

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 82837 / March 8, 2018**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4868 / March 8, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18393**

**In the Matter of**

**VOYA INVESTMENTS, LLC**  
**and**  
**DIRECTED SERVICES LLC,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
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,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Voya Investments, LLC and Directed Services LLC (“Respondents” or the “Voya Advisers”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings arise out of undisclosed conflicts of interest and misleading disclosures in connection with securities lending practices of the Voya Advisers. The Voya Advisers serve as investment advisers 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").

2. From at least August 20, 2003 until March 6, 2017 ("Relevant Period"), the Voya Advisers engaged in the practice of recalling, in advance of the dividend record date, portfolio securities of mutual funds they advised, including the Funds, that were out on loan. This recall practice enabled the Insurance Affiliates, which were the record shareholders of the Funds' shares, to take a tax deduction known as the dividend received deduction ("DRD"). The recall practice resulted in an undisclosed conflict of interest. The Insurance Affiliates benefited from the DRD, while the Funds and individuals invested in those Funds through their variable life annuity contracts and variable life insurance policies – known as "contract holders" – lost securities lending income during the period when the securities were recalled. The Voya Advisers knew that recalling securities benefited the Insurance Affiliates but failed to identify and disclose the conflict of interest that arose from the recall practice to the Funds' board of directors ("Board"). In addition, the Voya Advisers failed to disclose in the Funds' prospectuses that their practice of recalling securities would benefit their affiliates while depriving the Funds and the affiliates' contract holders of income. This failure rendered the Funds' disclosures concerning securities lending materially misleading.

#### Respondents

3. **Voya Investments, LLC** ("Voya Investments") is an Arizona limited liability company with its principal place of business in Scottsdale, Arizona. Prior to May 1, 2014, Voya Investments was known as ING Investments, LLC. Voya Investments has been registered as an investment adviser with the Commission since February 7, 1995. Voya Investments is an indirect, wholly owned subsidiary of Voya Holdings Inc., which, in turn, is an indirect, wholly owned subsidiary of Voya Financial, Inc. ("Voya Financial"). As of March 2017, Voya Investments had \$51.8 billion in regulatory assets under management.

4. **Directed Services LLC** ("Directed Services") is a Delaware limited liability company with the principal place of its business as an investment adviser in Scottsdale, Arizona.

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Until recently, Directed Services was dually registered as an investment adviser and broker-dealer. Directed Services was registered as an investment adviser with the Commission from February 16, 1988 until August 22, 2017. On August 22, 2017, Directed Services filed a Form ADV-W withdrawing its investment adviser registration. Voya Investments is now serving as the adviser to all funds for which Directed Services previously served as investment adviser. Directed Services has been registered as a broker-dealer with the Commission since May 16, 1998. Directed Services is an indirect, wholly owned subsidiary of Voya Holdings Inc., which, in turn, is an indirect, wholly owned subsidiary of Voya Financial. As of March 2017, Directed Services had \$38.4 billion in regulatory assets under management.

### **Facts**

5. Voya Financial offers retirement, investment and insurance products and services to individual and institutional customers, including over one hundred mutual funds that are managed through Voya Financial's investment management business segment ("Mutual Fund Complex"). Voya Financial is the ultimate parent company of the Voya Advisers. During the Relevant Period, the Voya Advisers provided advisory, management, administrative and other services to mutual funds in the Mutual Fund Complex, including the Funds.

6. In order to generate additional income for the mutual funds, the Voya Advisers instructed the Funds' third-party lending agent to enter into securities lending agreements with financial institutions such as broker-dealers, banks or other recognized domestic institutional borrowers of securities for the loan of portfolio securities held by their mutual funds.

7. During the time period when portfolio securities are out on loan, the borrower is the record shareholder and is therefore entitled to receipt of any dividends paid on such securities. In an effort to make the lending mutual fund whole, the borrower typically makes payments to the lending fund to compensate it for the lost dividend income (called "Substitute Payments"). When a fund receives dividends from the issuer of portfolio securities, a portion of the dividends paid by the fund to a corporate shareholder (but not a portion of the Substitute Payments) may be eligible for the DRD. Here, based on the structure of the Funds, the Insurance Affiliates were the shareholders of the Funds and, accordingly, could claim the DRD for any portion of the dividends the Funds received. During the Relevant Period, the Voya Advisers instructed their third-party lending agent to recall securities out on loan in advance of the 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.

8. The practice of recalling securities in advance of the dividend record date resulted in an undisclosed conflict of interest. The recall practice benefited the Insurance Affiliates who stood to receive the DRD tax benefit while the Funds and their contract holders – who were not eligible to receive the DRD – lost securities lending income without any offsetting tax benefit. As a result of the Voya Advisers' conduct, 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.

9. At various times since 2003, the Board requested information from the Voya Advisers concerning conflicts of interest and fall-out benefits, which are benefits that accrue to the Voya Advisers or their affiliates because of the Voya Advisers' relationship with the mutual funds. The Voya Advisers disclosed to the Board that the DRD could be considered a fall-out benefit to affiliates of the Voya Advisers but did not disclose that the Funds and their contract holders were losing securities lending income. As a result, the Board was not aware of the conflict of interest related to the recall practice.

10. The Voya Advisers knew and understood that there was a connection between recalling securities for the dividend record date and net earnings from securities lending by the mutual funds, and understood that the recall practice benefitted the Insurance Affiliates. Despite this knowledge, the Voya Advisers failed to recognize that the Insurance Affiliates were benefitting at the expense of the Funds and their contract holders. The Voya Advisers failed to take reasonable care in evaluating and disclosing all conflicts of interest arising from the recall practice.

11. The Funds' prospectuses, which were made available to contract holders in connection with their investment elections, disclosed that a Fund may lend its portfolio securities, that the loans earn income for the Funds, and that the loans could be terminated or be recalled at any time. The Voya Advisers omitted to state in the prospectuses that they had a practice of recalling securities that provided a tax benefit to the Insurance Affiliates and deprived the Funds and the contract holders of securities lending income. This omission rendered the other statements concerning securities lending materially misleading.

12. On March 6, 2017, the Voya Advisers stopped recalling securities on loan in advance of the dividend record date.

### **Violations**

13. As a result of the conduct described above, the Voya Advisers willfully violated Section 206(2) of the Advisers Act, which prohibits investment advisers from "engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client." A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963); *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992); *SEC v. Yorkville Advisors, LLC*, 12 Civ. 7728, 2013 WL 3989054, at \*3 (S.D.N.Y. Aug. 2, 2013).

14. As a result of the conduct described above, the Voya Advisers willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle." *Steadman*, 967 F.2d at 647. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act. *Id.*

## **Remedial Efforts**

15. In determining to accept the Offers, the Commission considered remedial acts taken by Respondents and cooperation afforded by them to the Commission staff.

### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondents shall 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.
- B. Respondents are censured.
- C. Respondents shall pay disgorgement, prejudgment interest and a civil money penalty totalling \$3,647,469.14 as follows:
  - (i) Respondents shall jointly and severally pay disgorgement of \$2,635,490.25 and prejudgment interest of \$511,978.89, consistent with the provisions of this Subsection C;
  - (ii) Respondents shall jointly and severally pay a civil money penalty in the amount of \$500,000, consistent with the provisions of this Subsection C;
  - (iii) Within ten (10) days of the entry of this Order, Respondents shall pay, jointly and severally, \$1,623,113.66 of the disgorgement, penalty and prejudgment interest to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:
    - 1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
    - 2. Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

3. Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Voya Investments, LLC and Directed Services LLC as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281.

- (iv) Within ten (10) days of the entry of this Order, Respondents shall deposit \$2,024,355.48 ("Distribution Fund") of the disgorgement into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] or 31 U.S.C. § 3717.
- (v) Respondents shall be responsible for administering the Distribution Fund and may hire a professional acceptable to the Commission, at their own cost, to assist them in the administration of the distribution. All costs of the distribution and the administration of the distribution shall be borne by Respondents; no costs shall be taken from the Distribution Fund. Respondents shall pay from the Distribution Fund to each Fund that had its securities recalled at any time from June 14, 2011 to present, an amount representing the Fund's pro rata share of the Distribution Fund, which shall be calculated as the full amount of the securities lending income that was lost by such Fund plus the amount that the securities lending income would have earned had the income been received and reinvested by the Funds ("Calculation"). The Respondents shall submit the Calculation to the Commission staff within ten (10) days of this Order for review and written approval by the Commission staff. The Calculation submitted to the Commission shall identify, at minimum, (i) each Fund that will receive a portion of the Distribution Fund; (ii) the exact amount of the payment to each Fund; and (iii) the methodology used to determine the amount of the payment to each Fund. Respondents shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may reasonably request for the purpose of its review. In the

event of one or more objections by the Commission staff to the Calculation and/or any of the information or supporting documentation, Respondents shall submit a revised Calculation for the review and written approval of the Commission staff, and/or additional information or supporting documentation, within ten (10) days of the date that Respondents are notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection.

- (vi) Respondents shall complete the disbursement of all amounts payable to the Funds within 90 days of the date of receipt of the Commission staff approval of the Calculation, unless such time period is extended as provided in Paragraph xi of this Subsection C. The Respondents shall use their best efforts to distribute all funds in the Distribution Fund to the Funds, including performing outreach acceptable to the Commission staff to the Funds to which disbursements are directed but distribution is not completed.
- (vii) If Respondents are unable to distribute or return any portion of the Distribution Fund for any reason, Respondents shall transfer any such undistributed funds to the Commission for eventual transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 in accordance with subsections ix and x of this Subsection C below. Payment must be made in one of the ways set forth in Paragraph iii of this Subsection C.
- (viii) Respondents shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund and may retain any professional services necessary. The costs and expenses of such professional services shall be borne by Respondents and shall not be paid by the Distribution Fund.
- (ix) Within 45 days after Respondents complete the distribution of the Distribution Fund as described in Paragraph vi of this Subsubsection C, Respondents shall submit to the Commission staff for its approval a final accounting and certification of the disposition of the Distribution Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each Fund; (2) the date of each payment; (3) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (4) an affirmation that Respondents have made payments from the Distribution Fund to Funds in accordance with the Calculation approved by the Commission staff. Respondents shall submit the final accounting and certification together with proof and supporting documentation of such payment in a form acceptable to the Commission staff under a cover letter that identifies Voya Investments, LLC and Directed Services LLC as Respondents and the file number of these proceedings to Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281, or such other address the

Commission staff may provide. Respondents shall provide any supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- (x) After Respondents have submitted the final accounting to the Commission staff and transferred to the Commission any funds remaining in the Distribution Fund, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amounts in the Distribution Fund to the United States Treasury and to terminate the Distribution Fund.
- (xi) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

By the Commission.

Brent J. Fields  
Secretary