



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 8, 2018

Pamela L. Marcogliese, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006-1470

Re: In the Matter of Voya Investments, LLC and Directed Services LLC
Voya Financial, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Ms. Marcogliese:

This is in response to your letter dated March 2, 2018, written on behalf of Voya Financial, Inc. (“Voya”) and constituting an application for relief from Voya being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). Voya requests relief from being considered an ineligible issuer under Rule 405, due to the entry on March 8, 2018 of a Commission Order (“Order”) pursuant to Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Voya Investments, LLC and Directed Services LLC (together, the “Voya Advisers”). The Order requires that, among other things, the Voya Advisers cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Based on the facts and representations in your letter, and assuming the Voya Advisers comply with the Order, we have determined that Voya has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that Voya will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from Voya being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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March 2, 2018

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of Voya Investments, LLC and Directed Services LLC
Waiver Request pursuant to Rule 405 of the Securities Act of 1933

Dear Mr. Henseler,

We submit this letter on behalf of our client, Voya Financial, Inc. (“VFI”) in connection with the settlement of the above-referenced administrative and cease-and-desist proceeding by the U.S. Securities and Exchange Commission (“Commission”) against VFI’s indirect subsidiaries Voya Investments, LLC (“Voya Investments”) and Directed Services LLC (“Directed Services” and, together with Voya Investments, “Voya Advisers” or “Respondents”). Voya Investments is registered as an investment adviser. Directed Services was dually registered as an investment adviser and broker-dealer, until August 22, 2017 when it filed a Form-ADV-W withdrawing its investment adviser registration. Directed Services is still registered as a broker-dealer.

Because VFI has a class of securities listed on the NYSE pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), it files periodic and other disclosure reports as required by the Exchange Act. As indicated in its most recent Annual Report on Form 10-K, VFI currently is a well-known seasoned issuer (“WKSI”).

Pursuant to Rule 405 (“Rule 405”) of the Securities Act of 1933, as amended (“Securities Act”), VFI hereby respectfully requests that the Commission (or the Division of Corporation Finance (“Division”), pursuant to the delegation of the authority of the Commission¹) determine that, for good cause shown, it is not necessary under the circumstances that VFI be considered an “ineligible issuer” under Rule 405 and therefore waive the disqualification that would result from the Commission’s order (the “Order”) in the above-referenced proceedings. VFI requests that this determination be effective upon the entry of the Order against the Respondents in the above-referenced administrative proceeding.

Background

The Respondents have engaged in settlement discussions with the Division of Enforcement (“Enforcement”) and, as a result of these discussions, the Respondents have submitted an offer of settlement pursuant to which they consent to the entry of the Order. Under the terms of the offer of settlement, the Respondents have neither admitted nor denied any of the findings that are in the Order, except as to jurisdiction and subject matter.

The Order states that from at least August 20, 2003 until March 6, 2017 (the “Relevant Period”), the Voya Advisers failed to disclose conflicts of interests leading to misleading disclosures in connection with their securities lending practices. During the Relevant Period the Voya Advisers served as investment advisers² to certain insurance-dedicated mutual funds (“Funds”) offered to variable annuity, variable life and group annuity customers through insurance companies affiliated with the Voya Advisers (“Insurance Affiliates”).

During the Relevant Period, the Voya Advisers engaged in the practice of recalling, in advance of the applicable dividend record date, the portfolio securities of mutual funds they advised, including the Funds, that were out on loan. This recall practice allowed the Insurance Affiliates, which were record shareholders of the Funds’ shares, to take a tax deduction known as the dividend received deduction (“DRD”). This recall practice resulted in an undisclosed conflict of interest. While the Insurance Affiliates benefitted from the DRD, the Funds and individuals invested in those Funds lost securities lending income during the period when the securities were recalled. The Voya Advisers knew that recalling securities benefitted the Insurance Affiliates but failed to disclose this conflict of interest to the Funds’ board of directors (“Board”). While the Funds’ prospectuses disclosed that a Fund may lend its portfolio securities, that the loans earn income for the Funds, and the loans could be terminated or recalled at any time, the Voya Advisers failed to disclose their practice of recalling securities or that this practice would benefit their affiliates while depriving the Funds and the affiliates’ contract holders of income.

The Order finds that, based on such conduct, the Respondents violated Section 206(2) and Section 206(4) of the Investment Advisers Act of 1940 (the “Advisers Act”), and Rule 206(4)-8 thereunder. Under the terms of the Order, pursuant to Section 15(b) of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, the Respondents have been: (1) ordered to cease and desist from committing or causing any violations and future violations of Sections

¹ C.F.R. § 200.30-1(a)(10).

² As noted, on August 22, 2017 Directed Services LLC ceased to be an investment adviser when it filed a Form-ADV-W withdrawing its investment adviser registration.

206(2) and 206(4), and Rule 206(4)-8 thereunder; (2) censured and (3) ordered to pay disgorgement of \$2,635,490.25 and prejudgment interest of \$511,978.89, as well as a civil money penalty in the amount of \$500,000.00.

Discussion

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act (the “Securities Offering Reform Rules”).³ As part of the Securities Offering Reform Rules, the Commission added a new category of issuer, the “WKSI.” In order to qualify as a WKSI, an issuer must not be an “ineligible issuer.” The Securities Offering Reform Rules also permit, under Rules 163, 164 and 433 of the Securities Act, expanded communications with potential investors by issuers that are not deemed ineligible issuers.

Under Rule 405, an issuer will be an ineligible issuer if, among other things:

- (vi) Within the past three years . . . , the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that:
 - (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;
 - (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or
 - (C) Determines that the person violated the anti-fraud provisions of the federal securities laws.⁴

Pursuant to this rule and based on actions involving its indirect subsidiaries, the Voya Advisers specified in the Order, VFI would become an ineligible issuer upon the entry of the Order absent a waiver from the Commission.

Under Rule 405, the Commission (or the Division pursuant to delegated authority) may grant waivers of ineligible issuer status “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”⁵

In the Division’s Revised Statement on Well-Known Seasoned Issuer Waivers (the “Revised Statement”), issued on April 24, 2014, it identifies certain factors relevant to its assessment in determining whether an issuer has shown good cause that ineligible issuer status is not necessary for the public interest or the protection of investors, namely:

³ Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005), 70 Fed. Reg. 44, 722 (Aug. 3, 2005).

⁴ Rule 405, 17 C.F.R. § 230.405 (definition of “ineligible issuer”).

⁵ *Id.*

1. The nature of the violation or conviction and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosure currently and in the future;
2. Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation;
3. Who was responsible for and what was the duration of the misconduct;
4. What remedial steps the issuer took; and
5. What the impact would be if the waiver request is denied.⁶

Reasons for Granting a Waiver

VFI believes there is good cause to conclude that it is not necessary under the circumstances for it to be considered an ineligible issuer. As more fully described below, VFI respectfully requests that the Commission determine that, under the circumstances, it should not be considered an ineligible issuer.

Nature of the Violations Described in the Order

As discussed above, the Order states that during the Relevant Period the Respondents failed to disclose their practice of recalling securities and that this practice represented a conflict of interest that benefited their affiliates while depriving the Funds and the affiliates' contract holders of income. Specifically, the Voya Advisers instructed their third party lending agent to recall securities out on loan in advance of the applicable dividend record date, which, in the case of the Funds, enabled the Insurance Affiliates to claim the DRD tax benefit for dividends received from the Funds' portfolio securities. On the other hand, the Funds and their contract holders – who were not eligible to receive the DRD – lost securities lending income.

As a result of the Voya Advisers' actions, since June 2011 the Insurance Affiliates received a tax benefit of \$2,635,490.25 while the Funds lost \$2,024,355.48 in securities lending income. The amounts of tax benefit and lost securities lending income were immaterial to the Voya Advisers and VFI throughout the entirety of the Relevant Period.

The Voya Advisers did disclose to the Board that the DRD could be considered a fall-out benefit to affiliates of the Respondents, but did not disclose that the Funds and their contract holders were losing securities income. As a result, the Board was not aware of the conflicts of interest arising from the recall of securities.

On March 6, 2017, the Respondents instructed their securities lending agent to stop recalling securities on loan in advance of the dividend record date.

⁶ See Division of Corporation Finance "Revised Statement on Well-Known Seasoned Issuer Waivers," April 24, 2014.

The disclosure violation described in the Order, which falls under Section 206(2) and Section 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder, involved only the Respondents, which sit several⁷ levels below VFI in VFI's organizational structure, identified only this issue relating to the Voya Advisers' disclosures, and did not involve or have any impact on any of VFI's other entities up to and including VFI itself. The Order does not state that VFI failed to comply with disclosure requirements applicable to VFI, as a WSKI or otherwise, under the Securities Act or the Exchange Act or that VFI made any misrepresentations in its own public disclosures.

In fact, the disclosure policies and procedures applicable to the Respondents described in the Order are completely separate and distinct from the disclosure policies and procedures relating to the issuing of securities and filings under the Exchange Act applicable to VFI. Moreover, the responsibilities of the individuals responsible for the violations described in the Order are completely separate and distinct from the responsibilities of individuals responsible for any disclosures of VFI, relating to the issuing of securities and filings under the Exchange Act. Accordingly, the violations described in the Order do not call into question the ability of VFI to provide reliable disclosure currently and in the future.

Criminal Convictions or Scier-er-Based Violations

The above described Revised Statement, which identifies factors relevant to determining whether an issuer has shown good cause that an ineligible issuer status is not necessary for the public interest or for the protection of investors, also addresses the issuer's burden to show good cause. The Division states that where there is a criminal conviction or a scier-er-based violation involving disclosure for which the issuer or any of its subsidiaries was responsible, the issuer's burden to show good cause that a waiver is justified would be significantly greater.

The Order does not state that VFI or the Respondents engaged in any conduct involving a criminal conviction or scier-er-based violation. The violations described in the Order, which fall under Section 206(2) and Section 206(4) of the Advisers Act, are not scier-er-based violations. Furthermore, the violations described in the Order do not give rise to or constitute a criminal conviction.

Responsibility for and Duration of the Violations Described in the Order

The violations described in the Order involved only the Respondents and did not involve any of VFI's other entities, including VFI itself. The violations described involved only the Respondents' practices and disclosures relating to their recalling of securities. The violations did not involve any offerings by VFI of its securities or disclosures related to VFI and, as noted above, the violations described in the Order do not state that VFI made any omissions or misrepresentations in its written materials and disclosures relating to the issuing of securities or filings under the Exchange Act.

⁷ VIL sits five levels below VFI and DSL sits three levels below VFI.

Furthermore, no one at VFI which is an indirect holding company for the Respondents, knew about the circumstances that gave rise to the violations described in the Order; the disclosure policies and procedures for the Respondents and VFI are completely separate.

Remedial Steps Taken and to be Taken

The Order states that the Respondents' failure to disclose their practice of recalling securities in advance of the dividend record date and the resulting conflict of interest dates back to at least August 20, 2003. However, since approximately April 2016, Voya Investments has undertaken a series of efforts designed to ensure that these problems will not recur. The Respondents have ceased their practice of recalling securities for the reasons described in the Order. Additionally, Respondents reviewed with the Board the securities lending practices of the Funds. These discussions included the Funds' recall practices as well as the effects of those practices on the Funds, the affiliates of the Respondents and the affiliates' customers.

As the Division is aware, VFI has previously requested a waiver in March 2017 regarding its WKSI status from the Division in connection with settlements involving its broker-dealer and investment adviser indirect subsidiary, Voya Financial Advisors, Inc. ("VFA"). A waiver was granted in connection with VFA's failure to disclose that it received mutual fund service and administrative fees from a third party clearing broker, which resulted in violations of Sections 206(2), 206(4) and 207 of the Advisers Act, and Rule 206(4)-7 thereunder. The set of facts and parties related to this previous matter are in no way related to the facts and parties described under the present Order. More specifically, this past matter does not in any way relate to the Respondents' practice of recalling securities and any remedial steps taken in response to the conduct at issue in this prior matter are not implicated by the Respondents' practice.

Moreover, like the conduct described above, none of the conduct at issue in this matter related to the reliability of VFI's current or future disclosures.

Impact if the Waiver Request is Denied

As the Division is also aware, VFI has an automatically effective Form S-3ASR registration statement (the "VFI WKSIS Shelf"), which is available only to WKSIs ("WKSIS Shelf"). Loss of WKSIS status would significantly impact the ability of VFI to quickly and effectively access the capital markets. Losing WKSIS status would eliminate many of the advantages for VFI of using shelf registration statements. Among other things, VFI would be required to pay all fees upfront at the time of registration and include additional information in its registration statements. VFI's registration statements would also be subject to a review period, limiting its flexibility and ability to access the capital markets when market conditions are advantageous with a transaction tailored to market demands, which would result in increased uncertainty as to the potential timing for executing transactions under the registration statement. As a direct result, depending on the timing and market conditions, VFI may be forced to restrict its capital raising efforts from securities sales to private offerings. The procedural and financial flexibility that the automatic shelf registration process provides is critically important in facilitating swift execution of VFI's funding and capital raising activities for VFI and its shareholders. In addition, VFI's inability to use free-writing prospectuses ("FWPs") that can

include marketing material that facilitates an offering (including using third party offering participants) could harm VFI's ability to efficiently respond to market conditions.

VFI filed the VFI WKSI Shelf on June 23, 2017, which registered a variety of securities, including debt securities, guarantees of debt securities, common stock, preferred stock, warrants and units.

In 2015, VFI completed its separation from ING Groep NV, its former parent company ("ING"). In connection with this separation, pursuant to a registration rights agreement between VFI and ING, ING has sold approximately \$3.5 billion of common stock registered under the VFI WKSI Shelf through a series of transactions. ING continues to hold certain of VFI's securities that are subject to registration rights agreement, namely, warrants and the shares of common stock underlying the warrants. The warrants held by ING and the shares of common stock underlying such warrants are registrable upon the demand of ING. Because the sales of such shares will be dependent on market conditions, VFI cannot predict if or when ING will seek to take advantage of these rights under the registration rights agreement, and it is possible they may do so in multiple transactions. As a result, the inability to sell such warrants and underlying shares pursuant to the VFI WKSI Shelf would adversely affect VFI's ability to efficiently respond to such contractual demands.

VFI also has issued and may issue debt securities in the financial markets from time to time to finance its operations, subject to market conditions and other considerations. For example, in July 2017 and June 2016, VFI issued \$400 million and \$800 million, respectively, aggregate principal amounts of senior notes registered under the VFI WKSI Shelf. Additionally, in 2013, the year prior to filing the VFI WKSI Shelf, VFI issued \$3 billion aggregate principal amount of notes during the year. It issued such notes on a private placement basis because it was not yet WKSI eligible and had to incur the time and expense of registering the exchange of the restricted notes for unrestricted notes pursuant to multiple A/B exchange offers. Because VFI expects to continue to finance its operations, subject to market conditions, through the issuance of debt in the public markets, the inability of VFI to use the VFI WKSI Shelf would adversely affect its ability to efficiently and cost-effectively take advantage of market conditions.

* * * *

Request for Waiver

In sum, these facts support a conclusion that VFI can demonstrate and has demonstrated that ineligible issuer status is not necessary for the public interest or the protection of investors.

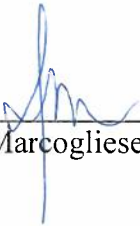
For the foregoing reasons, VFI respectfully submits that, based on the factors described above, it is not necessary under the circumstances for VFI to be deemed an ineligible issuer and that good cause exists for the relief requested in this letter. The facts also support a conclusion that the granting of a waiver would be entirely consistent with the guidelines for relief established in the Revised Statement. Furthermore, because the conduct described in the Order does not relate to VFI's ability to produce reliable disclosure as a WKSI, including with respect to offering securities, granting a waiver to VFI in this instance would be consistent with the public interest and the protection of investors.

Tim Henseler
Securities and Exchange Commission, p. 8

We therefore respectfully request that the Commission (or the Division pursuant to delegated authority) make a determination that VFI is granted a waiver from designation as an ineligible issuer at the time that the Order is issued by the Commission.

Please contact me at 212-225-2556 or by email at pmarcogliese@cgsh.com if you should have any questions regarding this request.

Sincerely,



Pamela L. Marcogliese

cc: Patricia J. Walsh, Voya Financial, Inc.
Trevor Ogle, Voya Financial, Inc.
Craig B. Brod, Cleary Gottlieb Steen & Hamilton LLP