

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INVESTMENT PROTECTION**

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In the Matter of

ING LIFE INSURANCE AND ANNUITY COMPANY,

Respondent.

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

WHEREAS, in December 2004, Eliot Spitzer, Attorney General of the State of New York (the “OAG”), commenced an investigation (“Investigation”) pursuant to Executive Law § 63(12) and Article 23-A of the General Business Law (the “Martin Act”), into retirement benefit products provided, marketed and sold by ING Life Insurance and Annuity Company (“ING”);

WHEREAS, ING is a corporation engaged in the business of marketing and selling retirement products to retirement plans and programs, including 401(k) plans, 403(b) variable annuity programs and 457 deferred compensation plans;

WHEREAS, ING marketed and sold a 403(b) product exclusively endorsed by the New York State United Teachers union (“NYSUT” or “Union”) to NYSUT members;

WHEREAS, in the course of the Investigation extensive documentary evidence was reviewed by the OAG;

WHEREAS, ING has cooperated in the Investigation by producing documentary evidence and identifying evidence relevant to the Investigation;

WHEREAS, as set forth in the findings of fact (“Findings”) below, the Investigation revealed that certain practices engaged in by ING violated the Martin Act and Executive Law § 63(12);

WHEREAS, ING has advised the OAG of its desire to resolve the Investigation;

WHEREAS, ING, without admitting or denying the OAG's Findings made below, has agreed to implement certain reforms and to make certain restitution (see Agreement below); and

NOW THEREFORE, the OAG, based upon the Investigation, makes the following Findings:

FINDINGS

1. ING is a corporation organized and existing under the laws of the State of Connecticut. On December 13, 2000, ING became the successor entity to Aetna Life Insurance and Annuity Company (“Aetna”).

2. Since 1976, ING and its predecessor have engaged in the business of selling retirement products. In recent decades, this has included selling retirement products, including 401(k) plans, 403(b) variable annuity programs and 457 deferred compensation plans.

I. Aetna/ING’s Union-Endorsed 403(b) Program

A. 403(b) Retirement Program and the NYSUT Endorsement

3. A 403(b) program, named for section 403(b) of the Internal Revenue Code, is a tax-deferred savings plan available to employees of educational institutions and certain other not-for-profit organizations. It allows teachers and other qualifying employees to save and to invest for retirement, on a tax-deferred basis, in various variable funds (which operate much like mutual funds) and fixed income investment options offered by an insurance company. Until

1974, 403(b) programs were solely a form of annuity contract -- investment vehicles with insurance features for which fees are charged. In 1974, section (7) was added to the Code, eliminating the need for an insurance "wrapper" for 403(b) programs and permitting investments to be made in mutual funds without any insurance charges. Both types of 403(b) programs allow teachers and other not-for-profit employees an opportunity to save for retirement, in some respects like private sector employees can save through 401(k) tax-deferred retirement plans.

4. In 1987, an arm of NYSUT, the New York State United Teachers Benefits Trust¹ ("Trust"), explored whether the Union should endorse a 403(b) program for its membership. One Union official stated that, by engaging in the endorsement process, Union members would gain "an advocate for their concerns or problems" in a market he described as "not tightly regulated." Exhibit 1.² The Trust expected that the NYSUT name would give a significant sales advantage to an endorsed vendor, allowing the vendor to capitalize on the sense of security and trust embodied in the Trust's endorsement of the product being sold.

5. In 1988, the Trust selected Aetna and endorsed a new 403(b) annuity product called Opportunity Plus which allowed for investments in both variable funds and a fixed income account. In connection with the Trust's endorsement of Opportunity Plus, Aetna agreed to pay an expense reimbursement that initially approximated \$40,000 a year.

1 In 1983, NYSUT established the Trust to provide benefits to members of NYSUT and affiliated unions. The Trust offered some benefits directly, including an array of life, medical and property insurance and car rental, travel and shopping discounts. In addition to these benefits offered directly by the Trust, the Trust also negotiated with various vendors for other voluntary benefit programs, including retirement products such as 403(b) plans. The NYSUT Benefits Trust was renamed "NYSUT Member Benefits" after this Investigation was commenced.

2 Citations refer to documents in the accompanying exhibits.

6. Aetna's endorsed Opportunity Plus product was first offered for sale in June 1989. In the first two years alone, 16,000 Union members invested over \$364,000,000 in the endorsed Opportunity Plus program. By 1994, participation in Opportunity Plus increased to 26,000 people with a total investment of \$735,000,000; by 1999, 40,400 people had invested over \$2,000,000,000 in the plan. At the end of 2003, there were approximately 50,000 current and retired school district employees invested in Opportunity Plus, though the total value of their investments had diminished slightly from the plan's 1999 peak due to the 2000 stock market decline. Today, more than 53,000 current and retired school district employees participate in Opportunity Plus, which holds approximately \$2,350,000,000.

7. Since its inception in 1989, investors in Opportunity Plus have been charged every year both for the expenses of the variable funds they select plus an insurance charge, a so-called Mortality and Expense fee ("M&E"), on their variable fund investments. A fixed-income option offered by the plan carries no M&E fees. Currently, the annual M&E is 1.00% of each retirement account's variable fund balance, and the average variable fund cost is .68% (although costs vary by fund), giving average combined annual charges of 1.68%.

8. As more NYSUT members invested in the endorsed product, Aetna, and later ING, paid ever increasing amounts to the Trust to keep the endorsement. In 1994, the endorsement agreement increased Aetna's annual payments to the Trust from \$40,000 to \$400,000 a year. The figure increased further to \$592,000 a year in 1998. In 2001, the Trust negotiated with ING a payment scale starting at \$1,852,000 in 2001 and gradually increasing to \$2,402,000 in 2006. Also in 2001, ING agreed to make additional payments that were to commence in 2005 based on the amount of NYSUT member assets invested in ING products.

The entire payment structure was later changed to a flat “per head” endorsement fee based on the overall number of NYSUT members. Under this new structure, the total ING endorsement payment to the Trust was over \$3,000,000 in 2005, rising to \$4,200,000 in 2009. Exhibit 2.

B. Aetna/ING Payments Purchased Union Sales Support

9. Aetna and ING highlighted the Trust’s endorsement and oversight role in marketing Opportunity Plus to NYSUT’s membership. One Aetna pamphlet advertised how “[w]orking closely with the New York State United Teachers Aetna . . . has designed Opportunity Plus specifically for you” and how “Aetna Financial Services has a history of working with NYSUT Member Benefits to offer smart solutions for its members’ financial goals.” Exhibit 3. When considering which retirement product provider to select, an ING flyer told NYSUT members to remember “[w]hen you’re making your choice be aware of the fact that NYSUT’s only endorsed provider of 403(b) plans is ING.” Exhibit 4. The endorsement allowed Aetna, and later ING, to capitalize on the idea that they were working with an active Union advocate when marketing Opportunity Plus to NYSUT’s members.

10. The Aetna and ING endorsement payments encouraged the Trust to covertly expand Aetna and ING’s business in conflict with the interests of its members. For instance, in 1994, Aetna and the Trust began offering a program called Financial Building Blocks to provide workshops on a variety of topics to NYSUT members. ING advertised Financial Building Blocks seminars as a source of neutral investment information for NYSUT members: “There’s no sales pitch - they do not promote specific products or services.” Exhibit 5 (emphasis in original). However, an internal ING email from January 2004 praised an ING employee, who

conducted Financial Building Blocks seminars, for using the opportunity “as a ‘foot in the door’ to promote” ING products. Exhibit 6.

11. In 1998, Aetna and the Trust began to offer a new Aetna Financial Counseling Program ("FCP") to be conducted by Ernst & Young ("E&Y"). In promotional material issued by the Trust, this program is described as providing an “independent review” and offering unbiased advice. Exhibit 7. In fact, however, it was a program to sell ING/Aetna products: an undated email from an ING Managing Director to the Manager of the Trust stated that the “initial purpose of the FCP program [sic] was to generate 403(b) leads for the Opp. Plus Producer.” Exhibit 8. In addition, ING representatives capitalized on the FCP to sell Union members a variety of other products beyond Opportunity Plus, including variable annuities, mutual funds, long-term care insurance, stocks, term life insurance, Roth IRAs and medical insurance. Exhibit 9.

12. Starting in 2001, the Trust hired six financial services coordinators (“Coordinators”) who were responsible for “acting as liaison between [ING] and the Trust, and overseeing on behalf of the Trust all aspects of the [ING] programs and services sponsored by the Trust.” Exhibit 10.

13. The Coordinators held themselves out to teachers as working solely on behalf of the Trust in the best interests of NYSUT members. As one Coordinator wrote to a teacher in 2003:

A final note, which I hope I made clear at the meeting, but which I would like to reiterate here: I work for [the Trust], not ING. My pay is not tied in any way to ING. Whether or not NYSUT members choose to use ING, or remain with ING, has no bearing whatsoever on my compensation. My sole interest is to maximize

Exhibit 13.

16. One ING employee wrote a review of a Coordinator on October 27, 2003, praising his assistance in ING's marketing efforts:

A case in point . . . was a recent deal that was done in Chappaqua. The union president wanted no mention of specific product or company, etc. [the Coordinator] used a nice soft selling approach and somebody in the audience finally was baited to ask why this [sic] NYSUT approved ING and as a result we have an exclusive. A soft sell that worked very well. He has done this approach in many other places

Exhibit 14. The ING employee summed up: "I think [the Coordinator's] 14 or 18 months with us . . . has been a very effective growth experience for [the Coordinator] and certainly very productive for my sales staff and myself." Exhibit 14.

C. Aetna and ING Failed to Adequately Disclose their Relationship with the Trust

17. Aetna and ING failed to properly disclose their close working relationship with the Trust to market the Opportunity Plus product. Originally, Aetna did not make any disclosure at all regarding its financial arrangements with the Trust. From June 1989 through November 1992, the Aetna prospectus for Opportunity Plus (the formal disclosure available to all investors) stated only that "Opportunity Plus is endorsed by [NYSUT] and [the Trust]." Exhibit 15. Aetna and ING prospectus disclosures referred to the payments made to the Trust, but never revealed that they were used in large part to market the Opportunity plan to teachers. For instance, the 2001 Opportunity Plus prospectus states: "We contribute to the costs incurred by [the Trust] for retaining up to six employees who assist in management of the Opportunity Plus program."

Exhibit 16. Not only did this description of the Coordinators' role fail to reflect the Coordinators' significant marketing activities, but also the fact that ING reimbursed the Trust for

the Coordinators' salaries. Elsewhere in the prospectus, ING disclosed specific payment amounts, including a \$40,000 annual expense reimbursement and \$313,000 quarterly endorsement payments, but ING failed to disclose the actual amount that ING paid the Trust for the consultants' salaries, amounting to up to \$600,000 per year. Exhibit 16.

18. In 2001, ING proposed changing Opportunity Plus marketing disclosure language to read: "All fees and expenses associated with Opportunity Plus **including those received by NYSUT Benefit Trust** are detailed in the current prospectus, which should be read carefully prior to investing or sending money." Exhibit 17 (emphasis supplied). Thereafter, NYSUT's then-Executive Director of Finance and Administration wrote to ING to request that the language in bold above be removed. He argued:

The issue, as I'm sure you can understand, is that [the Trust] does not want to advertise the financial arrangement between ING and NYSUT Benefit Trust to our competition. This is exactly what will happen, as they will use this information against us to persuade potential participants against our program. In addition, the ING type of disclosure on work site posters could create political problems for our local presidents. We need the support of local presidents in order to properly market this program. As you can well imagine, competition is fierce in New York State school districts. It is our position that the expense reimbursement arrangement should be disclosed to participants only in the prospectus. This matter must be resolved in order resume more active marketing and promotion of our program. Millions of dollars are being lost to our competition each day that this matter is allowed to go unresolved.

Exhibit 17.

19. ING ultimately agreed to compromise and proposed that the new disclosure language read as follows:

Opportunity Plus is a tax deferred variable annuity issued by [Aetna/ING]. . . . All fees and expenses associated with [Opportunity Plus], including those of the Trust, are detailed in the current prospectuses, . . . which should be read carefully prior to investing or sending money.

Exhibit 18. The Trust's Director approved this compromise language in an internal email, noting its obfuscating quality: "I think this lang. is even better. It makes you think that the expenses they are talking about are the expense [sic] of the ING National Trust." Exhibit 18.

II. Violations

20. The foregoing acts and practices of ING violated the Martin Act, Article 23-A of the General Business Law, which makes it illegal to employ any deception or concealment in the purchase, sale or promotion of securities.

21. The foregoing acts and practices of ING violated § 349 of the General Business Law.

22. The foregoing acts and practices of ING violated § 63(12) of the Executive Law.

AGREEMENT

IT NOW APPEARING THAT ING desires to settle and resolve the Investigation without admitting or denying the OAG's Findings;

NOW, THEREFORE the OAG and ING hereby enter into this Assurance of Discontinuance ("Assurance"), pursuant to Executive Law § 63(15), and agree as follows:

I. Remedial Measures

A. Disgorgement/Restitution

23. ING shall pay \$30 million in the manner described below as disgorgement and/or restitution to resolve the matters raised by this Assurance (the "Distribution Amount").

24. ING shall distribute the Distribution Amount to NYSUT members or former members who participated in Opportunity Plus at any point between January 1, 2001, and June

30, 2006 (collectively, the “Distribution Group”). ING shall distribute \$100 to each member of the Distribution Group. Concurrently, the balance of the Distribution Amount shall be distributed pro rata to the members of the Distribution Group based upon the average end of month account balance of each member of the Distribution Group between January 1, 2001, and June 30, 2006. Each participant’s share of the Distribution Amount (the “Participant Payment Amounts”) shall be distributed to each participant as described below.

25. Within 120 days of the execution of this Assurance, in cases where participants still have an Opportunity Plus account, ING shall credit the Participant Payment Amounts into participants’ Opportunity Plus accounts as an adjustment to earnings and in accordance with the participants’ current investment allocation instructions and notify the participants of the deposit. In cases where participants no longer have any Opportunity Plus account, within 120 days of the execution of this Assurance, ING shall reactivate the account and credit the Participant Payment Amount to the money market fund available under Opportunity Plus and notify the participants of the reactivation and deposit. In the event a former participant elects to roll-over or otherwise liquidate or withdraw any amount from the reactivated account, ING will waive any fees or charges it would otherwise charge under such circumstances.

26. No Participant Payment Amounts or costs incurred by ING pursuant to or in connection with this Assurance shall be borne directly or indirectly by any NYSUT member. ING agrees and undertakes that it and its affiliates shall not directly or indirectly assess any fee or charge to any 403(b) marketed, sold or provided by ING to NYSUT members to defray, recoup or reimburse any such payments or costs.

27. All Participant Payment Amounts made or costs incurred by ING pursuant to or in connection with this Assurance shall be paid exclusively by ING or an affiliated entity and ING shall neither seek nor accept from any person or entity indemnification or contribution, in whole or part, which pays for or otherwise relates to this Assurance.

B. Improved Disclosure

28. Within 180 days of the execution of this Assurance and continuing for at least five years from the date of this Assurance, ING shall, except as provided below, include a separate document as a cover to, or otherwise prominently displayed with, every offer to invest in, or account opening package, for retirement products offered by ING to retirement plans and programs under Internal Revenue Code sections 401(k), 403(b), 403(b)(7), and 457 (the “One-Page Disclosure”). ING shall deliver the One-Page Disclosure to existing participants in ING retirement plans and programs as a cover to, or otherwise prominently included with, a participant’s periodic statements during 2007 and, in any event, no later than December 2007, by the same delivery method (including paper or electronic delivery) such participants receive periodic statements. The One-Page Disclosure obligation shall not apply in situations involving fixed-only products (where no administrative fees or variable account fees are charged), or where ING provides only third-party administrative services, or in instances where a plan or program’s employer-sponsor has specifically directed that it not be delivered despite ING’s request. Exhibit A is the current form of the One-Page Disclosure agreed to by the parties subject to any other applicable regulatory review, requirements and approval.

C. General Relief

29. ING agrees that the OAG has jurisdiction over the matters discussed herein. ING will cease and desist from engaging in any acts in violation of the Martin Act and/or Executive Law § 63(12), and will comply with the Martin Act and Executive Law § 63(12).

30. Evidence of a violation of this Assurance by ING (or any of its subsidiaries or affiliates) shall constitute prima facie proof of a violation of the Martin Act, General Business Law §349 and Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the OAG.

II. Other Provisions

A. Scope of this Assurance of Discontinuance

31. Except as provided below, this Assurance concludes the Investigation and any action the OAG could commence against ING, ING Financial Advisers, LLC (“IFA”) and their current and former officers, trustees, employees, agents and affiliates, arising from or relating to the NYSUT 403(b) and 403(b)(7) products, provided however, that nothing contained in this Assurance shall be construed to cover claims of any type by any other state agency or any claims that may be brought by the OAG to enforce the ING’s obligations arising from or relating to the provisions contained in the Assurance. The Assurance shall not prejudice, waive or affect any claims, rights or remedies of the OAG with respect to any person, other than the ING, IFA and their current and former officers, trustees, employees, agents and affiliates, all of which claims, rights, and remedies are expressly reserved.

32. If ING commits a material breach of any of the obligations described herein, the OAG may in its sole discretion terminate the Assurance upon written notice to ING and ING

agrees that any statute of limitations or other time-related defenses applicable to the subject of the Investigation and any claims arising from or relating thereto are tolled from and after December 14, 2004. In the event of such termination, ING expressly agrees and acknowledges that the Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Investigation, against ING or from using in any way any statements, documents or other materials produced or provided by ING after commencement of the Investigation, including, without limitation, any statements, documents or other materials provided for purposes of settlement negotiations.

B. Cooperation

33. ING shall fully and promptly cooperate with the OAG with regard to the Investigation, and related proceedings and actions, of any other person, corporation or entity, including but not limited to current and former employees, concerning retirement products. ING shall use its best efforts to ensure that all its officers, directors, employees and agents also fully and promptly cooperate with the OAG in the Investigation and related proceedings and actions. Cooperation shall include without limitation: (1) production voluntarily and without service of subpoena of any information and all documents or other tangible evidence reasonably requested by the OAG, and any compilations or summaries of information or data that the OAG reasonably requests be prepared; (2) without the necessity of a subpoena, having ING's officers, directors, employees and agents attend any proceedings at which the presence of any such persons is requested by the OAG and having such persons answer any and all inquiries that may be put by the OAG to any of them at any proceedings or otherwise ("proceedings" include but are not

limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (3) fully, fairly and truthfully disclosing all information and producing all records and other evidence in their possession relevant to all inquiries made by the OAG concerning any fraudulent or criminal conduct whatsoever about which ING has any knowledge or information; (4) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by ING indicating: (a) the type of document; (b) the date of the document; (c) the author and recipient of the document; (d) the general subject matter of the document; (e) the reason for withholding the document; and (f) the Bates number or range of the withheld document. The OAG may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by ING, its officers, directors, employees, or agents; and (5) ING shall not jeopardize the safety of any investigator or the confidentiality of any aspect of the Investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the investigation, without the consent of the OAG. Nothing herein shall prevent ING from providing such evidence to other regulators, or as otherwise required by law.

34. If ING violates the terms of this Assurance in any material respect, as determined solely by the OAG: (1) the OAG may pursue any action, criminal or civil, against any entity for any crime it has committed, as authorized by law, without limitation; (2) as to any criminal prosecution brought by the OAG for violation of law committed within six years prior to the date of this Agreement or for any violation committed on or after the date of this Agreement, ING

shall waive any claim that such prosecution is time-barred on grounds of speedy trial or speedy arraignment or the statute of limitations.

C. Miscellaneous Provisions

35. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

36. No failure or delay by the OAG in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

37. ING consents to the jurisdiction of the OAG in any proceeding or action to enforce the Assurance.

38. ING enters into this Assurance voluntarily and represent that no threats, offers, promises or inducements of any kind have been made by the OAG or any member, officer, employee, agent or representative of the OAG to induce ING to enter into this Assurance.

39. The Assurance may be changed, amended or modified only by a writing signed by all parties hereto, and the parties may extend any of the procedural dates set forth above where appropriate.

40. The Assurance, together with the attached Exhibits, constitutes the entire agreement between the OAG and ING, and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

41. This Assurance shall be binding upon ING and its successors, assigns, and/or purchasers of all or substantially all its assets (“Successors”) provided, however, that any Successor to ING may petition the Attorney General and obtain relief from such undertakings.

42. The Assurance shall be effective and binding only when it is signed by all parties. The Assurance may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

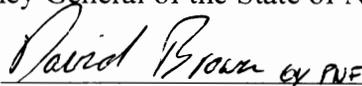
WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

Dated: October 10, 2006

ELIOT SPITZER

Attorney General of the State of New York

By:



David D. Brown, IV

Assistant Attorney General

Investment Protection Bureau

EXHIBIT A

Important Facts About [Name of Product]

This retirement product is not free. ING and the funds offered in the product charge various fees and expenses. Many fund companies pay ING in return for being offered as investment options, as well as for the recordkeeping and related services ING provides. Funds are selected based on the revenue they pay to ING and on ING's assessment of their quality and cost. Both ING and the mutual fund companies seek to make a profit from the product.

Any fees that you pay as part of your retirement plan will have an impact on your savings over time. An investor in this product pays ING and the fund companies an average of __% of his or her account balance every year.

The table below shows the impact of the average fee on the account of an investor who saves \$[the rounded average annual investment] at the beginning of each year over a twenty-year period, assuming that the investment portfolio (before fees) increases by 7% per year.

Year	End of year balance without fees	End of year balance after average fee
1		
5		
10		
15		
20		

Total impact of average fees = \$