

informed investment decisions. Every issuer subject to Sections 13(a) and 15(d) under the Exchange Act must file a periodic report with the Commission containing information about its business and financial condition. We estimate that Form 10-SB takes approximately 133 hours per response and is filed by 254 respondents. It is estimated that 25% of the 33,782 annual burden hours (8,446 burden hours) would be prepared by the company.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: October 7, 2005.

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27116; 812-13116]

### ING Partners, Inc., et al.; Notice of Application

October 12, 2005.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") exempting applicants from section 17(a) of the Act and under section 12(d)(1)(f) of the Act exempting applicants from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

*Summary of the Application:* The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management

investment companies or unit investment trusts that are within or outside the same group of investment companies as well as a guaranteed rate investment contract issued by an affiliated insurance company.

*Applicants:* ING Partners, Inc. ("IPI"), ING Investors Trust ("IIT"), ING Variable Insurance Trust ("IVIT"), ING Variable Products Trust ("IVPT"), ING VP Emerging Markets Fund, Inc. ("IVPEMF"), ING VP Natural Resources Trust ("IVPNRT") (the "ING Investment Companies"), ING Life Insurance and Annuity Company ("ILAC"), ING Investments, LLC ("IIL") and Directed Services, Inc. (the "Advisers").<sup>1</sup>

*Filing Dates:* The application was filed on August 13, 2004 and amended on April 7, 2005, and September 28, 2005. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 7, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549-9303. Applicants, c/o Huey P. Falgout, Jr., Chief Counsel, ING Americas U.S. Legal Services, 7337 E. Doubletree Ranch Rd., Scottsdale, Arizona 85258.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 551-6813, or Mary Kay Frech, Branch

<sup>1</sup> All entities that currently intend to rely on the requested order are named as applicants and any other entity that relies on the order in the future will comply with the terms and conditions of the application. Applicants request that the relief also apply to any existing or future registered open-end management investment company that is part of the same group of investment companies as defined in section 12(d)(1)(G) of the Act as the ING Investment Companies (included in the term "ING Investment Companies") and any existing or future insurance company controlling, controlled by or under common control with ILIAC that may issue a guaranteed rate investment contract (each an "ING Insurance Company"). Each series of an ING Investment Company is referred to as a "Fund" and collectively as "Funds."

Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F St., NE., Washington, DC 20549-0102 (tel. (202) 551-5850).

### Applicants' Representations

1. IPI is a Maryland corporation and is registered under the Act as an open-end management investment company. IPI currently consists of 25 Funds, each with its own investment objective and policies. The shares of each IPI Fund are offered and sold through registered separate accounts of insurance companies that are affiliates of the Advisers ("Registered Separate Accounts") and unregistered separate accounts of insurance companies that are affiliates of the Advisers ("Unregistered Separate Accounts" and, together with the Registered Separate Accounts, the "Separate Accounts"), which are used to fund variable annuity contracts and variable life insurance contracts, and may be offered and sold to retirement plans and certain investment advisers, pursuant to an order granted by the Commission.<sup>2</sup> IPI has created 5 new Funds known as the Solutions Portfolios, which will be managed by ILIAC and each of which will be a fund of funds ("Funds of Funds"). The Solutions Portfolios are the only Funds of Funds that currently intend to rely on the requested relief.

2. IIT is a Massachusetts business trust and is registered under the Act as an open-end management investment company. IIT currently consists of 46 Funds, each with its own investment objective and policies. The shares of each IIT Fund currently are offered and sold through Separate Accounts which are used to fund variable annuity contracts and variable life insurance contracts, and may be offered and sold to retirement plans, pursuant to an order granted by the Commission.<sup>3</sup>

3. IVIT is a Delaware statutory trust and is registered under the Act as an open-end management investment company. IVIT currently consists of 11 Funds, each with its own investment objective and policies. IVPT is a Massachusetts business trust and is registered under the Act as an open-end management investment company. IVPT currently consists of 10 Funds, each

<sup>2</sup> Aetna Variable Fund, Investment Company Act Release Nos. 23545 (Nov. 23, 1998) (notice) and 23616 (Dec. 21, 1998) (order).

<sup>3</sup> *Id.*

with its own investment objective and policies. IVPPEMF is a Maryland corporation and is registered under the Act as an open-end management investment company. IVPPEMF currently consists of one Fund. IVPNRT is a Massachusetts business trust and is registered under the Act as an open-end management investment company. IVPNRT currently consists of one Fund.

4. The Funds of Funds will invest in other Funds ("Affiliated Underlying Funds") and in other registered open-end management investment companies and unit investment trusts that are not part of the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Funds of Funds ("Unaffiliated Underlying Funds"). The Affiliated Underlying Funds and the Unaffiliated Underlying Funds are together the "Underlying Funds." Each Fund of Funds may also make investments in other securities and in a guaranteed rate investment contract issued by ILIAC or another ING Insurance Company (the "ING Guaranteed Contract"). ILIAC and all other ING Insurance Companies are indirect subsidiaries of ING Groep, N.V. Applicants state that each Fund of Funds will enable investors to create a comprehensive asset allocation program with just one investment and provide a simple, convenient and cost-efficient program for investors who are able to identify their investment goals and risk tolerances but may not be comfortable deciding how to invest their assets to achieve those goals.

5. Each Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, is a direct or indirect subsidiary of ING Groep, N.V., and serves as investment adviser to the Funds. Each investment adviser to a Fund of Funds that meets the definition of section 2(a)(20)(A) of the Act is referred to as a "Fund of Funds Adviser." Any investment adviser to a Fund of Funds that meets the definition in section 2(a)(20)(B) of the Act is referred to as a "Fund of Funds Subadviser."

6. Applicants request relief to permit the Funds of Funds to purchase shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and for the Underlying Funds, their principal underwriters and any broker or dealer to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act. Applicants also seek relief from section 17(a) of the Act to permit Underlying Funds to sell shares to, and redeem shares from, the Funds of Funds. In addition, applicants seek relief from

section 17(a) of the Act to permit a Fund of Funds to purchase the ING Guaranteed Contract.

### Applicants' Legal Analysis

#### A. Sections 12(d)(1)(A) and (B) of the Act

1. Section 12(d)(1)(A) prohibits a registered investment company from acquiring shares of another registered investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company or, together with the securities of other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling shares of the company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock or more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction from any provision of section 12(d)(1), if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit Funds of Funds to acquire shares of Underlying Funds and Underlying Funds to sell their shares to Funds of Funds, beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will be structured to mitigate the potential abuses from which sections 12(d)(1)(A) and (B) are designed to protect investors, such as undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over any Underlying Fund. To limit the influence that a Fund of Funds may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting (a)(i) The Fund of Funds Adviser, (ii) any person controlling, controlled by or under common control with the Fund of Funds Adviser and (iii) any investment company or issuer that would be an

investment company but for section 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Fund of Funds Adviser or any person controlling, controlled by or under common control with the Fund of Funds Adviser ("Group"), and (b)(i) Any Fund of Funds Subadviser, (ii) any person controlling, controlled by or under common control with the Fund of Funds Subadviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Subadviser or any person controlling, controlled by or under common control with the Fund of Funds Subadviser ("Subadviser Group"), from controlling (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions 2-7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of an Unaffiliated Underlying Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis. Condition 2 precludes a Fund of Funds and its Fund of Funds Adviser, any Fund of Funds Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a "Fund of Funds Affiliate") from causing any existing or potential investment by the Fund of Funds in an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an "Unaffiliated Fund Affiliate"). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund that is an open-end management investment company ("Unaffiliated Fund") or sponsor to an Unaffiliated Underlying Fund that is a unit investment trust ("Unaffiliated Trust")) from causing an Unaffiliated Underlying Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds

Subadviser, sponsor or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Subadviser, sponsor or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. In addition, as an assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds operating in reliance on the requested relief from sections 12(d)(1)(A) and (B), prior to any investment by the Fund of Funds in the Unaffiliated Fund in excess of the limit set forth in section 12(d)(1)(A)(i), condition 10 requires the Fund of Funds and the Unaffiliated Fund to execute an agreement stating, without limitation, that their boards and their investment adviser understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Underlying Fund has the right to reject an investment from a Fund of Funds.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees ("Board") of a Fund of Funds, including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will find that any investment advisory fees charged to the Fund of Funds under its investment advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the investment advisory contract(s) of any Underlying Fund. Applicants further state that the Fund of Funds Adviser will waive or offset fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b-1 under the Act) received from an Unaffiliated Underlying Fund by the Fund of Funds Adviser, or an affiliated person of the Fund of Funds Adviser, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated

person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Applicants also state that any Fund of Funds Subadviser will waive fees otherwise payable to the Fund of Funds Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds Subadviser, or an affiliated person of the Fund of Funds Subadviser, other than any advisory fees paid to the Fund of Funds Subadviser or its affiliated person, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds Subadviser. Applicants agree that the benefit of any such waiver by a Fund of Funds Subadviser will be passed through to the Fund of Funds.

8. Applicants represent that the aggregate sales charges and/or service fees (as defined in the Conduct Rules of the NASD ("NASD Conduct Rules")) charged with respect to shares of any Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the NASD Conduct Rules. Moreover, the prospectus and sales literature of a Fund of Funds will contain concise, "plain English" disclosure tailored to the particular document designed to inform investors of the unique characteristics of the fund of funds structure including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds.

9. Applicants contend that the proposed arrangement will not create an overly complex fund structure. Applicants note that Underlying Funds will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that an Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)), or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

#### *B. Section 17(a) of the Act*

1. Section 17(a) generally prohibits purchases and sales of securities, on a principal basis, between a registered investment company and any affiliated person or promoter of, or principal underwriter for, the company, and affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the other's outstanding voting securities; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; any person directly or indirectly controlling, controlled by or under common control with the other person; and any investment adviser to an investment company.

2. Section 17(b) authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) permits the Commission to exempt any person or transaction, or any class or classes of persons or transactions from any provisions of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that an Underlying Fund might be deemed to be an affiliated person of a Fund of Funds if the Fund of Funds acquires 5% or more of the Underlying Fund's outstanding voting securities. Applicants also state that since the Funds of Funds and Affiliated Underlying Funds will be advised by an Adviser, they may be deemed to be under common control and, therefore, affiliated persons of each other. Accordingly, section 17(a) could prevent an Underlying Fund from selling shares to, and redeeming shares from, a Fund of Funds. Applicants state that the consideration paid in sales and redemptions permitted under the requested order of shares of Underlying Funds will be based on the net asset values of the Underlying Funds.

4. ILIAC or another ING Insurance Company will issue an ING Guaranteed Contract to the Funds of Funds. ILIAC also may serve as investment adviser to a Fund of Funds and may also be the record owner of 5% or more of the shares of a Fund of Funds and thus may be deemed to be an affiliated person of the Fund of Funds. The purchase by a Fund of Funds of an ING Guaranteed Contract would therefore be prohibited by section 17(a). Applicants submit that the ING Guaranteed Contract will bear a fixed rate of interest which will be at least as favorable as the guaranteed rate on substantially similar guaranteed contracts offered by the ING Insurance Companies and other insurance companies. Applicants further submit that the Funds of Funds may withdraw assets from the ING Guaranteed Contract at any time if the rate becomes non-competitive (or for any other reason) without the imposition of any sales charge or market value adjustment.

5. Applicants seek an exemption under sections 6(c) and 17(b) to allow the proposed transactions. Applicants state that the transactions satisfy the standards for relief under sections 6(c) and 17(b). Applicants represent that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund and with the general purposes of the Act.

#### **Applicants' Conditions**

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions

were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. This condition shall not apply to a Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Fund of Funds Subadviser or person controlling, controlled by or under common control with the Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Fund of Funds Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person

concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an Affiliated Underwriting.

6. The Board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The Board of the Unaffiliated Fund will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase

in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Unaffiliated Fund's Board were made.

8. A Fund of Funds will pay no sales load when purchasing an ING Guaranteed Contract, and will be permitted to remove its assets from an ING Guaranteed Contract at any time without the imposition of a sales charge or market value adjustment.

9. Prior to purchasing an ING Guaranteed Contract, and prior to any periodic adjustment to the rate of interest on an ING Guaranteed Contract held by a Fund of Funds, the Board of the Fund of Funds, including a majority of the Disinterested Trustees, will make a determination that (i) purchasing or maintaining, as applicable, the ING Guaranteed Contract is in the best interests of the Fund of Funds and its shareholders and does not involve overreaching on the part of any person concerned, and (ii) the guaranteed rate on the ING Guaranteed Contract is at least as favorable as the guaranteed rate on substantially similar guaranteed contracts offered by the ING Insurance Companies and other insurance companies. This determination, and the information upon which it was based, will be recorded fully in the minute books of the Fund of Funds.

10. Prior to an investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and

preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

11. Prior to approving any investment advisory or management contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, will find that the advisory or management fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Affiliated Underlying Funds or Unaffiliated Funds in which the Fund of Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Funds.

12. The Fund of Funds Adviser will waive or offset fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b-1 under the Act) received by the Fund of Funds Adviser or an affiliated person of the Fund of Funds Adviser from an Unaffiliated Underlying Fund, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Any Fund of Funds Subadviser will waive fees otherwise payable to the Fund of Funds Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds Subadviser, or an affiliated person of the Fund of Funds Subadviser, other than any advisory fees paid to the Fund of Funds Subadviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds Subadviser. In the event that the Fund of Funds Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

13. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With

respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the Conduct Rules of the NASD.

14. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (i) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (ii) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions.

15. The Board of any Fund of Funds will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act ("Governance Standards") by the later of (i) the compliance date for the rule ("Compliance Date") or (ii) the earlier of the date of reliance on the order or the date on which the Fund of Funds executes a Participation Agreement. The Board of any Unaffiliated Fund will satisfy the Governance Standards by the later of (i) the Compliance Date or (ii) the date on which the Unaffiliated Fund executes a Participation Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-5735 Filed 10-17-05; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 35-28045]**

### **Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")**

October 12, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the