

STATE OF CONNECTICUT
DEPARTMENT OF BANKING
260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



Jorge L. Perez
Commissioner

IN THE MATTER OF:
VOYA FINANCIAL ADVISORS, INC.
f/k/a ING FINANCIAL PARTNERS, INC.
CRD No. 2882

AMENDED AND RESTATED
ORDER TO CEASE AND DESIST
AMENDED AND RESTATED
ORDER TO MAKE RESTITUTION
AMENDED AND RESTATED
NOTICE OF INTENT TO FINE
AND
NOTICE OF RIGHT TO HEARING
DOCKET NO. CRF-18-8430-S

I. AMENDED AND RESTATED PRELIMINARY STATEMENT

- 1. The Banking Commissioner ("Commissioner") is charged with the administration of Chapter 672a of the General Statutes of Connecticut, the Connecticut Uniform Securities Act ("Act"), and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies ("Regulations") promulgated under the Act.
2. Pursuant to Section 36b-26(a) of the Act, the Commissioner, through the Securities and Business Investments Division ("Division") of the Department of Banking, has conducted an investigation into the activities of Voya Financial Advisors, Inc. ("Voya") to determine if Voya has violated, is violating or is about to violate provisions of the Act or Regulations ("Investigation").
3. As a result of the Investigation, the Commissioner has reason to believe that Voya has violated Section 36b-31-6f of the Regulations.
4. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to issue a cease and desist order against Voya as authorized by Section 36b-27(a) of the 2018 Supplement to the General Statutes ("2018 Supplement").

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5. As a result of the Investigation, the Commissioner has reason believe that a basis exists to order that Voya make restitution as authorized by Section 36b-27(b) of the 2018 Supplement.

6. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to impose a fine upon Voya as authorized by Section 36b-27(d) of the 2018 Supplement.

7. As a result of the Investigation, on April 23, 2018, the Commissioner, acting pursuant to Section 36b-27 of the 2018 Supplement, issued an Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Fine and Notice of Right to Hearing (collectively, "Order and Hearing Notice") against Voya, which Order and Hearing Notice is hereby amended and superseded.

8. On May 3, 2018, Voya requested a hearing on the allegations set forth in the Order and Hearing Notice. The hearing was originally scheduled for July 17, 2018. On June 25, 2018, the Hearing Officer continued the hearing to a date to be determined.

9. Section 36b-31(a) of the Act authorizes the Commissioner to "make [and] amend . . . such . . . orders as are necessary to carry out the provisions of sections 36b-2 to 36b-34, inclusive . . ."

10. Section 36a-1-22 of the Regulations provides, in pertinent part, that:

The commissioner may amend the notice of hearing at any stage of the contested case prior to the close of evidence. The presiding officer shall provide parties . . . with notice of the amendment and shall provide them with sufficient time to prepare their case in light of the amendment. A party that has requested a hearing on the original notice need not request a hearing on the amended notice and any such hearing shall proceed on the amended notice as if it were the original notice.

II. VOYA

11. Voya has been registered as a broker-dealer under the Act since at least September 29, 1983. Prior to September 4, 2014, Voya was known as ING Financial Partners, Inc. Voya has also been an investment adviser registered with the Securities and Exchange Commission (SEC No. 801-46585) since July 11, 1994, and has filed with the Division the notice required by Section 36b-6(e) of the 2018 Supplement since June 1, 1999.

III. IMPROPER SELLING AWAY BY VOYA'S BROKER-DEALER AGENT DALE QUESNEL

12. Dale Joseph Quesnel, Sr. ("Quesnel") (CRD No. 2231152) was registered as a broker-dealer agent of Voya under the Act from January 1, 2004 to January 14, 2011. During the time he was a broker-dealer agent of Voya, Quesnel was supervised from the Voya office located at 12 Grafton Common, Grafton, Massachusetts 01519 ("Grafton Branch"). From July 1992 through August 2011, Quesnel did business as Insurance and Investment Services LLC, a Connecticut limited liability company with its principal place of business at 50 Freshwater Boulevard, P.O. Box 615, Enfield, Connecticut 06083.

13. On June 22, 2015, the Commissioner entered an Order to Cease and Desist, Order to Make Restitution and Notice of Intent to Fine (Docket No. CRF-15-8110-S) against Quesnel ("Quesnel Notice"), which Quesnel Notice is incorporated herein. Also named as Respondents in the Quesnel Notice were: Overtime Marketing, LLC; Overtime Sports Southeast, LLC; Overtime Sports Southwest, LLC (collectively, the "Overtime Entities"); Kenneth Hansmire; and Floridel, LLC ("Floridel"). Among other things, the Quesnel Notice alleged that, without written notice to Voya, Quesnel sold approximately \$1.9 million of securities issued by the Overtime Entities and approximately \$250,000 of securities issued by Floridel to investors in Connecticut and other states (many of whom were Quesnel's Voya clients); and engaged in fraud by failing to provide investors with any offering document or risk disclosure document for either the Overtime Entities or Floridel securities. Quesnel was a broker-dealer agent of Voya for a majority of the time these investments were offered and sold by Quesnel.

14. On October 20, 2015, a hearing on the Quesnel Notice was held at the Department of Banking, but Quesnel did not appear. On March 3, 2016, the Commissioner issued Findings of Fact, Conclusions of Law and Order (Docket No. CRF-15-8110-S) ("Quesnel Order"), wherein all of the allegations in the Quesnel Notice were deemed admitted, the Order to Cease and Desist and Order to Make Restitution were made permanent and Quesnel was fined \$600,000.

15. Quesnel failed to pay either the restitution ordered or the administrative fine imposed by the Commissioner in the Quesnel Order. On September 1, 2016, the Office of the Attorney General of the State of Connecticut initiated a civil action in the Superior Court, Judicial District of Hartford, to enforce the Quesnel Order (Docket No. HHD-CV16-6071291-S). On December 22, 2017, the Superior Court issued an order that, among other things, directed Quesnel to make full restitution to the investors within thirty days from the court's order and pay the Commissioner the civil penalty of \$600,000 as previously ordered by the Commissioner as well as an additional civil penalty of \$900,000 for Quesnel's failure to comply with the Commissioner's previous orders (both within sixty days from the court's order). To date, Quesnel has not complied with the court's order.

IV. VOYA'S SUPERVISORY SYSTEM FAILED TO DETECT QUESNEL'S SELLING AWAY DESPITE MULTIPLE RED FLAGS

16. Voya had an ongoing duty to supervise Quesnel.

17. Quesnel was able to sell away the unregistered Overtime and Floridel offerings because Voya ignored multiple red flags that became apparent to Voya at different times during Quesnel's association with Voya. These red flags should have put Voya on notice that Quesnel might be violating state securities laws.

A. Voya's Annual Inspections of Quesnel Missed Red Flags, Including the Funneling of Outside Business Activity Money into Quesnel's Bank Account

18. When Quesnel was hired by Voya, Voya required that its agents make their checking account records available to Voya during Voya's annual compliance review of its agents. Although Quesnel disclosed to Voya that he held checking accounts at BNY Mellon (Mellon Trust of New England, N.A.) ("Mellon Account") and Rockville Bank ("Rockville Account"), he failed to disclose to Voya the existence of a checking account at Webster Bank ("Webster Account"). Quesnel deposited the funds he received from his selling away activity into his Webster Account.

19. In August 2009 and October 2010, Voya performed annual inspections of Quesnel's office operations. The inspections were not done on a "surprise" basis but previously announced to Quesnel.

The inspection reports indicated that Voya had access to and reviewed the Mellon Account and Rockville Account bank statements.

20. From June 2009 to January 2011, Quesnel deposited approximately twenty-seven checks from his Webster Account into his Rockville Account. Even a cursory look at the face of the twenty-seven checks deposited into the Rockville Account would have revealed that Quesnel had a third checking account at Webster Bank. However, despite undertaking a review of the Rockville Account, Voya failed to perform even the most basic due diligence and consequently did not detect the Webster Account.

21. The commissions Quesnel earned at Voya were deposited into Quesnel's Mellon Account. In 2009, Quesnel's commission production declined significantly. At the same time, Quesnel's Rockville Account saw an influx of deposited checks from the Webster Account. For example, in 2009, Quesnel only earned a fraction of the commissions he earned in 2008, yet he deposited significantly more money than he earned in commissions into his Rockville Account. The deposits made in the Rockville Account, when contrasted to Quesnel's commissions, should have put Voya on notice that Quesnel was potentially generating money from another source. Quesnel's Rockville and Mellon checking account activity in 2009 should have put Voya on notice that Quesnel needed to be questioned about the source of the monies he was depositing into his Rockville Account. However, despite having access to Quesnel's 2009 statements from Rockville and Mellon, Voya did not take any steps to question or further assess Quesnel's activities.

22. Voya's lack of meaningful supervision allowed Quesnel to continue to engage in the sale of unregistered securities for an extended period of time.

B. Quesnel's Form U4 Disclosures Raised Red Flags Concerning Ongoing Financial Difficulties

23. Quesnel's Uniform Application for Securities Industry Registration or Transfer ("Form U4") had multiple disclosures that should have put Voya on notice that Quesnel's financial situation warranted closer supervision of his agent activities. For example:

- (a) Quesnel's February 16, 2005, Form U4 disclosed that Quesnel filed for bankruptcy in the United States Bankruptcy Court for the District of Connecticut on May 19, 2004 (Bankruptcy Petition 04-21485). Although Quesnel's March 30, 2006, Form U4 stated that this bankruptcy was discharged on January 7, 2005, federal court online records (pacer.gov) indicated that the bankruptcy was not discharged until June 22, 2010;
- (b) From January 3, 2005 to December 10, 2010, Quesnel's Form U4 disclosed a \$12,000 outstanding Internal Revenue Service tax lien, originally filed on August 21, 1997 ("IRS Lien"). For over five years, Quesnel's Form U4 stated that Quesnel's "[a]ttorney is now working towards resolution . . . and anticipate closure by summer." Although this lien dated back to 1997, Voya did not take any steps to follow up on this disclosure item to determine why Quesnel was not satisfying this financial obligation; and
- (c) From January 3, 2005 to December 10, 2010, Quesnel's Form U4 disclosed a \$53,423 outstanding civil judgment owed to an individual ("Civil Judgment"). Voya failed to follow up to determine whether Quesnel ever satisfied this outstanding monetary judgment. Had Voya done so, it would have found that Quesnel never paid the Civil Judgment.

24. The above disclosable items should have put Voya on notice that Quesnel was having personal financial problems. However, Voya did nothing to scrutinize or implement enhanced supervision over Quesnel's broker-dealer agent activities. Such additional steps might have detected that Quesnel was improperly engaging in additional outside business activities involving securities to generate money to supplement the commissions Quesnel earned at Voya.

C. Voya's Delayed and Insufficient Response to Red Flags

25. In 2009, Voya became aware of several persistent patterns involving Quesnel. First, Voya became aware that Quesnel failed to disclose multiple disclosure occurrences to Voya. Second, Voya became aware that Quesnel was the subject of multiple tax liens and bankruptcies.

26. In April 2009, the Voya Compliance Department ("Compliance") sent a letter to the Grafton Branch, inquiring whether the Grafton Branch knew whether Quesnel's Civil Judgment and IRS Lien had been satisfied. The letter stated that "[u]ntil he satisfies these liens, we'll continue to monitor and will ask for a new credit report every 6 to 12 months. *He does not show any other red flags at this point.*" (Emphasis added)

27. On June 29, 2009, Compliance ordered a Trans Union credit report ("Credit Report") on Quesnel. The Credit Report reflected five items that Quesnel had not previously disclosed to Voya:

- (a) A \$7,671 federal tax lien imposed in October 1995 (this lien was released in 1996);
- (b) A \$9,594 federal tax lien imposed in September 1997;
- (c) A \$1,257 Connecticut state tax lien imposed in May 2003;
- (d) A July 2003 Chapter 13 bankruptcy filed by Quesnel and dismissed in March 2004. This bankruptcy was separate from the one Quesnel disclosed on his Form U4; and
- (e) A \$4,745 federal tax lien imposed in April 2009.

28. In July 2009, after receiving and reviewing the Credit Report, Voya asked Quesnel to explain why he failed to disclose the 2009 \$4,745 federal tax lien, the 2003 Chapter 13 bankruptcy filing and the 2003 \$1,257 Connecticut state tax lien, and required him to disclose these items on his Form U4. In addition on January 13, 2010, Voya sent Quesnel a Letter of Warning, which included a \$250 monetary fine, reminding Quesnel of the importance of updating one's Form U4 in a timely manner.

29. Voya did not take any apparent action to address with Quesnel the two earlier federal tax liens, which were part of Quesnel's unsettled financial history.

30. Despite learning in June 2009 that Quesnel failed to disclose these five events to Voya, including a second bankruptcy and multiple tax liens, Voya did not send Quesnel the Letter of Warning until January 13, 2010. Moreover, subsequent to the Letter of Warning, Voya failed to take any additional supervisory action or surveillance measures with respect to Quesnel. Even after learning that Quesnel *filed for bankruptcy twice* and was subject to a grand total of *five tax liens*, Voya did not question Quesnel regarding the circumstances surrounding these events or their current status.

D. Voya Failed to Detect Additional Red Flags Involving Quesnel

1. Quesnel's Real Property was in Foreclosure

31. Voya failed to detect and Quesnel failed to disclose to Voya the following:

- (a) Quesnel's residential real estate at 22 Crescent Beach Drive, Enfield, Connecticut was subject to a Judgment of Strict Foreclosure entered on May 5, 2003, in the Superior Court for the Judicial District of Hartford (CV 030823532S); and
- (b) On November 6, 2009, Bank of New York Mellon Trust Company NA brought a foreclosure action against Quesnel in the Superior Court for the Judicial District of Hartford (HHD-CV-09-6005466-S). This foreclosure action was pending throughout Quesnel's association with Voya.

2. Voya Failed to Address Quesnel's Use of an Unauthorized E-mail Address

32. Section 5.7 of the Voya (then ING) "Office of Supervisory Jurisdiction Manual" ("Supervisory Manual") provides, in pertinent part:

Upon registration, ING Financial Partners registers an e-mail address for each registered representative with the AdvisorMail system that will be used for all business related e-mail communications with clients and prospects, ING Financial Partners, product vendors, and the registered representative's own internal staff. *When using e-mail for any business-related communications, registered representatives are prohibited from using any other e-mail address other than the account approved and registered with the AdvisorMail system.* (Emphasis supplied)

33. While associated with Voya, Quesnel violated Section 5.7 of Voya's Supervisory Manual by using a non-Voya e-mail address for Voya business correspondence, including e-mails sent to his supervisor at the Grafton Branch and other Voya supervisory personnel. In fact, Quesnel's own supervisor at the Grafton Branch e-mailed Quesnel at the non-Voya approved e-mail address multiple times throughout Quesnel's association with the firm in blatant disregard of Section 5.7 of the Supervisory Manual.

34. Notwithstanding its own supervisory procedures, Voya failed to question Quesnel's use of this non-Voya e-mail address although it was readily apparent from the face of the e-mails sent by Quesnel. As a result, Voya was not able to review and/or archive all of Quesnel's e-mail and adequately supervise him.

E. Voya Failed to Detect Quesnel's Outside Business Activity as Treasurer of a Local Tax District

35. The Crescent Lake Tax District ("Crescent Lake") is a quasi-municipal corporation created by the town of Enfield, Connecticut as a special tax district formed pursuant to Section 7-325 of the General Statutes of Connecticut. Quesnel resided in Crescent Lake during the relevant period of time and was its treasurer from approximately October 2003 to at least May 2011. During a substantial portion of the time he served as treasurer, Quesnel was also registered as a broker-dealer agent of Voya under the Act. As treasurer of Crescent Lake, Quesnel was responsible for depositing money collected from residents into

Crescent Lake's bank account, as well as paying Crescent Lake's bills. Quesnel was also responsible for preparing Crescent Lake's annual budget.

36. Quesnel failed to disclose to Voya his outside business activity of serving as Crescent Lake's treasurer.

37. Quesnel wrote out and signed checks from Crescent Lake's bank account. Certain of these checks were made payable to "Dale Quesnel" and deposited by Quesnel into Quesnel's Rockville Account mentioned in paragraph 18 above.

38. Crescent Lake's bank records were sent to Crescent Lake Tax District, c/o Dale Quesnel, 50 Freshwater Blvd, Enfield, CT 06082. This was the same location from which Quesnel conducted his Voya business and the location where Voya and the Grafton Branch conducted the 2008, 2009 and 2010 audits of Quesnel.

39. Despite Voya's annual audits of Quesnel in 2008, 2009 and 2010, and Voya's access to Quesnel's Rockville Account, Voya failed to discover Quesnel's outside business activity involving serving as treasurer of Crescent Lake.

V. VOYA FAILED TO SUPERVISE ADDITIONAL VOYA AGENTS

A. Texas Agent Daniel Tapia

40. Daniel Enrique Tapia (CRD No. 2219749) ("Tapia"), a resident of Texas, is an individual who is not registered in any capacity under the Act. Tapia was registered as a broker-dealer agent of Voya under the Texas Securities Act from December 8, 2004 to August 26, 2016, and as an investment adviser agent of Voya from January 4, 2005 to August 26, 2016. Tapia did business as Rembrandt Financial Group, LLC ("Rembrandt"). Like Quesnel, Tapia was supervised remotely by the out-of-state Grafton Branch.

41. The Division has reason to believe that Tapia and Quesnel met each other at a Voya sponsored event.

42. As part of his business, Tapia created and distributed a newsletter to his clients that included securities research. On December 30, 2009, Quesnel submitted to Voya an Outside Business Activity Form seeking permission to be the Director of Research at Rembrandt, where Quesnel would perform due diligence and analysis of securities for Rembrandt in exchange for Tapia and/or Rembrandt paying Quesnel a \$4,000 per month salary. On March 9, 2010, this request was denied by Voya because Quesnel failed to provide additional information to Voya about the proposed outside business activity.

43. Despite Voya's denial of the request, Quesnel and Tapia surreptitiously entered into the arrangement without Voya's approval. From approximately January 2010 to approximately November 2010, Tapia through Rembrandt sent Quesnel two checks a month of approximately \$1,800 each in exchange for securities research. The checks from Rembrandt to Quesnel totaled approximately \$35,000.

44. Voya, as part of its supervision of Tapia, had access to Tapia d/b/a Rembrandt's bank account ("Tapia Account"). For approximately eleven months, Tapia wrote checks out of the Tapia Account to pay Quesnel for securities research. Although Voya had access to the Tapia Account and performed annual inspections of Tapia's business, including an inspection that took place on October 22, 2010, Voya failed to notice and/or follow up on the bi-monthly checks being written by Tapia d/b/a Rembrandt to Quesnel. The checks from Tapia d/b/a Rembrandt to Quesnel were deposited into Quesnel's Webster Account.

45. Despite supervisory responsibility over both Voya agents, Voya failed to implement and enforce a system to identify or detect this arrangement. Quesnel and Tapia were easily able to circumvent the entire Voya supervisory system for eleven months without any detection or monitoring by Voya.

B. Florida Agent Stephen Ruff

46. Stephen Mark Ruff (CRD No. 1527170) ("Ruff"), a resident of Florida, is an individual who is not registered in any capacity under the Act. Ruff was registered as a broker-dealer agent of Voya under the Florida Securities Investor Protection Act from January 1, 2004 to January 29, 2007, and from

May 8, 2007 to July 1, 2009. Like Quesnel and Tapia, Ruff was supervised remotely from the out-of-state Grafton Branch. Ruff had a history of selling securities without firm approval, having been terminated from a prior firm in 1999 for selling a private placement absent firm approval (FINRA Occurrence No. 368371).

1. Ruff's Involvement with Floridel, LLC and Connection to Quesnel

47. On March 8, 2007, Ruff and two other individuals as managing members formed Redevecorp, LLC as a Florida limited liability company. Redevecorp, LLC's predecessor was Redevecorp, Inc., a Florida corporation which converted to a limited liability company on January 23, 2007. Redevecorp, LLC changed its name from Redevecorp, LLC to Floridel, LLC ("Floridel") on May 4, 2007.

48. Ruff terminated his association with Voya on or about January 29, 2007. In April 2007, Ruff sought to reregister with Voya as a broker-dealer agent in Florida and other jurisdictions, excluding Connecticut. As a precondition to Voya reregistering Ruff, Voya required Ruff to, among other things, resign as an officer of Floridel and agree to limit his involvement to that of an investor. Ruff became registered as a broker-dealer agent of Voya in Florida on April 27, 2007.

49. On June 24, 2009, based on a press release listing Ruff as the President of Floridel, Voya sent Ruff a letter inquiring whether he was still involved in Floridel. On June 26, 2009, Ruff represented to Voya that he had no relationship with Floridel. Notwithstanding the condition placed on Ruff's reregistration when he was an agent, Ruff did not completely sever his ties with Floridel. In fact, following his 2009 termination with Voya, Ruff served as managing member of Floridel from at least April 27, 2010 to August 20, 2012, and, together with Quesnel, devised a plan to sell unregistered securities issued by Floridel to investors in Connecticut and other states. Ultimately, Quesnel sold approximately \$250,000 of unregistered Floridel securities to investors.

50. Ruff's involvement with Floridel was not an outside business activity approved by Voya. Despite this fact and despite Ruff's history of outside business activity at a prior firm, Voya failed to implement adequate supervisory measures to ensure that Ruff was abiding by his agreement to curtail his

involvement with Floridel. Even more striking, a supervisor at Voya's Grafton Branch personally invested in Floridel and at least three of Quesnel's Voya clients invested in Floridel without Voya's knowledge.

2. Ruff's Involvement with the Overtime Entities

51. Ruff and Quesnel became acquainted and discussed doing business together. In 2008, Ruff and Quesnel attended an NFL football showcase in Texas, where Ruff introduced Quesnel to Kenneth Hansmire, owner of the Overtime Entities referenced in paragraph 13 above. The meeting of Ruff, Quesnel and Hansmire culminated in Quesnel working with Hansmire in offering and selling \$1.9 million of securities in the Overtime Entities.

52. Voya failed to exercise adequate supervisory controls over Ruff's involvement with the Overtime Entities and the fraud ultimately perpetrated by Quesnel.

C. Connecticut Agent Eric Olojugba

53. Eric Olojugba (CRD No. 2925026) ("Olojugba") was registered as a broker-dealer agent of Voya under the Act from September 27, 2006 to November 30, 2012, and as an investment adviser agent of Voya under the Act from February 26, 2007 to November 30, 2012. Like Quesnel, Tapia and Ruff, Olojugba was supervised remotely from the out-of-state Grafton Branch.

54. In December 2010, the Division sent a letter to Olojugba requesting that Olojugba explain to the Division why he failed to disclose certain outside business activities on his Form U4. The Division subsequently discovered that Olojugba also failed to update his Form U-4 with his then-current address.

55. Prior to the Division's December 2010 inquiry regarding Olojugba, Voya was not aware that Olojugba had potentially engaged in outside business activities or that Olojugba's Form U4 did not reflect his current address. It was only after Voya became aware of the Division's inquiry, that Voya began an Internal Review of Olojugba.

56. On November 30, 2012, the Commissioner entered a Permanent Order to Cease and Desist and Order Imposing Fine against Olojugba in the amount of \$25,000. The Commissioner found that Olojugba

committed one violation of Section 36b-31-14e(a) of the Regulations for his failure to update the Commissioner regarding his outside business activities and his residential address.

D. Massachusetts Agent John J. McDonnell Jr.

57. John J. McDonnell Jr. (CRD No. 4369031) (“McDonnell”), a resident of Massachusetts and New Hampshire, has been registered as a broker-dealer agent of Voya under the Act since January 1, 2004 and has passed the Series 6, Series 26 and Series 63 examinations. Throughout his employment at Voya, McDonnell’s primary function has been, and continues to be, recruiting and retaining Voya agents and assisting the Grafton Branch in supervising the insurance business of those agents who fall within the supervision of the Grafton branch and hold FINRA Series 6 licenses. McDonnell also assists and has assisted in the audits of agents that hold FINRA Series 6 licenses, such as Ruff. From January 1, 2004 to the present, McDonnell has worked out of his respective homes in Pembroke and Scituate, Massachusetts and has himself been supervised from the Grafton Branch.

58. On July 10, 2018, as part of the Investigation, McDonnell gave on the record testimony to the Division (“Deposition”).

**1. Voya Failed to Follow Its Own Supervisory Procedures
With Respect to McDonnell’s Outside Business Activity Involving Floridel**

59. In approximately 2004, McDonnell recruited both Tapia and Ruff to work as agents of Voya.

60. In approximately 2007, Ruff approached McDonnell and asked him to invest in Floridel. Floridel intended to purchase Del Taco restaurant franchises from Del Taco LLC, the franchisor of Del Taco restaurants.

61. McDonnell made two \$150,000 investments in Floridel, one in approximately 2007 and the other in approximately 2009.

62. McDonnell was hardly a passive investor. For example, from approximately 2008 to at least 2010, McDonnell signed numerous business documents on behalf of Floridel including, but not limited to, the following:

- (a) A December 23, 2008 “Floridel’s Principals’ Personal Guaranty of Sublease”, guaranteeing a December 23, 2008 sublease Floridel signed with Fazoli’s Restaurants, LLC for property and a building;
- (b) A February 4, 2009 “Unconditional Guarantee” relating to a \$738,000 Small Business Association loan to Floridel from Regions Bank, N.A. (“Regions Loan One”);
- (c) A February 4, 2009 commitment letter between Regions Bank, N.A. and Floridel (executed by McDonnell as a Guarantor of Regions Loan One);
- (d) An April 6, 2009 Corporate Resolution to Borrow/Grant Collateral in the amount of \$40,000 from Regions Bank, N.A. (executed by McDonnell as a Manager of Floridel);
- (e) An August 4, 2010 “Commercial Guaranty” executed by McDonnell as the Guarantor of a \$700,000 loan from Regions Bank, N.A. to Floridel (“Regions Loan Two”); and
- (f) Three separate Del Taco Franchise Agreements with Del Taco LLC, signed by McDonnell on March 14, 2009, April 1, 2010 and November 10, 2010, for the purpose of Floridel opening and operating a Del Taco franchise in three different locations in Florida. These three franchise agreements were also signed by Ruff and the other Floridel Principals (collectively, “Floridel Principals”).

63. Section 4.2 (“Outside Business Activities”) of the Voya “IFP – Designated Supervisor Manual”

that was in effect during the relevant time period provides, in pertinent part, that:

Registered Representatives are required to file requests to participate in outside business activities by submitting an Outside Business Activity Disclosure Form to their Designated Supervisor. The Designated Supervisor will review the request and then forward to the Firm’s Home Office for consideration. Registered Representatives are prohibited from engaging or participating in any outside business activity until they have been notified in writing that the Firm’s Home Office has acknowledged the activity and has no objections.

. . . .

The Designated Supervisor will keep a file of completed Outside Business Activity requests and responses for all Registered Representatives within his or her OSJ, as described in this manual.

64. During the Deposition, McDonnell testified that he submitted an outside business activity form to Voya’s home office and that both the Grafton Branch and “the president of the broker/dealer in the Compliance Department” knew about his involvement in Floridel. McDonnell also testified that his outside business activity request involving Floridel was approved. Following the Deposition, the Division asked Voya’s counsel to produce any outside business forms/documents related to John

McDonnell's involvement with Del Taco LLC (and/or Del Taco Restaurants) and/or Floridel. On July 25, 2018, Voya's counsel sent the Division an e-mail representing that despite Voya's good faith search of its records, Voya had been unable to locate any documents related to McDonnell's investment in Floridel, including anything related to McDonnell's request pertaining to outside business activity in Floridel or Del Taco Restaurants, or Voya's response to McDonnell's outside business activity request. Presumably, such documents would have included outside business activity approval forms and/or an attestation from McDonnell that he was not engaged in outside business activity (*see*, Section 2.3 of ING Financial Partners, Inc. "Voya's Supervisory and Compliance Manual" that was in effect during the relevant period of time [requiring that, as part of the Form U4 registration process, the firm obtain "Outside Business Activity Disclosure Forms or an attestation that the representative is not engaged in outside business activities"]).

65. McDonnell's Form U4 amendments filed on (i) February 19, 2008; (ii) July 14, 2010; (iii) August 24, 2010; (iv) April 24, 2014; (v) December 12, 2014; (vi) May 29, 2015; (vii) September 13, 2016; and (viii) January 20, 2017 all failed to disclose McDonnell's outside business activity involving Floridel.

66. Voya was aware of McDonnell's involvement with Floridel, Del Taco, LLC and the Del Taco franchise. In a February 16, 2007 e-mail, for example, a Voya principal, discussing the possibility of Ruff's reregistration with the firm, questioned internal personnel whether "Steve [Ruff could] re-register if he is and were to remain a passive investor, *similar to John's status*. this [sic] would mean that he would relinquish all duties in the Del Taco franchise?" (Emphasis added) However, McDonnell's involvement in Floridel was not passive – it constituted an active outside business activity. Had Voya followed up, it could have easily ascertained the true nature of McDonnell's Floridel-related activity. Yet despite Voya's supervisory responsibility over McDonnell, Voya took no measures to ensure that McDonnell's involvement in Floridel was consistent with Voya's own supervisory and compliance procedures or that the involvement was appropriately disclosed on McDonnell's Form U4.

2. McDonnell's Involvement in Two Floridel Lawsuits

67. Section 3.5 (*Disclosure Reporting Pages and Amendments to Form U4*) of the "ING –IFP-Registered Representative Manual" that was in effect during the relevant time period provided that:

Changes to the Form U4 must be made no later than 30 days after the discovery of the facts and circumstances giving rise to a reporting event. . . . This information includes, but is not limited to the following: . . .
10. Judgments or liens . . . 12. Arbitrations, civil litigations or customer complaints.

Floridel Lawsuit One

68. On January 11, 2013, McDonnell was named as an individual defendant, in addition to Floridel and the Floridel Principals, in a case filed in the Circuit Court of the Eighteenth Judicial Circuit in and for Seminole County, Florida (*Fazoli's Restaurants LLC v. Floridel et al., LLC*, 2013 CA 000176 (January 11, 2013)) ("Floridel Lawsuit One"). The lawsuit related to the commercial sub-lease between Floridel and Fazoli's Restaurants LLC referenced in paragraph 62 above.

69. On July 30, 2013, the court in Floridel Lawsuit One entered an "Order Granting Plaintiff's Motion for Final Summary Judgment Against Guarantors", including McDonnell. On January 21, 2014, the court entered an "Amended Final Summary Judgment against Guarantors", including McDonnell, in the amount of \$1,112,994.74. However, it was not until May 29, 2015 that McDonnell amended his Form U4 ("2015 U4 Amendment"), specifically Question 14M, which requires the disclosure of any unsatisfied judgments or liens. The 2015 U4 Amendment stated that (a) the amended final summary judgment was entered on January 21, 2014; (b) McDonnell learned of the judgment/lien on May 13, 2015; and (c) McDonnell "was an investor into Floridel, LLC which was a named party to the lawsuit and was responsible for satisfying the judgment."

70. In May 2015, Voya became aware of the \$1,112,994.74 Floridel Lawsuit One judgment rendered in January 2014 against McDonnell and others. However, even after learning that McDonnell had been named in a lawsuit involving Floridel, the very entity in whose activities McDonnell participated as an outside business, Voya did not follow up or speak to McDonnell about the judgment,

about Floridel, or the fact that McDonnell did not disclose the civil suit on his Form U4 for at least sixteen months after the judgment was entered. Again, Voya failed to exercise adequate supervisory controls over McDonnell's outside business activity or McDonnell's Form U4 reporting obligations.

Floridel Lawsuit Two

71. In November 2014, Floridel, McDonnell and the Floridel Principals filed an arbitration with the American Arbitration Association against Del Taco LLC and Del Taco Restaurants, Inc. arising out of a dispute relating to their franchise relationship. (AAA Case Number 01-14-001-9403). On June 15, 2016, the arbitration panel issued a Final Award in favor of Del Taco LLC and Del Taco Restaurants, Inc. in the amount of \$1,183,275.10 ("Arbitral Award").

72. On July 5, 2016, Del Taco LLC and Del Taco Restaurants, Inc. filed a "Petition of Del Taco LLC and Del Taco Restaurants, Inc. to Confirm the Arbitral Award" in the United States District Court for the Central District of California, Southern Division (*Del Taco LLC v. Floridel, LLC et al.*, 8:16-cv-01248) ("Floridel Lawsuit Two"). On October 19, 2016, a judgment was entered by the court confirming the Arbitral Award.

73. On January 20, 2017, McDonnell disclosed on his Form U4 ("2017 U4 Amendment") that he was subject to an unsatisfied judgment/lien amount of \$150,000. The 2017 U4 Amendment disclosed that (a) McDonnell was "1 of 5 respondents in civil case with Del Taco LLC. \$150,000 was representative portion paid the per settlement agreement"; (b) the judgment was filed with the court on October 19, 2016; and (c) McDonnell "did not learn of judgment until 1/12/17 after matter had settled on 12/24/2016 and he requested copies of "Exhibit A" referenced in settlement document. Attorney had not advised representative that a judgment had been filed and did not provide copies until requested."

74. In January 2017, Voya learned of the October 2016 judgment of \$1,183,275.10 rendered against McDonnell, Floridel and the other Floridel Principals in the Floridel Lawsuit Two. However, even after learning that McDonnell was named in a **second** lawsuit involving Floridel (the very entity in whose activities McDonnell participated as an outside business), neither Voya nor the Grafton Branch

followed up with McDonnell regarding the judgment or McDonnell's involvement in Floridel. Even after learning of this second lawsuit, Voya failed to (a) take any action regarding the fact that McDonnell's Forms U4s from 2007 through 2017 did not disclose Floridel as an outside business activity; and (b) speak to McDonnell to ensure that McDonnell's involvement in Floridel was within the confines of Voya's outside business activity limitations contained in Section 4.2 of the Voya Manual and FINRA Rule 3270 (Outside Business Activities of Registered Persons).

75. As stated in paragraph 13 above, on June 22, 2015, the Commissioner entered the Quesnel Notice against Floridel, among other Respondents. Among other things, the Quesnel Notice alleged that, without written notice to Voya, Quesnel sold approximately \$250,000 of securities issued by Floridel to investors in Connecticut and other states (including some Voya clients) and engaged in fraud. Although Voya was not named as a respondent in the Quesnel Notice, the Quesnel Notice put Voya on notice that Quesnel, a former agent, allegedly sold unregistered securities in the same entity (Floridel) with which McDonnell, a **Voya supervisor**, had an outside business relationship since approximately 2007. However, even after the Quesnel Notice regarding Floridel was issued, Voya did not take any steps to ascertain whether McDonnell's involvement in Floridel violated Voya's outside business activity rule in Section 4.2 of the Voya Manual and FINRA Rule 3270 (Outside Business Activities of Registered Persons).

3. McDonnell's Use of a Non-Voya E-mail Address for Voya Business Communications

76. At various times in 2013 and 2014, at least one Voya employee e-mailed McDonnell at a non-ING e-mail address to communicate with McDonnell regarding Voya business.

77. Notwithstanding its own supervisory procedures set forth in Section 5.7, Voya failed to detect that Voya employees were e-mailing McDonnell regarding Voya business at a non-Voya e-mail address belonging to McDonnell.

**VI. REGULATORY BASIS FOR
AMENDED AND RESTATED ORDER TO CEASE AND DESIST,
AMENDED AND RESTATED ORDER TO MAKE RESTITUTION
AND AMENDED AND RESTATED ORDER IMPOSING FINE**

Violations of Section 36b-31-6f of the Regulations by Voya –
Failure to Establish, Enforce and Maintain Adequate Supervisory Procedures

78. Paragraphs 1 through 77, inclusive, are incorporated and made a part hereof as if more fully set forth herein.

79. Voya's failure to establish, enforce and maintain a system for supervising the activities of its agents that was reasonably designed to achieve compliance with applicable securities laws and regulations, as more fully described above, constitutes a violation of Section 36b-31-6f of the Regulations, which forms a basis for an order to cease and desist to be issued against Voya under Section 36b-27(a) of the 2018 Supplement, an order of restitution to be issued against Voya under section 36b-27(b) of the 2018 Supplement, and the imposition of a fine upon Voya pursuant to Section 36b-27(d) of the 2018 Supplement.

**VII. AMENDED AND RESTATED ORDER TO CEASE AND DESIST,
AMENDED AND RESTATED ORDER TO MAKE RESTITUTION,
AMENDED AND RESTATED NOTICE OF INTENT TO FINE
AND NOTICE OF RIGHT TO HEARING**

WHEREAS, as a result of the Investigation, the Commissioner finds that, with respect to the activity described herein, Voya has committed at least five violations of 36b-31-6f of the Regulations;

WHEREAS, the Commissioner further finds that the issuance of an Order to Cease and Desist against Voya, an Order to Make Restitution against Voya, and the imposition of a fine upon Voya is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policies and provisions of the Act;

WHEREAS, notice is hereby given to Voya that the Commissioner intends to impose a maximum fine not to exceed one hundred thousand dollars (\$100,000) per violation upon Voya;

WHEREAS, the Commissioner **ORDERS** that **VOYA CEASE AND DESIST** from directly or indirectly violating, or materially aiding any other person in violating, the provisions of the Regulations,

including without limitation, failing to establish, enforce and maintain adequate supervisory procedures that are reasonably designed to achieve compliance with applicable securities laws and regulations.

WHEREAS, the Commissioner **ORDERS** that **VOYA MAKE RESTITUTION** of any sums obtained as a result of Voya's violations of 36b-31-6f of the Regulations, plus interest at the legal rate set forth in Section 37-1 of the General Statutes of Connecticut. Specifically, the Commissioner **ORDERS** that:

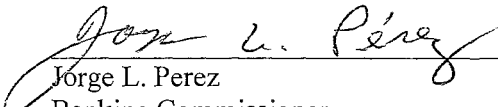
1. Within thirty (30) days from the date this Order to Make Restitution becomes permanent, Voya shall provide the Division with a written disclosure which contains (a) the name and address of each investor who purchased Overtime and Floridel securities while Quesnel was associated with Voya, (b) the amount of the investments, and (d) the amount of any refund of each investor's monies to date;
2. Within forty-five (45) days from the date this Order to Make Restitution becomes permanent, Voya shall reimburse each investor the amount of his/her investment in Overtime and Floridel securities plus interest, less the amount of any refund returned to the investor to date. Such restitution shall be made by certified check, and shall be sent by certified mail, return receipt requested, to each affected investor; and
3. Within ninety days (90) days from the date this Order to Make Restitution becomes permanent, Voya shall provide the Division with proof in the form of copies of the certified checks and the return receipts required by paragraph 2 of this section that Voya has reimbursed each investor the amounts set forth in paragraph 2 of this section.

THE COMMISSIONER FURTHER ORDERS THAT, pursuant to Section 36b-27 of the 2018 Supplement Voya will be afforded an opportunity for a hearing on the allegations set forth above.

The hearing will be held in accordance with the provisions of Chapter 54 of the General Statutes of Connecticut. At such hearing, Voya will have the right to appear and present evidence, rebuttal evidence and argument on all issues of fact and law to be considered by the Commissioner.

If Voya fails to appear at any such hearing, the allegations herein against Voya will be deemed admitted. Accordingly, the Amended and Restated Order to Cease and Desist and Amended and Restated Order to Make Restitution shall remain in effect and become permanent against Voya, and the Commissioner may order that the maximum fine be imposed upon Voya.

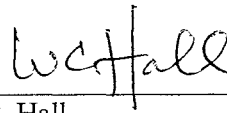
Dated at Hartford, Connecticut,
this 13th day of November 2018.



Jorge L. Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 13th day of November 2018, I caused to be mailed by certified mail, return receipt requested, the foregoing Amended and Restated Order to Cease and Desist, Amended and Restated Order to Make Restitution, Amended and Restated Notice of Intent to Fine and Notice of Right to Hearing to: Voya Financial Advisors, Inc., f/k/a ING Financial Partners, Inc., 699 Walnut Street, Suite 1000, Des Moines, Iowa 50309, certified mail no. 7016 2710 0000 5896 9162; and Brian J. Palmeri, Esq., Winget, Spadafora & Schwartzberg, LLP, 77 Broad Street, 10th Floor, Stamford, Connecticut 06901, certified mail no. 7016 2710 0000 5896 9179; and a copy to be hand delivered to Stacey Serrano, Staff Attorney, State of Connecticut, Department of Banking, 260 Constitution Plaza, Hartford, Connecticut 06103-1800.



W.C. Hall
Paralegal