

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90745 / December 21, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5651 / December 21, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20183

In the Matter of

**VOYA FINANCIAL
ADVISORS, INC.**

Respondent.

**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 Financial Advisors, Inc. (“Voya” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents 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 Respondent’s Offer, the Commission finds¹ that

Summary

1. These proceedings arise from Voya’s breach of its fiduciary duties to its advisory clients in connection with: (a) Voya’s mutual fund share class selection practices and the financial benefits it received for advising clients to purchase and hold mutual fund share classes that paid fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (“12b-1 fees”); (b) Voya’s receipt of compensation in connection with certain client cash sweep accounts; and (c) Voya’s policy of requiring advisory clients to pay an upfront brokerage commission when purchasing illiquid alternative investment products (“Illiquid Alts”) when the same investment was available to advisory clients with the brokerage commissions waived.

2. First, at times during the period from January 13, 2013 through December 31, 2018 (the “Relevant 12b-1 Period”), Voya received 12b-1 fees, and in some instances avoided paying certain transaction fees, when it purchased, recommended, or held for advisory clients mutual fund share classes that charged 12b-1 fees when a lower-cost share class was available without providing adequate disclosure. Additionally, Voya provided disclosures: (a) that misstated the availability of lower-cost share classes for clients and Voya’s monitoring of those purchases; and (b) that Voya would rebate all 12b-1 fees to clients, which Voya did not consistently do.

3. Second, from January 13, 2013 through December 31, 2018 (the “Relevant Cash Sweep Period”), the unaffiliated clearing broker Voya used for client accounts (the “Clearing Broker”) paid Voya a portion of the revenue the Clearing Broker received from cash sweep products in which Voya invested advisory client assets. Voya did not disclose this revenue sharing arrangement or the related conflicts of interest to its advisory clients.

4. Third, from January 13, 2013 through July 28, 2017 (the “Relevant Illiquid Alt Period”), Voya caused certain advisory clients to pay higher fees, in the form of upfront commissions, when purchasing Illiquid Alt products when those same investments were available with commissions waived for advisory clients. Voya did not disclose this practice or the related conflicts of interest.

5. During each relevant period, Voya failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with mutual fund share class selection, revenue sharing, and Illiquid Alts.

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. As a result of the conduct described above, Voya willfully² violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

7. **Voya Financial Advisors, Inc.**, a Minnesota corporation with its principal place of business in Des Moines, Iowa, has been registered with the Commission as an investment adviser and broker-dealer since July 1994 and July 1968, respectively. Prior to September 1, 2014, Voya was known as ING Financial Partners, Inc. Voya Financial, Inc. (NYSE: VOYA), a publicly traded company, is the sole shareholder of Voya Holdings, Inc., which owns 100% of Voya. As of its most recent annual updating amendment on March 30, 2020, Voya reported regulatory assets under management of over \$15.9 billion.

Background

8. Voya provides investment advisory services to individuals, pension and profit sharing plans, charitable organizations, corporations and other businesses. Voya offers investment advisory services to clients on both a non-discretionary and discretionary basis. Voya also provides financial planning and consulting services.

9. According to Voya's applicable Forms ADV during all relevant periods, advisory clients paid Voya a fee for asset management services of approximately 1.00% to 2.75% of the client's assets under management. In Voya's Prime Portfolio Services ("Prime"), Total Advice Program ("TAP"), and Strategic Advisory Services Select ("SAS") advisory programs ("Prime/TAP/SAS programs"), Voya or its associated persons agreed to pay any transaction-based fee, or "ticket charge," ("Transaction Fee") for the purchase or sale of, among other things, mutual fund shares. Voya offered other advisory programs in which the client paid the Transaction Fee.

10. As an investment adviser, Voya was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and/or its associated persons and its clients, which could affect the advisory relationship. Voya was also obligated to disclose all material facts relating to how those conflicts could affect the advice Voya and/or its associated persons provided its clients. To meet this fiduciary obligation, Voya was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that clients could understand the conflicts of interest concerning Voya's investment advice and have an informed basis on which they could consent to or reject the conflicts.

²"Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Mutual Fund Share Class Selection

11. Mutual funds typically offer investors different types of shares or “share classes.” Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

12. Some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund’s total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points (which equals 0.25% to 1.00% of the value of the mutual fund investment). These fees are deducted from the mutual fund’s assets on an ongoing basis and paid to the fund’s distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

13. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., “Institutional Class” or “Class I” shares (collectively, “Class I shares”)).³ An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

14. During the Relevant 12b-1 Period, Voya generally advised clients to purchase or hold⁴ mutual fund share classes that charged 12b-1 fees when lower-cost share classes of the same funds were available to those clients. As a result, Voya received 12b-1 fees that it would not have collected had its advisory clients been invested in the available lower-cost share classes of those funds.

15. From November 13, 2014 through December 1, 2016, Voya disclosed in its Form ADV that it

receives 12b-1 fees from certain mutual funds ... Some mutual funds make available share classes that do not pay 12b-1 fees (e.g., institutional share classes) ***only if a client’s holding meets a certain asset minimum.*** The receipt of 12b-1 fees presents a potential conflict of interest because it gives Voya and its [associated persons] an incentive to recommend mutual funds for accounts based on the compensation received rather than on a client’s needs.

³ Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as “Class F2,” “Class Y” and “Class Z” shares. As used in this Order, the term “Class I shares” refers generically to share classes that do not charge 12b-1 fees.

⁴ In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

(Emphasis added.) This statement was not true for many mutual funds. Voya's advisory clients were routinely eligible to invest in many mutual funds that offered Class I shares to advisory clients with no asset minimum or waived such asset minimums.

16. During this same time, Voya also stated in its Form ADV that it had mitigated its conflicts of interest by "monitor[ing] the sales activities of its [associated persons] *to ensure that products and services that [the associated person] offers to [the client] are appropriate for [the client's] specific situation.*" (Emphasis added.) Voya, however, did not engage in such monitoring with respect to its mutual fund share class selection. Thus, Voya would have led clients to believe incorrectly that Voya had invested them in mutual fund share classes appropriate to their specific investment needs, rather than higher-cost mutual fund share classes that generated 12b-1 fee revenue for Voya.

17. On December 2, 2016, Voya revised its Form ADV brochure to also state that "[i]n the event that Voya receives 12b-1 fees for funds, Voya will credit the account for such fees" While Voya did credit to its clients most of the 12b-1 fees received after December 2, 2016, due to a coding error for certain clients, Voya failed to rebate approximately 15% of the 12b-1 fees generated during that time. Voya's coding error was not identified until the Commission's investigation.

18. In some instances, Voya or its associated persons also financially benefited by avoiding paying Transaction Fees when they advised clients to purchase certain mutual fund share classes that charged 12b-1 fees. In particular, for advisory clients enrolled in Prime/TAP/SAS programs, Voya or its associated persons, and not the clients, pay the Transaction Fees. Some mutual fund share classes that charge 12b-1 fees could be purchased through the Clearing Broker without a Transaction Fee whereas lower-cost share classes for those same funds would have incurred a Transaction Fee. Thus, in addition to receiving the 12b-1 fees, in some instances, Voya also avoided paying a Transaction Fee. While Voya generally disclosed that its associated persons had an incentive to select mutual funds that could be purchased without a Transaction Fee, it did not adequately disclose all the material facts regarding the conflicts of interest that arose for it and its associated persons when selecting certain mutual fund share classes.

Revenue Sharing from Cash Sweep Money Market Funds

19. During the Relevant Cash Sweep Period, Voya recommended that clients choose certain money market funds to hold uninvested cash ("Sweep Account Options"). A sweep account is a money market mutual fund or bank account used by brokerages to hold uninvested cash (e.g., incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money ("Sweep Account"). A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used as cash sweep account options. The investment yields and expense ratio of a money market fund will differ from fund to fund.

20. During the Relevant Cash Sweep Period, the Clearing Broker agreed to share with Voya a portion of the revenue the Clearing Broker received in connection with certain money market funds offered to Sweep Accounts. Under this arrangement, the Clearing Broker provided

Voya with a list of over 130 money market funds as Sweep Account Options for Voya's advisory clients. The amount of revenue sharing Voya received would vary depending on the money market fund recommended by Voya and selected by advisory clients.

21. Voya had a conflict of interest when recommending Sweep Account Options to its clients. In particular, the money market funds available on the Clearing Firm's platform that paid Voya the most revenue sharing generally charged higher fees and returned lower investment yields to clients. Conversely, the money market funds available on Clearing Firm's platform that paid no or lower revenue sharing to Voya generally charged lower fees and returned higher investment yields to clients. Accordingly, Voya's interests were in conflict with advisory clients' interests because Voya had an incentive to recommend cash sweep products that paid it the greatest amount of revenue sharing to Voya, even though they returned lower investment yields to clients.

22. From at least 2013 through August 2017, Voya's account opening worksheet listed only two money market funds for its advisory clients as Sweep Account Options: one for retirement accounts and one for non-retirement accounts. These two Sweep Account Options paid Voya the highest revenue sharing. If clients wanted to choose a different Sweep Account Option, the client account agreement directed clients to a list of options located later in the document; clients then had to manually write in the name of a Sweep Account Option from that list. The client account agreement provided no information about where to find yield or expense information for those other options, nor did it indicate the amount of revenue sharing Voya would receive for each product.

23. As a result, from 2013 through August 2017, Voya recommended and invested over 97% of advisory clients' uninvested cash in two money market funds that paid Voya the highest available rate of revenue sharing. However, using August 2017 as an example, those two money market funds only paid Voya clients a 7-day effective yield of approximately 0.38%. By contrast, in that same period, the Clearing Broker made several other money market funds available to Voya's advisory clients that would have paid Voya's clients a 7-day yield as high as 0.92%, but for which Voya would have received less or no revenue sharing.

24. During the Relevant Cash Sweep Period, Voya failed to disclose to clients, in its Forms ADV or otherwise, its receipt of Sweep Account revenue sharing and the attendant conflicts of interest.

25. In August 2017, Voya sent a letter and other materials to advisory clients with respect to Voya's decision to stop offering certain money market funds as Sweep Account Options and move clients to a bank deposit sweep product for which Voya would be primarily responsible for setting the interest rate that clients would be paid. In those materials, Voya provided what it described as a "comparison to [clients'] existing money market sweep options . . ." The comparison consisted of a table listing, among other things, the 0.38% interest rate Voya initially set for the bank deposit sweep product (referred to as the "NEW SWEEP OPTION") and the "7-Day Effective Yield" of money market funds Voya called "EXPIRING SWEEP OPTIONS", which then had 7-day effective yields between 0% and 0.38%. This comparison failed to disclose that these "EXPIRING SWEEP OPTIONS" were only a small subset of the money market funds held by Voya's advisory clients at the time, and that the other available Sweep Account Options not listed in the table had 7-day effective yields of up to 0.92% as of August 2017.

Illiquid Alternative Investments

26. Illiquid Alts are public offerings registered with the Commission that hold non-traditional investments (e.g., real estate, start-up companies, or commodities) or use complex investment and trading strategies. Illiquid Alts are not listed on any exchange, are generally considered long-term investments, and shares are sold directly to investors through solicitation by broker-dealers and investment advisers.

27. Investors generally pay an upfront brokerage commission in connection with purchase of Illiquid Alts; however, these commissions are waived for investment advisory clients.

28. Voya adopted a policy prohibiting the purchase of commission-waived Illiquid Alts for advisory clients. Instead, Voya required advisory clients to purchase Illiquid Alts through a brokerage account and pay upfront commissions to Voya. Voya thereafter did not charge an advisory fee on assets invested in Illiquid Alts purchased through brokerage accounts.

29. Yet given the investment characteristics of Illiquid Alts, certain advisory clients paid higher fees, in the form of upfront brokerage commissions, than they otherwise would have had they purchased the same Illiquid Alts commission-free through a fee-based advisory account.

30. During the Relevant Illiquid Alt Period, Voya failed to disclose, in its Forms ADV or otherwise, the corresponding conflict of interest arising from its policy requiring that advisory clients pay upfront commissions for purchases of Illiquid Alts when those same investments were available to advisory clients commission-free.

Best Execution Failures

31. An investment adviser's fiduciary duties include, among other things, an obligation to seek best execution for client transactions.⁵

32. By causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, Voya violated its duty to seek best execution for those transactions.

33. By causing certain advisory clients to invest in higher-cost Illiquid Alts through brokerage accounts that charged upfront commission instead of purchasing commission-free Illiquid Alts through fee-based advisory accounts that presented a more favorable value under the particular circumstances in place at the time of the transactions, Voya violated its duty to seek best execution for those transactions.

⁵ See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

Compliance Deficiencies

34. During each relevant period, Voya failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with disclosure of conflicts of interest presented by its mutual fund share class selection practices, its Sweep Account revenue sharing, and its Illiquid Alt selection practices, or in connection with making recommendations of mutual fund share classes and Illiquid Alt investments that were in the best interests of its advisory clients.

Violations

35. As a result of the conduct described above, Voya willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

36. As a result of the conduct described above, Voya willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Undertakings

37. Respondent Voya has undertaken to:

a. Notice to Advisory Clients. Within 30 days of the entry of this Order, Voya shall notify affected investors (*i.e.*, those former and current clients who were financially harmed during each relevant period by the practices discussed above (hereinafter, “affected investors”)) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

b. Retention of Independent Compliance Consultant. Respondent Voya shall retain, within 30 days of the issuance of this Order, the services of an Independent Compliance Consultant (“Independent Consultant”) not unacceptable to the staff of the Commission and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant’s engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant’s responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant’s compensation and expenses shall be borne exclusively by Respondent.

c. Independent Consultant's Reviews. Respondent Voya shall require the Independent Consultant to:

(1) conduct a comprehensive review of Voya's current disclosures, policies, procedures, systems, and internal controls with respect to compensation Voya receives from any source in connection with advisory clients' investments;

(2) at the end of the review, which in no event shall be more than 180 days after the entry of this Order, submit a written and dated report to Voya and the Commission staff that shall include a description of the review performed, the names of the individuals who performed the review, the Consultant's findings and recommendations for changes or improvements to the disclosures, policies, procedures, systems, and internal controls, and a procedure for implementing the recommended changes and improvements;

(3) conduct one annual review 365 days from the date of the issuance of the Independent Consultant's initial report, to assess whether Voya is complying with its then-current disclosures, policies, procedures, systems, and internal controls and whether the then-current disclosures, policies, procedures, systems, and internal controls are effective in achieving their stated purposes; and

(4) at the end of the annual review, which in no event shall be more than 180 days from the date that the annual review commenced, submit a written annual report to Voya and the Commission staff that shall include a description of its findings and recommendations, if any, for additional changes or improvements to the disclosures, policies, procedures, systems, and internal controls, and a procedure for implementing the recommended changes and improvements.

d. Respondent shall, within forty-five (45) days of receipt of each of the Independent Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, Respondent shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but Respondent shall instead propose in writing to the Independent Consultant and Commission staff an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant. Respondent shall attempt in good faith to reach an agreement with the Independent Consultant on any recommendations objected to by Respondent. Within fifteen (15) days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation. At the same time, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal within thirty (30) days and the Commission staff does not agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall abide by the determinations of the Independent Consultant.

e. Within thirty (30) days of Respondent's adoption and implementation of all of the recommendations in the Independent Consultant's reports that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Independent Consultant and the Commission staff that Respondent has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

f. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.

g. To ensure the independence of the Independent Consultant, Respondent (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

h. Respondent shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Voya, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement shall also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Voya, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

i. Respondent shall not be in, and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.

j. Certificate of Compliance. Respondent Voya shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance no later than sixty (60) days from the completion of each of the undertakings. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Gary Y. Leung, Assistant Regional Director, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F. Street NE, Washington, DC 20549.

k. Deadlines. The staff of the Commission may extend any of the procedural dates set forth above for good cause shown. The procedural dates 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.

IV.

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

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. Respondent 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)-7 thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty totaling \$22,919,155 as follows:

- (i.) Respondent shall pay disgorgement of \$11,547,820 and prejudgment interest of \$2,371,335, consistent with the provisions of this Subsection C.
- (ii.) Respondent shall pay a civil money penalty in the amount of \$9,000,000, consistent with the provisions of this Subsection C.
- (iii.) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

- (iv.) Within ten (10) days of the entry of this Order, Respondent's payment of the Fair Fund shall be made by depositing the full amount of the disgorgement, prejudgment interest, and civil penalty into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].
- (v.) Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (vi.) Respondent shall distribute from the Fair Fund to each affected investor an amount representing: (a) the financial harm during each relevant period by the practices discussed above, and (b) reasonable interest paid on such amounts, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to: (1) any affected investor account in which Respondent, or any of its current or former officers, directors, investment adviser representatives, or associated persons (or any of their spouses or children) have a financial interest; and (2) any affected investor account that was not charged advisory fees by Voya.
- (vii.) Respondent shall, within ninety (90) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make themselves available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- (viii.) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, (3) the application of a *de minimis* threshold, and (4) the amount of reasonable interest paid.
- (ix.) Respondent shall complete the disbursement of all amounts payable to affected investors within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiii.) of this Subsection C. Respondent shall notify the Commission staff of the date[s] and the amount paid for each distribution.
- (x.) If Respondent is unable to distribute any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent’s control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of the funds is complete and before the final accounting provided for in Paragraph (xii.) below is submitted to Commission staff. Payment must be made in one of the following ways:
 - (a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (b) Respondent 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
 - (c) Respondent 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 Respondent as a Respondent 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 Gary Y. Leung, Assistant Regional Director,

Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, or such other address as the Commission staff may provide.

- (xi.) A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent shall be responsible for all tax compliance responsibilities associated with distribution of the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid by the Fair Fund.
- (xii.) Within 150 days after Respondent completes the distribution of amounts payable to the affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor, with reasonable interest and post-order interest if applicable; (2) the date of each payment; (3) the check number or other identifier of money transferred to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Payment File approved by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies Voya Financial Advisors, Inc. as the Respondent in these proceedings and the file number of these proceedings to Assistant Regional Director Gary Y. Leung, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- (xiii.) The Commission staff may extend any of the procedural dates set forth in Paragraphs (ii.) through (ix.) of this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar

days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 37.a through 37.j above.

By the Commission.

Vanessa A. Countryman
Secretary