

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

ING Life Insurance and Annuity Company,
and
ING Financial Advisors, LLC

RESPONDENTS

)
)
) ORDER TO CEASE AND DESIST
) ORDER TO SHOW CAUSE
)
) INV04-016
)
)
)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

Pursuant to RSA 421-B:10, III, the Secretary of State may issue an order requiring any person to whom any license has been granted to show cause why the license should not be revoked.

Pursuant to RSA 421-B:22,III, for the purpose of any investigation, hearing or proceeding under this title, the secretary of state or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Secretary of State deems relevant or material to the inquiry.

Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10,I(b)(2), the Secretary of State has the authority to deny, suspend, or revoke any license or application if he finds that the licensee or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser: has failed to comply with any provision of this title or a predecessor law, or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any such statutes, or any order there under of which he has notice and to which he is subject.

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10 (b)(14), the Secretary of State may by order deny suspend, or revoke any license or application if he finds that the order is in the public interest, and for good cause shown.

Pursuant to RSA 421-B:10,I(a) and RSA 421-B:10 (b) (7), the Secretary of State may by order deny, suspend or revoke any license or application if he finds that the order is in the public interest, and that the licensee or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer,

issuer-dealer, or investment adviser: has engaged in dishonest or unethical practices in the securities business.

Pursuant to RSA 421-B:10, VI, the Secretary of State may, upon hearing and in lieu of, or in addition to any order to suspend or revoke any license, assess an administrative fine up to \$2,500.00 for each violation of the New Hampshire Securities Act.

Pursuant to RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: to employ any device, scheme, or artifice to defraud; to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25.

Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer agent or agent who materially aids in the acts or transactions constituting the violation either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any

registration or license, or administrative fine not to exceed \$2,500 or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondents have the right to request a hearing on this Order to Cease and Desist and Order to Show Cause, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the respondent, or by the duly authorized agent of the above named respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:23, I, if respondents fail to request a hearing relative to this order within 30 calendar days of receipt of this order, respondents shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation (hereinafter referred to as the "Bureau"), in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, after which and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated June 8, 2006 (a copy of which is attached) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations contained in the Staff Petition for Relief, if proved true and correct, form the legal basis of the relief requested,

THEREFORE, it is hereby **ORDERED**, that:

1. The Respondent is hereby ordered to immediately cease and desist from further violations of RSA 421-B.
2. The Respondent shall show cause why its New Hampshire broker-dealer license should not be denied, suspended or revoked.
3. The Respondent shall pay an administrative fine, the amount of which shall be determined once all relevant and non-privileged documents and records have been delivered to and reviewed by the Bureau.
4. The Respondent shall pay restitution and disgorgement to plan participants, the amount which shall be determined following Respondents production of all relevant and non-privileged documents and records as requested in the Bureau's petition for the purpose of establishing the full extent of harm caused to Plan participants.
5. The Respondent shall reimburse the Bureau for all costs associated with its investigation.

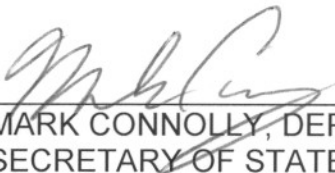
Failure on the part of the Respondent to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondent.



Date: 6/8/06

SIGNED,

WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:



MARK CONNOLLY, DEPUTY
SECRETARY OF STATE &
DIRECTOR, N.H. BUREAU OF
SECURITIES REGULATION

3. Beyond exercising such conflicted control over the assets of the Plan, the Respondent did not alert the Commission or Plan participants of extensive market-timing problems involving investment products within the Plan. The Respondent misled the Commission and Plan participants by failing to disclose the following material information: 1) The Respondent had knowledge of market timing problems as early as 2001 and possibly beyond, and it failed to effectively correct the problem. (Ex. 1 - 4.) 2) The Respondent had knowledge that the market timing problems directly affected the Plan. 3) The Respondent failed to disclose in a timely manner its decision to abandon the Janus Aspen Series mutual funds due, in part, to market timing. 4) The Respondent contributed to the market timing problems by allowing repeat market timers to continue to trade large sums in the same investment products that were in the Plan despite mutual fund disclosures which specifically prohibited excessive trading. (Ex. 4, 5.) In addition, the Respondent, despite its assurances to the contrary, did not reimburse the Commission and Plan participants for the harm to the Plan caused by market timing problems.
4. Finally, the Respondent failed to retain email communications in compliance with regulatory requirements, and failed to adequately document its revenue sharing relationships, thwarting the system of regulatory control. The Respondent's lack of sufficient record retention and reporting controls has, to a significant degree, made a public hearing regarding its relationship with the Plan necessary.

SPECIFIC ALLEGATIONS OF FACT

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire ("the Bureau"), hereby petitions the Director, and makes the following allegations of fact regarding securities violations occurring from October 1999 to the present:

Background of the Parties and Jurisdiction

1. IFA, a broker-dealer substantially owned by ILIAC, resides at 151 Farmington Avenue, Hartford, CT 06156. IFA's CRD number is 34815. ILIAC is a subsidiary of ING America Insurance Holdings, Inc ("ING"). The Respondent engages in the business of buying and selling securities for the accounts of others and administers several thousand governmental employee deferred compensation plans across the country, including the Plan which has assets under management of about 180 million dollars. One of the Respondent's primary business functions is the sale of variable annuities and mutual fund products for various public and private retirement plans. The products are manufactured by ILIAC and sold through IFA.
2. The former Aetna Life and Insurance and Annuity Company ("ALIAC") and Aetna Investment Services, Inc. ("AIS") (collectively, "Aetna") of Hartford, CT, a broker-dealer originally licensed with New Hampshire since August 16, 1993, previously administrated the Plan. The Respondent's parent company, ING, acquired Aetna and

assumed its assets and liabilities on or around November 27, 2000. The Respondent assumed the on-going contractual duties and obligations of Aetna pertaining to administration of the Plan.

3. The Respondent maintains a local non-branch office that houses IFA registered representatives who also serve as plan enrollers. Although enrollers are not paid commissions based on Plan sales, they have access to and may sell, on a retail commission basis, insurance and securities products to participants who have left state employment including retirees, as well as current Plan participants desiring other financial products outside of the Plan.
4. The Commission is Plan sponsor. The Commission consists of New Hampshire government officials designated to serve by New Hampshire RSA 101-B. In March 1999, the Commission issued a request for proposals (“RFP”) to provide investment products and administrative services for the Plan. Aetna responded along with eleven other bidders, and Aetna was awarded the contract on October 28th, 1999. During the RFP process, the Commission hired Wainwright Investment Counsel, LLC, (“Wainwright”) to assist and advise the Commission on the various bids submitted. Wainwright remained under contract with the Commission until the end of 2004, when Wainwright opted not to bid for renewal of its contract when faced with the Respondent taking over the role of advisor to the plan in 2004. Segal Advisors, Inc. (“Segal”) replaced Wainwright in December 2004.
5. The Plan is authorized under section 457(b) of the Internal Revenue Code to provide tax deferred investments to New Hampshire state employees to supplement their retirement benefits. The Plan provides state employees an investment vehicle that is designed to enable them to set aside a portion of their earnings for investment within products offered through the Plan. Typically, mutual funds are the investment products which back the asset accumulation made under the Plan. Plan participants have three investment options: 1) a fixed interest product; 2) separate variable mutual fund investment options that are offered through a group annuity contract; 3) direct purchases of mutual fund shares which are not part of the variable contract component. Under the second option, mutual fund shares are purchased through sub-accounts of a separate account, ILIAC Variable Annuity Account D (“Account D”), which is not registered with the SEC as a unit investment trust.

The Respondent Controlled Plan Assets Without Disclosing Its Revenue Sharing Arrangements

1. The Administrative Services Agreement (“Service Agreement”) and the Investment Policy Statement (“IPS”) direct the Commission, with the assistance of its investment consultant, to control the removal and addition (“mapping”) of investment products on the menu of the Plan. The Service Agreement specifically provides that “[t]he Commission may direct the [Respondent] to offer or cease to offer any Investment Product from the range of Investment Products with which the [Respondent] has, or may obtain, a selling agreement.” In other words, the

Commission holds the contractual right to direct the Respondent to add or remove an investment product from the Plan. The Respondent, however, has no such right under the Service Agreement or otherwise to exert control over decisions concerning the menu of investment products available to Plan participants.

2. Despite the Service Agreement, the Respondent exercised significant control over the selection of investment products in the Plan particularly in 2004. The Respondent disclosed to the Commission and Wainwright that it was removing the Janus Aspen Series funds from the Plan's menu on August 18, 2004, one day before the Committee's scheduled meeting and after the *Wall Street Journal* published an article on the topic. In an email to the Commission, an employee of the Respondent wrote that after a thorough analysis of the Janus fund family it had "decided to replace the Janus Aspen Series funds made available in the Plan." At the Commission meeting on the following day, employees of the Respondent reiterated that the Respondent had decided to remove the Janus Aspen Series funds from the Plan. The Respondent, in fact, had commenced its entity-wide substitution process of the Janus Aspen Series funds at least eight months earlier in 2003.
3. While the Respondent cited the "performance, cash flows, and investment talent" of the replaced Janus Aspen Series funds as reasons for its decision, other fund complexes sold through the Plan – including ING-advised funds – performed as poor as or worse than the Janus Aspen Series funds according to Wainwright's analysis. To illustrate, when Wainwright analyzed the performance of all investment products in the Plan prior to the Janus substitution in 2004, it recommended that all three of the Janus Aspen Series investment products and all six of the ING-advised variable investment products be included on either the "Watch List" or "Probation" for performance, risk, or style related problems. In particular, Wainwright reported that, as of December 2003, the ING VP International Equity Fund performed worse than 90% of the investment products in its asset class on a three-year basis, and 79% of such products on a five-year basis. (Ex. 6) Because of its poor performance, Wainwright recommended that the Commission "terminate" the ING VP International Equity Fund (and one other investment product) in February 2004. At the same time, Wainwright recommended that the poorest-performing Janus Aspen Series fund, the Janus Aspen Worldwide Fund, be included on the "Probation" list. (The Janus Aspen Worldwide Fund, as of year-end 2003, had performed worse than 71% of funds its asset class on a three-year basis, and 60% on a five-year basis.)
4. In addition to exercising discretionary control over the removal of the Janus Aspen Series of funds in the Plan, the Respondent controlled the selection of replacement funds for the Plan. In the initial email to the Commission alerting them of the pending substitution on August 18, 2004, an employee of the Respondent wrote that the Janus Aspen Series funds were being replaced "with what we believe are much more compelling offerings." At the Commission meeting the following day, employees of the Respondent recommended a

“transition strategy” for the Commission and mentioned that it had “pre-selected” investment products for replacement of the Janus funds. Then, on August 30, 2004, after the Janus Aspen Series funds in the Plan were placed on replacement status, the Respondent, by letter, informed the Commission of the Respondent’s plan to replace the funds from a group of “pre-selected” funds. In the weeks that followed, the Respondent recommended two groups of investment options – a “primary” group and an “alternative” group. Ultimately, two funds from the primary group, ING Oppenheimer Strategic Income Portfolio, ING Oppenheimer Global Portfolio, and one fund from the “alternative” group, the American Balanced Fund, were inserted into the Plan.

5. The Respondent’s recommendations and control over assets in the Plan were conflicted. The Respondent received extra and differential compensation from the replacement fund companies, creating a bias that the Respondent should have fully disclosed to the Commission and Plan participants. Both current and previous Commission chairpersons and other Commission members stated that the Respondent never disclosed to the Commission how it received revenue from the Plan prior to May, 2006. Instead, the Respondent led the Commission to believe that funds were chosen solely based on performance, when, in fact, the Respondent required the assets in the Plan to generate certain revenue (“target revenue”) back to the Respondent. The Respondent received several types of revenue from the ING, Oppenheimer and American mutual fund complexes. As “Strategic Partners,” ING, Oppenheimer and American paid supplemental revenue from company assets to IFA, the broker-dealer of the Respondent that serviced the Plan. In addition, the replacement funds generated other amounts of compensation to the Respondent including advisory fees, “12b-1” fees, and “service” fees to the Respondent based on assets under management in the Plan that were greater than the amounts of compensation generated by the Janus Aspen Series funds.

The Respondent Facilitated the Market Timing of Mutual Funds sold through the Plan and Failed to Inform the Commission or Plan Participants about the Market-Timing Problem.

1. Market timing occurs when mutual fund shareholders rapidly trade fund shares typically in an attempt to capture inefficiencies in the price of the traded-fund in several ways. Market timing harms the traded-fund and the shareholders of the fund in that it causes the fund to increase cash positions in order to redeem fund shares, and disrupts the orderly execution of the investment strategy of the fund. Excessive cash positions can harm a fund’s performance because the fund’s portfolio management would otherwise invest the cash position in other securities consistent with the investment strategy of the fund. Market timing also harms the fund by increasing the expense of processing the portfolio trading necessary to accommodate the requests for redemption and purchase of the fund shares. Finally, market-timing harms the shareholders of the traded-fund by diluting the total profits of the fund.

2. From 2001 and possibly earlier, the Respondent processed and/or assisted in processing mutual fund trades by several known market timers. The known market timers held ING annuity contracts and traded excessively in the mutual funds contained in those contracts. Some of the underlying mutual funds were the same mutual funds sold through the Plan. The Respondent, in particular, identified market timing by ING annuity contract holders in the Janus Aspen Series Worldwide Growth fund in 2002, if not earlier. In an email from an employee dated August 16, 2002, the Respondent demonstrated its awareness of the “chronic” market timing of Janus Aspen Series funds and the harmful impact of this activity on fund shareholders. (Ex. 2.) In another email from an ING employee, the Respondent indicated that it hesitated to respond to this harmful activity because such a response could cause the Respondent to lose the fee-generating assets of market timers that were under management by the Respondent. (Ex. 5.) The email further explained that the Respondent’s hesitation was due in part to the Respondent’s inadequate controls and systems. (Ex. 5.) The Respondent did not make an effort to block the trades of market timers until spring 2003. In that year, the Respondent implemented an entity-wide market timing policy. The Respondent’s inability to detect and deter market timing was evident over a three year period leading up to their entity-wide decision to replace the Janus Aspen Series funds in 2004. Then, in the later part of 2003 and into 2004, when the Respondent conducted its “internal review” to determine the extent of the illegal trading practices, it further misled the Commission and Plan participants by indicating that the market timing problems had no impact on the Plan. To date, the Respondent has failed to disclose to the Commission and Plan participants the extent of its contribution to the market timing problems. In fact, the Respondent has claimed as privileged and confidential its internal review of this matter and key emails which likely contain the missing disclosure required to be revealed by the New Hampshire Uniform Securities Act. (The Bureau has on this date filed a Motion To Compel production of this information.)

The Respondent Failed to Properly Retain Email Communications Relevant to this Investigation and/or Keep Adequate Records

1. The Bureau initiated an investigation and issued a subpoena to the Respondent on April 20, 2004 and additional follow-on Letters of Production, as well as a second subpoena on August 15, 2005.
2. Pursuant to the Bureau’s September 2, 2005 Letter of Production, the Respondent provided batches of employee email files. The Respondent confined its search, retrieval, and production of emails to two databases previously created by the Respondent through an outside vendor as part of earlier, limited discovery requests from other regulators. The Respondent created the vendor databases in 2003 and included only emails contained on month-end back-up tapes from October 2002, April 2003, October 2003, April 2004 and October 2004. The emails produced by ING did not include those “double-deleted” by ING employees. Further, ING

retained emails on magnetic tapes at irregular intervals. In certain instances, ING could not locate tapes and/or re-used tapes, preventing the recovery of significant amounts of data. Additionally, while ING advised that additional emails contained in a supplementary database maintained by outside counsel would be made available to the Bureau, the Respondent produced back-up tapes from only four of thirteen locations where such tapes were stored.

3. In addition to failing to maintain copies of communications, the Respondent has failed to appropriately account for millions of dollars in supplemental revenue sharing payments made by Strategic Partners to IFA and other broker-dealers affiliated with the Respondent. The Bureau has learned that supplemental revenue sharing payments were typically made without written agreements or in addition to existing written agreements. The Respondent has offered conflicting explanations for the receipt of such payments: First, the Respondent asserted that the payments from Strategic Partners were “purely discretionary with the fund companies.” Next, the Respondent stated that the payments were not made based on assets in the Plan, but that the fund companies kept track of what the payments were for. Finally, an employee of the Respondent, in her deposition, stated that the payments were based on ING agent gross dealer commissions. To date, however, the Respondent has neither provided a consistent response to the Bureau’s inquiry nor any records that adequately account for the supplemental payments received by the Respondent from Strategic Partners.

STATEMENT OF LAW

II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. The Respondent is a “person” pursuant to RSA 421-B:2, XVI.
2. The Respondent is a “broker-dealer” pursuant to RSA 421-B:2, III.
3. Pursuant to RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: to employ any device, scheme, or artifice to defraud; to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. The Respondent, in violation of RSA 421-B:3, failed to disclose material facts to and misled Commission and Plan Participants. Specifically, 1) the Respondent failed to disclose its knowledge of market timing as far back as 2001 and possibly beyond, and its failure to detect and quickly and effectively correct the problem. 2) The Respondent failed to

disclose that the market timing directly affected the Plan and the extent of the harm incurred by the Plan. 3) The Respondent failed to disclose in a timely manner its decision to abandon the Janus Aspen Series mutual funds due in part to market timing. 4) The Respondent failed to disclose that it contributed to and facilitated the market timing problems affecting the Plan by allowing repeat market timers to continue to trade large sums in the same investment products that were in the Plan despite mutual fund disclosures which specifically prohibited excessive trading.

4. The Respondent, while administrator to the Plan, exercised significant discretionary control over the removal of the Janus Aspen Series funds and the selection of replacement funds for the Plan. Pursuant RSA 421-B:3, it is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale whether through the issuance of analyses or reports or otherwise: (a) To employ any device, scheme, or artifice to defraud another person; or (b) To engage in any act, practice, or course of business which would operate as a fraud or deceit upon the other person. The Respondent, while exercising substantial control over the removal and replacement of the Janus Aspen Series funds violated this section by failing to disclose material conflicts of interest, including: 1) The Respondent received supplemental revenue sharing payments from “Strategic Partner” mutual fund complexes, including Oppenheimer and American funds. 2) The Respondent made fund selections in part based on the amount of revenue received by the Respondent. 3) The Respondent Commission received greater fees (excluding the supplemental payments) on the investment products that were mapped into the Plan – the ING Oppenheimer Strategic Income Portfolio, the ING Oppenheimer Global Portfolio, and the American Balanced Fund – than on the Janus Aspen Series funds.
5. Persons licensed under this chapter to conduct securities business shall abide by the rules of the Securities and Exchange Commission (“SEC”), National Association of Securities Dealers (“NASD”), national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. RSA 421-B: 8, X.
6. Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with SEC Rule 17a-4 under the Securities Exchange Act of 1934. NASD Rule 3110(a).
7. Every licensed broker-dealer...shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the secretary of state prescribes by rule or order, except as provided by section 15 of the Securities

Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records so required, shall be true and accurate, and shall be preserved for a period of not less than 6 years, the first 2 years in an easily accessible place and form, subject to the exceptions previously referenced in this section. RSA 421-B:8, XII(a).

8. Unless otherwise provided by order of the Securities and Exchange Commission, each broker-dealer licensed or required to be licensed under this chapter shall make, maintain and preserve books and records in compliance with Securities and Exchange Commission rules 17a-3 (17 C.F.R. 240.17a-3), 17a-4 (17 C.F.R. 240.17a-4), 15c2-6 (17 C.F.R. 240.15c2-6), and 15c2-11 (17 C.F.R. 240.15c2-11). RSA 421-B:8, XII(b)(2). RSA 421-B:8, XII (b)(1). The Respondent failed to do so by not adequately preserving emails.
9. The Secretary of State may by order deny, suspend, or revoke any license or application if he finds that the order is in the public interest, and that the licensee or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser: has failed to comply with any provision of this title or a predecessor law, or the Securities Act of 1933, the Securities Exchange act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any such statutes, or any order thereunder of which he has notice and to which he is subject. RSA 421-B:10, I(a) and (b)(2). The Respondent has violated this section having failed to comply with provision of this title and retain email records required by rules of the NASD and SEC.
10. The Secretary of State may by order deny, suspend, or revoke any license or application if he finds that the order is in the public interest, and that the licensee or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser: has engaged in dishonest or unethical practices in the securities business. RSA 421-B:10, I(a) and (b)(7).
11. The Secretary of State may by order deny, suspend, or revoke any license or application if he finds that the order is in the public interest, and for good cause shown. RSA 421-B:10, I(a) and (b)(14).
12. The Secretary of State may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. RSA 421-B:10, III.
13. The Secretary of State, may upon hearing, assess an administrative fine of not more than \$2,500 per violation, in lieu of or in addition to, an order to suspend or revoke a license. RSA 421-B:10, VI.

14. The Secretary of State shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by this title. RSA 421-B:21, II.
15. For the purpose of any investigation, hearing or proceeding under this title, the secretary of state or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry. RSA 421:B 22, III.
16. Whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter: The Secretary of State shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. RSA 421-B:23, I(a) The Respondent are subject to this section.
17. Any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Respondent are subject to a suspension, revocation, and a fine under this section for violating RSA 421-B:3, and 421-B:8. RSA 421-B:26,III.
18. Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. Respondent violated this section by facilitating and aiding in market timing.

RELIEF REQUESTED

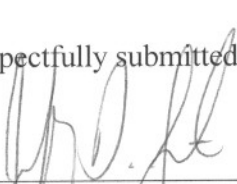
III. The staff of the Bureau of Securities Regulation requests that the Director take the following action:

1. Find as fact the allegations contained in section I of the Statement of Facts of this petition.
2. Make conclusions of law as stated in section II relative to the allegations contained in section I of this petition.
3. Find that the Respondent is a person and a broker-dealer in accordance with RSA 421-B:2.
4. Find that the Respondent committed fraud and failed to comply with the securities laws, and that it is in the public interest and that there is good cause to suspend or revoke the Respondent's broker-dealer license in accordance with RSA 421-B:3, and RSA 421-B:10, I(a) and (b)(7) and (14).
5. Find that the Respondent violated RSA 421-B:8,X; NASD Rule 3110, RSA 421-B:8,XII(a), and RSA 421-B:8,XII,(b)(1), having failed to retain documents including email communication for the required statutory period.
6. Find that the Respondent violated RSA 421-B:10,I (a) and (b)(2) for failing to comply with SEC rules and the provisions of RSA 421-B, and that it is in the public interest and that there is good cause to suspend or revoke the Respondent's broker-dealer license.
7. Order Respondent to Cease and Desist from further violation of RSA 421-B.
8. Order the Respondent to pay restitution or disgorge to Plan participants, the amount of which to be determined following Respondent producing all relevant and non-privileged documents and records requested by the Bureau which will likely establish the full extent of those harms caused to Plan participants. (See the State's Motion To Compel filed on this date.)
9. Order the Respondent to pay a fine, the amount of which shall be determined once all relevant and non-privileged documents and records have been delivered to the Bureau in accordance with applicable law. See the State's Motion To Compel filed on this date.
10. Order the Respondent to pay the Bureau's costs for this investigation.
11. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of the Act.


RIGHT TO AMEND

The Bureau's Staff reserves the right to amend this Petition for Relief and to request that the Director of Securities take additional administrative action. Nothing herein shall preclude the Staff from bringing additional enforcement action under this NH RSA 421-B or the regulations thereunder.

Respectfully submitted this 8th day of June, 2006 by:



Jeffrey Spill
Deputy Director



David Allen
Staff Attorney

cds/06

Dated

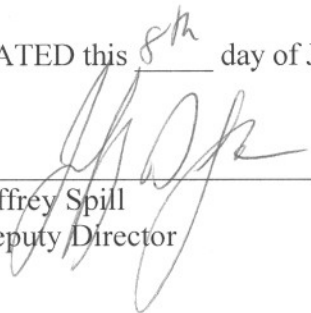
CERTIFICATE OF SERVICE

I certify that I, Jeffrey J. Spill deposited in the United States mail, with postage prepaid, certified return receipt requested, a true and correct copy of this of the foregoing STAFF PETITION FOR RELIEF in an envelope addressed to:

Nina Schloesser McKenna, Esquire
ING Americas
2519 Tomahawk Road
Mission Hills, Kansas 66208

Brian M. Quirk, Esquire
Preti Flaherty PLLP
57 North Main Street
Concord, NH 03301

DATED this 8th day of June, 2006



Jeffrey Spill
Deputy Director

Bebe Wilkinson

05/24/2001 05:42 PM

I just spent the last hour on the phone with [redacted] - getting chewed out about market timing. I went through all of our steps of how we are addressing the issue. They don't think that it is enough - and want a larger conference call on Wednesday at 11:30. I'm drafting the two of you to join me. They are basically threatening to stop our trading activity - I guess where we would have to step in with cash to offset the trade. Since this program seems to make money, I guess that we would be incurring offsetting losses every day on the offsetting amount that we have to front. They are saying that they are having to hold 18% of the fund in cash - to accommodate our market timing that is moving practically every two days. I looked at the cash report - and basically for the first couple of weeks of May - we've had \$124 million move into the fund and \$114 million move back out of the fund. I believe that our assets in the fund total \$240 million.

They also said that the single broker limits had to go down to \$1 million - to better control the situation. I called Chris Smythe to update the matrix.

Sent:
To:
Cc:
Subject:

We share your concern and understand the urgency. Shaw McCabe is the contact in Minot for both life and annuity. He is compiling this information for you. For many of the larger accounts we have assigned account managers in the call center so we will be able to intervene if necessary.

Laurie Rasanen
Head of Annuity and Life Service
ING Service Center - Minot

Laurie M Tillinghast@AmerExchange 08/16/2002 11:26 AM

for the second time in a few weeks, I received an urgent call from our relationship manager, Sr VP at Janus. He has indicated that are very aware of a market timing pattern among several of the Reliastar Life and Norther Life accounts traded in Minneapolis. The activity is hitting the Janus Aspen International Portfolio and the Janus Aspen Worldwide portfolio. The aggregate activity from these accounts is causing the Cash flows to exceed 15% of the Portfolio in the International one, in particular. These amounts go in and are subsequently reversed a day or two later. The impact is trading activity and cash balances that severely impact the performance of the overall fund, hurting the remaining shareholders. By prospectus, the Fund company has the right to reject trades if they believe their acceptance is NOT in the best interests of ALL shareholders. This is where Janus is now. If we do not do something to curtail this activity of a few, Janus WILL reject a trade and cause significant reprocessing costs, explanations, cash settlements, accounting and disruption (not to mention costs) to the OMNIBUS trading account. It is ALL or nothing.

I think that Carolyn Beaufort's folks are aware of this problem and who is doing it. It is NOT the first time. This is a chronic problem. I have asked Carolyn's folks to work with Minot to identify the troublesome contracts and how these fund transfers

are coming in (if via fax, we will need to monitor and reject at that point). I will probably need a contact in the Minot service area for both VA and Life.

What i need from the sales group is your support to severely LIMIT or eliminate this activity. If we can get names, i can have Janus draft a letter, but we will also need to set up controls at the Minot point. Some of these actions are already in place for the Golden products and a list of funds where trading is prohibited is distributed to distribution.

This is a VERY URGENT matter as the \$\$ that went in yesterday is likely to come out this week and go back in next week. That is when everything will "hit the fan" if we cant manage it. THANKS for your help and feel free to pass this on to Jim Gelder or whomever in the broker dealer can help.

Laurie M
Tillinghast@AmerExch
ange

To:
cc:

04/16/2003 03:21 PM

Subject: RE: Market Timers

I have the persons, addresses and bd affiliation. I think we need to draft a letter that lets them no we will NO longer accept trades in certain funds either by phone or fax. Shaw assures me that we can do that. there are not too many, but some move \$ 30-70M a day. We only need to confirm that our contracts are UNspecific as to how transfers occur. Most work that way and legal has said that "snail mail" is a method of transfer and we dont have to accept phone or fax instructions. What does everyone think of that?????

—Original #
From:
Sent:
To:
Cc:
Subject:

How can we identify the individuals and stop them on the way IN.....that is the key.

Let me know.

P. Marc Boisvert
ING - USFS
Senior Fund Analyst
Fund Strategy Group
Investment Research & Marketing, TS41
phone: 860-723-3402 (NEW)
fax: 860-723-3413 (NEW)
e-mail: boisvertprn@ing-afs.com

—Origin
From:
Sent:
To:
Cc:
Subject: Market Timers
Importance: High

PLEASE BE ADVISED THAT EVERYONE IS MOVING OUT OF THE FUNDS AND INTO THE MONEY MARKET TODAY!

This is a very large amount of money.

Shaw M. McCabe
Variable Annuity Administration
ING Service Center
shaw.mccabe@us.ing.com

Laurie M
Tillinghast@AmerExch
ange

To: Shaw McCabe/US/AMERICAS@AMERICAS
cc:

05/14/2003 04:58 PM

Subject: RE: Market Timing Letter

Right now, the game plan is to apply it to all the business that these few timers (springboard?) do. The timing is targeted at mostly international and small cap funds, no others. I think that anyone doing trades once a month can do it by mail—even 2X a month. We should go slow and get the abusers first rather than target everyone. I'm asking if you can administer NO phone or Fax trades for the few people we identify... this is a small group of 3-5 folks, I think. You gave me and Marc the names..

—Original Message—

From: McCabe, Shaw
Sent: Wednesday, May 14, 2003 5:11 PM
To: Tillinghast, Laurie M
Cc:

Subject: Re: Market Timing Letter

Laurie

There are a few issues that should be raised before we take this route.

-What is excessive? What constitutes market timing in our world? Twice a month, three times a month, five times a month? We would need to set a guideline for determination of all other accounts we do not know about presently.

-We have over \$50,000,000 in what I would say are our high profile market timing accounts. ~~If we employ this strategy, I feel that much of this will leave~~

-We have our high profile traders, but we also have numerous smaller ones that market time. These accounts are not visible because of the smaller account values. However, if we use this strategy against market timers, they should receive the same treatment as the high profile traders. In order to determine if a contract market times, we will have to review transaction history to determine how often they trade. This will increase processing times as it is a totally manual process.

-Would we apply this to the ReliaStar side as well as the Northern side? There is about \$10,000,000 on the ReliaStar annuity side. If so, then do we apply it to ReliaStar Life as well as annuity?

-Would we apply this to contract owners as well as third parties?

-Are we applying this to market timers in general or just to Janus traders? Can we apply it to just Janus traders?

Shaw M. McCabe
Variable Annuity Administration
ING Service Center
shaw.mccabe@us.ing.com

Shaw McCabe

To:

07/14/2003 10:21 AM

cc:

Subject:

Please be advised that I have been working with Laurie Tillinghast, fund relationship manager for ING, regarding the excessive trading in certain funds, specifically Janus. We have had numerous calls from Janus stating that they may refuse our trade request if this continues. We have identified certain individuals who are what we would call market timers and definitely abuse the fund transfer privilege we provide. Specific to the Life side would be Jon Hansen and Jeremie Mckee. I have an old list of policies that these individuals trade. There are quite a few and it would be beneficial to have an updated list.

A letter will be going out shortly stating that the only trades we will accept from these individuals is by US Mail. No phone, fax, IVR, or internet trades will be accepted. If the owner calls in we will allow him/her to trade (as long as it is not Hansen or Mckee). If this becomes a problem, we will consider sending the same letter to the owners of the individual policies. The date this new procedure will be effective will be on August 1, 2003.

Shaw M. McCabe

Variable Annuity Administration

State of New Hampshire Deferred Compensation Plan

Watchlist & Probation Summary as of December 31, 2003

Watchlist & Probation Summary Per IPS

Watchlist & Probation Measures Per IPS

Fund Name	PROBATION CRITERIA					FUND RETURNS		PEER RANK		SHARPE RATIO		STYLE		
	Watchlist	Returns	Rank	Sharpe	Style	1 Yr.	3 Yr.	5 Yr.	3 Yr.	5 Yr.	3 Yr.	5 Yr.	Mandate	Per WIC
Evergreen Special Value	Yes	-	-	-	-	35.4%	14.1%	12.7%	43%	41%	0.67	0.58	SCV	SCV
Fidelity Equity-Inc II [1]	-	-	-	-	-	32.6%	1.4%	3.2%	29%	39%	-0.04	-0.02	LCV	LCV
Fidelity Magellan [1]	Yes	-	Yes	Yes	-	24.8%	-5.6%	-1.1%	67%	57%	-0.44	-0.26	LCB	LCB
Fidelity OTC [1]	Yes	-	-	Yes	Yes	35.8%	-7.5%	0.0%	27%	20%	-0.34	-0.10	MCG	LCG
INVESCO Dynamics [2]	Yes	-	Yes	Yes	-	38.3%	-14.7%	-0.3%	82%	70%	-0.6	-0.1	MCG	MCG
ING Government	-	-	Yes	-	Yes	1.7%	5.6%	5.2%	64%	63%	0.88	0.49	FI	Gov't Bd.
ING Stable Asset Fund	-	-	-	-	-	4.1%	5.1%	5.5%	-	-	-	-	-	-
ING VP Balanced *	-	-	-	Yes	Yes	18.9%	0.7%	2.9%	41%	31%	-0.55	-0.37	BAL	Bal.
ING VP Bond *	-	-	-	-	Yes	6.3%	7.8%	6.4%	23%	10%	0.40	-0.09	FI	Core Bd.
ING VP Index Plus Large Cap *	Yes	-	-	Yes	-	26.1%	-5.1%	-0.8%	50%	34%	-0.70	-0.45	LCB	LCB
ING VP International Equity *	Yes	-	Yes	Yes	-	32.1%	-9.7%	-2.3%	90%	79%	-0.85	-0.42	IE	IE
ING VP Small Company *	Yes	-	-	Yes	-	37.5%	3.2%	8.9%	70%	42%	-0.17	0.08	SCB	SCB
Janus Aspen Bal. Instl * [3]	Yes	-	-	Yes	Yes	14.1%	0.6%	4.7%	53%	10%	-0.80	-0.21	BAL	Bal.
Janus Aspen Flex Inc. Ins * [3]	-	-	-	-	Yes	6.4%	8.2%	6.5%	51%	20%	0.39	-0.12	FI	Core Bd.
Janus Aspen Worldwide * [3]	Yes	-	Yes	Yes	-	24.0%	-10.5%	-0.1%	71%	60%	-0.96	-0.31	IE	IE
Janus Twenty [3]	Yes	-	Yes	-	-	25.3%	-12.3%	-5.6%	66%	74%	-0.75	-0.37	LCG	LCG
Lazard Intl Equity Instl	Yes	-	-	Yes	-	29.5%	-4.5%	-0.7%	49%	63%	-0.40	-0.27	IE	IE
Pax World Balanced	-	-	-	-	Yes	17.3%	-0.9%	3.8%	67%	26%	-0.35	0.03	SR	Bal.
Pioneer	Yes	-	-	-	-	24.6%	-4.1%	0.4%	35%	29%	-0.37	-0.20	LCB	LCB
Vanguard 500 Index	-	-	-	-	-	28.5%	-4.2%	-0.6%	37%	44%	-35%	-24%	LCB	LCB

NOTES:

- [1] Fidelity Investments has been issued subpoena for documents relating to market timing but has not been officially charged by the regulatory authorities.
- [2] On December 2003 INVESCO was accused of allowing arrangements that permitted some of its funds to be market timed in exchange for additional monies that would generate management fees for the company.
- [3] In September 2003 Janus was accused of permitting certain investors access to several of its funds for the purpose of market timing.

* Indicate ING Variable Annuity Funds

Style Key

LCB = Large Cap Blend
 LCV = Large Cap Value
 LCG = Large Cap Growth
 MCB = Mid Cap Blend
 MCV = Mid Cap Value
 MCG = Mid Cap Growth
 SCB = Small Cap Blend
 SCV = Small Cap Value
 SCG = Small Cap Growth
 IE = International Equity
 BAL = Balanced
 SR = Socially Responsible
 STV = Stable Value

The table above indicates those funds that could be placed on heightened alert per the criteria outlined in the Investment Policy Statement but does not in and of itself constitute a recommendation to place a fund on Watchlist or Probation. Each situation that is a potential for review is unique and each fund should be evaluated on a case by case basis. The designations of Watchlist and Probation should be viewed as the general conditions under which a fund could be placed on heightened review. All data is as of December 31, 2003 and is shown net of management expenses and trading costs. All return and volatility statistics are annualized for all time periods greater than one year. Sharpe Ratios were computed by Wainwright Investment Counsel, LLC. All data was taken from Morningstar and prepared by Wainwright Investment Counsel, LLC, except for the funds denoted with an asterisk (*), which represent the ING variable annuity funds. All data for these funds was provided by ING Life Insurance and Annuity Company.