

the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Non-FOF (or in the case of a Feeder Fund, the Master Fund) will acquire 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) of the Act, except to the extent that the Non-FOF acquires such securities in compliance with section 12(d)(1)(E) of the Act or the Feeder Relief in this order; or the Non-FOF (or in the case of a Feeder Fund, the Master 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) of the Act), or (b) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such Non-FOF (or in the case of a Feeder Fund, the Master Fund) to (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Non-FOF (or in the case of a Feeder Fund, the Master Fund) in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30295; 812-14013]

### ING Investments, LLC, et al.; Notice of Application

December 6, 2012.

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

**ACTION:** Notice of application for an order under section 17(d) of the Investment Company Act of 1940 ("Act") and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered open-end investment companies in the same group of investment companies to enter into a special servicing agreement ("Special Servicing Agreement").

**APPLICANTS:** ING Investments, LLC ("IIL"), Directed Services LLC ("DSL") and ING Investment Management Co. LLC ("IIM") (each, an "Adviser," and collectively, the "Advisers") and ING Balanced Portfolio, Inc., ING Equity Trust, ING Funds Trust, ING Intermediate Bond Portfolio, ING Investors Trust, ING Mayflower Trust, ING Money Market Portfolio, ING Mutual Funds, ING Partners, Inc., ING Separate Portfolios Trust, ING Series Fund, Inc., ING Strategic Allocation Portfolios, Inc., ING Variable Funds, ING Variable Portfolios, Inc., ING Variable Insurance Trust and ING Variable Products Trust (collectively, the "Registrants") and the series thereof (the Registrants and their series, collectively with the Advisers, the "Applicants").<sup>1</sup>

**FILING DATES:** The application was filed on March 9, 2012, and amended on June 18, 2012, and October 26, 2012.

**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 December 31, 2012, 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

<sup>1</sup> All entities that currently intend to rely on the order have been named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants, Huey P. Falgout, Jr., Chief Counsel, ING Funds, 7337 East Doubletree Ranch Road, Suite 100, Scottsdale, Arizona 85255.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551-6868, or Daniele Marchesani, Branch 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 via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. The Advisers are investment advisers registered under the Investment Advisers Act of 1940 and serve as investment advisers to the Funds. Each Adviser is a direct or indirect subsidiary of ING Groep, N.V.

2. Each Registrant is registered under the Act as an open-end management investment company. Certain of the Funds, as defined below, currently serve, and others in the future may serve, in "fund-of-funds" arrangements whereby a Fund (each, a "Top-Tier Fund," and collectively, the "Top-Tier Funds") invests their assets in other Funds ("Underlying Funds").<sup>2</sup>

3. Applicants request that the order also apply to each existing or future registered open-end management investment company or series thereof that is part of the same "group of investment companies" as the Registrants under Section 12(d)(1)(G)(ii) of the Act, and is advised or sub-advised now or in the future by an Adviser or any entity controlling, controlled by, or under common control with an Adviser (such entity included in the term "Adviser" and such investment companies or series thereof, collectively with the Registrants and their series, the "Funds").

4. Applicants propose that the Funds enter into a Special Servicing

<sup>2</sup> The Top-Tier Funds will not be Underlying Funds. Exhibit A to the application identifies the current Top-Tier Funds and Underlying Funds.

Agreement that would allow an Underlying Fund to bear the expenses of a Top-Tier Fund (other than investment management fees, rule 12b-1 fees and class-specific administrative service fees). Under the Special Servicing Agreement, each Underlying Fund will bear expenses of a Top-Tier Fund in proportion to the estimated benefits to the Underlying Fund arising from the investment in the Underlying Fund by the Top-Tier Fund (“Underlying Fund Benefits”).

5. Applicants state that the Underlying Fund Benefits are expected to result primarily from the incremental increase in assets resulting from investments in the Underlying Funds by the Top-Tier Funds and the large size of a Top-Tier Fund’s holdings of shares in a shareholder account relative to the average size of the share balances held in other Underlying Fund shareholder accounts. A Top-Tier Fund’s shareholder account will experience fewer shareholder transactions and greater predictability of transaction activity than other shareholder accounts. As a result, the shareholder servicing costs to any Underlying Fund for servicing one account registered to a Top-Tier Fund will be significantly less than the cost to that same Underlying Fund of servicing the same pool of assets contributed by a large group of shareholders owning relatively small accounts in one or more Underlying Funds. In addition, by reducing Top-Tier Fund expenses, the Special Servicing Agreement may lead to increased assets being invested in the Top-Tier Funds, which in turn would lead to increased assets being invested in the Underlying Funds. Further, increased assets could enable the Underlying Funds to control and reduce their expense ratios because their operating expenses will be spread over a larger asset base.

6. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the expenses incurred by a Top-Tier Fund that may be reimbursed by an Underlying Fund (“Underlying Fund Payments”); (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other

expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund’s average per account transfer agent expense, the Top-Tier Fund’s investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund’s board of trustees (“Board”), including a majority of trustees who are not “interested persons” (within the meaning of section 2(a)(19) of the Act) (“Independent Directors/Trustees”), as being in the best interests of any Fund and its shareholders and not involving overreaching on the part of any person concerned.

#### Applicants’ Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act provide that an affiliated person of, or a principal underwriter for, a registered investment company, or an affiliate of such person or principal underwriter, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving the arrangement. Each Adviser, as investment adviser, is an affiliated person of each of the Underlying Funds and Top-Tier Funds, which in turn could be deemed to be under common control of the Advisers and therefore affiliated persons of each other. The Top-Tier Funds and the Underlying Funds also may be affiliated persons by virtue of a Top-Tier Fund’s ownership of more than 5% of the outstanding voting securities of an Underlying Fund. Consequently, the Special Servicing Agreement could be deemed to be a joint transaction among the Top-Tier Funds, the Underlying Funds and Advisers.

2. Rule 17d-1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission will consider whether participation of the investment company in the joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d-1 to permit the proposed expense sharing arrangements. Applicants state that participation by the Top-Tier Funds, the Underlying Funds and Advisers in the

proposed expense sharing arrangements is consistent with the provisions, policies and purposes of the Act, and that the terms of the Special Servicing Agreement and the conditions set forth below will ensure that no participant will participate on a basis less advantageous than that of other participants.

#### Applicants’ Conditions

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

1. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the Underlying Fund Payments; (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket expenses and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund’s average per account transfer agent expense, the Top-Tier Funds’ investment in the Underlying Fund will be excluded); and (e) has been approved by the Funds’ Board, including a majority of the Independent Directors/Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

2. In approving a Special Servicing Agreement, the Board of an Underlying Fund will consider, without limitation: (a) The reasons for the Underlying Fund’s entering into the Special Servicing Agreement; (b) information quantifying the Underlying Fund Benefits; (c) the extent to which investors in the Top-Tier Fund could have purchased shares of the Underlying Fund; (d) the extent to which an investment in the Top-Tier Fund represents or would represent a consolidation of accounts in the Underlying Funds, through exchanges or otherwise, or a reduction in the rate of increase in the number of accounts in the Underlying Funds; (e) the extent to which the expense ratio of the Underlying Fund was reduced following investment in the Underlying Fund by

the Top-Tier Fund and the reasonably foreseeable effects of the investment by the Top-Tier Fund on the Underlying Fund's expense ratio; (f) the reasonably foreseeable effects of participation in the Special Servicing Agreement on the Underlying Fund's expense ratio; and (g) any conflicts of interest that the Advisers, any affiliated person of the Advisers, or any other affiliated person of the Underlying Fund may have relating to the Underlying Fund's participation in the Special Servicing Agreement.

3. Prior to approving a Special Servicing Agreement on behalf of an Underlying Fund, the Board of the Underlying Fund, including a majority of the Independent Directors/Trustees, will determine that: (a) The Underlying Fund Payments under the Special Servicing Agreement are expenses that the Underlying Fund would have incurred if the shareholders of the Top-Tier Fund had instead purchased shares of the Underlying Fund through the same broker-dealer or other financial intermediary; (b) the amount of the Underlying Fund Payments is less than the amount of Underlying Fund Benefits; and (c) by entering into the Special Servicing Agreement, the Underlying Fund is not engaging, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Underlying Fund.

4. In approving a Special Servicing Agreement, the Board of a Fund will request and evaluate, and Advisers will furnish, such information as may reasonably be necessary to evaluate the terms of the Special Servicing Agreement and the factors set forth in condition 2 above, and make the determinations set forth in conditions 1 and 3 above.

5. Approval by the Fund's Board, including a majority of the Independent Directors/Trustees, in accordance with conditions 1 through 4 above, will be required at least annually after the Fund's entering into a Special Servicing Agreement and prior to any material amendment to a Special Servicing Agreement.

6. To the extent Underlying Fund Payments are treated, in whole or in part, as a class expense of an Underlying Fund, or are used to pay a class-based expense of a Top-Tier Fund, conditions 1 through 5 above must be met with respect to each class of a Fund as well as the Fund as a whole.

7. Each Fund will maintain and preserve the Board's findings and determinations set forth in conditions 1 and 3 above, and the information and considerations on which they were

based, for the duration of the Special Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68382; File No. SR-NYSEARCA-2012-136]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing And Immediate Effectiveness of Proposed Rule Change to Allow for the Split-Price Priority Provisions to Apply to Open Outcry Trading of Cabinet Trades

December 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 30, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.80 to allow for the split-price priority provisions to apply to open outcry trading of cabinet trades. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 6.80 to provide that the split-price priority provisions in Rule 6.75(h) apply to accommodation trades ("cabinet trades") in open outcry.<sup>3</sup>

<sup>3</sup> See Rule 6.75(h). Rule 6.75(h) regarding priority on split-price transaction occurring in open outcry specifically provides the following: (1) If an OTP Holder or OTP Firm purchases (sells) one or more option contracts of a particular series at a particular price or prices, the OTP Holder or OTP Firm must, at the next lower (higher) price at which another OTP Holder or OTP Firm bids (offers), have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that the OTP Holder or OTP Firm purchased (sold) at the higher (lower) price or prices, provided that the OTP Holder or OTP Firm's bid (offer) is made promptly and continuously and that the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). This paragraph only applies to transactions effected in open outcry; (2) If an OTP Holder or OTP Firm purchases (sells) fifty or more option contracts of a particular series at a particular price or prices, he/she shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he/she purchased (sold) at the higher (lower) price or prices, but only if his/her bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of the transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Exchange may increase the "minimum qualifying order size" above 100 contracts for all products. Announcements regarding changes to the minimum qualifying order size shall be made via an Exchange Bulletin. This paragraph only applies to transactions effected in open outcry; (3) If the bids or offers of two or more OTP Holders or OTP Firms are both entitled to priority in accordance with subsections (1) or (2), it shall be afforded them, insofar as practicable, on an equal basis; (4) Except for the provisions set forth in Rule 6.75(h)(2), the priority afforded by this rule is effective only insofar as it does not conflict with customer limit orders represented in the Consolidated Book. Such orders have precedence over OTP Holders' or OTP Firms' orders at a particular price; customer limit orders in the Consolidated Book also have precedence over OTP Holders' or OTP Firms' orders that are not superior in price by at least the MPV; and (5) Floor Brokers are able to achieve split price priority in accordance with paragraphs (1) and (2) above.

Example: Market quote is \$1.00-1.20, with customer interest in the book at the offer price. Floor Broker announces a market order to buy 100 contracts. Market Maker A ("MM-A") is alone in responding "Sell 50 at \$1.15 and 50 at \$1.20" (for an equivalent net price of \$1.175).

Because MM-A is willing to sell contracts at the lower price of \$1.15, MM-A then has priority over

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.