

**NEW YORK STOCK EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017-03-00048**

TO: New York Stock Exchange LLC

RE: ING Financial Markets LLC
CRD No. 28872

From 2007 into 2015 (the “Relevant Period”), ING Financial Markets LLC violated NYSE Rule 2010 (Standards of Commercial Honor and Principles of Trade) in connection with borrowing and lending pre-released American Depositary Receipts not backed by the underlying ordinary foreign shares. ING consents to a censure and a fine and disgorgement totaling \$5,000,000.

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Pursuant to Rule 9216 of the New York Stock Exchange LLC (the “NYSE” or the “Exchange”) Code of Procedure, ING Financial Markets LLC (“ING” or the “Firm”) submits this Letter of Acceptance, Waiver, and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, the NYSE will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. ING hereby accepts and consents, solely for the purposes of this proceeding and any other proceeding brought by or on behalf of the NYSE, or to which the NYSE is a party, prior to a hearing and without an adjudication of any issue of law or fact, without admitting or denying the findings, to the entry of the following findings by the NYSE:

BACKGROUND AND JURISDICTION

1. ING became a member of the NYSE in November 2001, and its registration remains in effect. ING is a Delaware limited liability company headquartered in New York, New York. The Firm is a wholly owned subsidiary of ING Financial Holdings Corporation, which in turn is a wholly owned subsidiary of ING Bank, N.V., a Dutch bank controlled by ING Groep, N.V., a multinational banking and financial services company headquartered in the Netherlands. Among other services it provides, ING acts as a broker-dealer that engages in the lending of securities in a matched-book capacity. The Firm has no relevant prior disciplinary history.

PROCEDURAL HISTORY

2. This matter arises from an investigation by NYSE Regulation into ING's practices involving the borrowing and lending of pre-released American Depositary Receipts ("ADRs").
3. In a letter dated March 23, 2017, NYSE Regulation provided notice to ING that it and its associated persons were under investigation in this matter, specifically concerning the Firm's pre-released ADR lending practices.

SUMMARY

4. During the Relevant Period, ING's securities lending desk borrowed ADRs from counterparty broker-dealers (the "ADR Brokers") that obtained pre-released ADRs from depositary banks when ING was on notice that the ADR Brokers did not own the requisite ordinary foreign shares underlying those ADRs and ING made no inquiry as to whether ING or the customers to whom ING lent the pre-released ADRs owned the shares. The result of this conduct was the lending by ING of ADRs that were not backed by ordinary shares as required by deposit agreements between the issuer and the depositary banks and the ADR Brokers' pre-release agreements with the depositary banks. Accordingly, ING violated NYSE Rule 2010 by lending these ADRs in contravention of just and equitable principles of trade.

VIOLATIONS

ADRs and the Pre-Release of ADRs

5. ADRs allow U.S. investors to invest in foreign companies without having to purchase the shares in foreign markets, and allow foreign companies to get increased exposure to U.S. markets. ADRs are negotiable instruments that represent an ownership interest in a specified number of shares of a foreign company that have been deposited with a depositary bank ("Depositary Bank"). ADRs trade on the NYSE and other U.S. exchanges as well as on over-the-counter markets.
6. The owner of an ADR has the right to obtain the underlying foreign securities by withdrawal from an ADR facility. ADR facilities, which provide for the issuance of ADRs, are established by a Depositary Bank pursuant to a deposit agreement ("Deposit Agreement").
7. Typically, when a Depositary Bank issues ADRs, the corresponding number of the foreign company's shares represented by the ADRs are contemporaneously delivered to the Depositary Bank or its foreign custodian ("Custodian"). In this way, those ordinary shares are in effect removed from the market and the total number of securities in the markets – ADRs plus underlying foreign shares – is unaffected.

8. In certain situations, however, ADRs may be obtained through “pre-release” transactions, where the Depositary Bank issues ADRs before the corresponding ordinary foreign shares are delivered to the Custodian. The traditional rationale for pre-release transactions was to address settlement timing disparities that could delay delivery to the Custodian of recently-purchased ordinary foreign shares. In theory, the pre-release transaction would be closed within a few days after the purchased ordinary shares were delivered to the Custodian. Once issued, pre-released ADRs are indistinguishable from other ADRs of the same issuer and can be freely traded, even while the pre-release transaction remains open.
9. Pre-released ADRs can be obtained directly from Depositary Banks only by parties, typically broker-dealers, who have entered into pre-release agreements (“Pre-Release Agreements”) with the Depositary Banks. Deposit Agreements and Pre-Release Agreements govern the terms of pre-release transactions and, among other things, require that, at the time of the pre-release transaction, either the broker-dealer or its customer: (i) beneficially owns the ordinary foreign shares that evidence the ADRs; and (ii) assigns all beneficial right, title, and interest in those ordinary shares to the Depositary Bank while the pre-release transaction is outstanding.
10. Under this process, the broker-dealer or its customer is required to hold in custody the number of ordinary foreign shares that corresponds to the issued ADRs at all times until the pre-released ADR position is closed by delivery of the ordinary shares (or an equivalent number of ADRs). In this way, the rights and obligations of anyone who ends up holding the pre-released ADR will be protected, and not impacted by the fact that the ordinary shares were not simultaneously deposited with the Custodian at the time the pre-released ADR was issued. This ensures that the total number of ordinary shares plus shares represented by ADRs available in the markets is unaffected by the fact that ADRs were pre-released, and that any impact related to holding the ordinary shares flows to the Depositary Bank and the ADR holders for whose benefit the Depositary Bank custodies ordinary shares.

Certain ING Conduct in Borrowing and Lending ADRs From the ADR Brokers Violated NYSE Rule 2010

11. During the Relevant Period, ING ran a matched-book securities lending business, whereby ING obtained securities, including ADRs, from broker-dealers and in turn lent them to its counterparties, including external counterparties, other ING desks, and ING affiliates.
12. In the early 2000s, ING had its own Pre-Release Agreements with the Depositary Banks. As a result, ING was on notice that Pre-Release Agreements required either the party obtaining pre-released ADRs from the Depositary Bank or its customer to own the underlying ordinary foreign shares.
13. During the Relevant Period, however, ING did not borrow ADRs directly from the Depositary Banks pursuant to Pre-Release Agreements, but instead borrowed ADRs

pursuant to standard master securities loan agreements (“MSLAs”), including from the ADR Brokers (both pre-released and otherwise).

14. During the Relevant Period, the ADR Brokers obtained pre-released ADRs directly from the Depositary Banks pursuant to Pre-Release Agreements and then lent those pre-released ADRs to their counterparties, including ING. The trader on ING’s securities lending desk with primary responsibility for trading ADRs (the “ING Employee”) was on notice that certain ADR Brokers obtained pre-released ADRs from the Depositary Banks and then lent those pre-released ADRs to their counterparties, including ING, without owning the underlying ordinary foreign shares as required by the Deposit Agreements and the ADR Brokers’ Pre-Release Agreements. As a result, ING’s securities lending desk lent such pre-released ADRs to ING’s external counterparties, other ING desks, and ING affiliates when, in some instances, neither ING nor its counterparties owned the requisite ordinary foreign shares.
15. Banca IMI Securities Corp. (“Banca IMI”) was one of the largest counterparty broker-dealers from whom ING borrowed ADRs. The ING Employee was on notice – based on direct communications with the Banca IMI securities lending desk – that Banca IMI routinely obtained pre-released ADRs directly from the Depositary Banks and lent them to ING. The ING Employee also was on notice that Banca IMI did not own, and made no inquiry as to whether ING (or the counterparties to whom ING lent the pre-released ADRs) owned, the underlying ordinary shares in connection with those pre-released ADR transactions.
16. On multiple occasions, the ING Employee communicated directly with Depositary Banks about the availability of pre-released ADRs. With the ING Employee’s knowledge, and at times at the ING Employee’s request, the Depositary Banks pre-released ADRs to Banca IMI (among others) to lend on to ING.
17. On other occasions, the ING Employee asked the Banca IMI securities lending desk to request pre-released ADRs from the Depositary Banks. In some instances, the Banca IMI securities lending desk either forwarded to the ING Employee their communications with the Depositary Banks concerning the availability and issuance of pre-released ADRs, or directly communicated to the ING Employee about their communications with the Depositary Banks and the specific terms – levels, rates, and return dates – upon which the Depositary Banks would issue the pre-released ADRs to Banca IMI to lend on to ING.
18. In approximately January 2007, Banca IMI issued a letter (the “Banca IMI Notice”) to a number of broker-dealers, including ING, stating that Banca IMI engaged in the practice of lending pre-released ADRs, was relying upon the fact that, as borrower, either ING or ING’s customer owned the underlying ordinary foreign

shares, and that Banca IMI would not knowingly lend out pre-released ADRs otherwise.¹

19. Upon receipt of the Banca IMI Notice, the supervisor of ING's stock-loan desk raised the issue with the ING Employee, among others. The ING Employee failed to tell her supervisor what she understood of Banca IMI's trading practices concerning pre-released ADRs or of her own trading as described above. As a result of her knowledge and the Banca IMI Notice, ING was on notice that Banca IMI lent pre-released ADRs to its counterparties and that Banca IMI did not own the underlying ordinary foreign shares.
20. Despite receiving the Banca IMI Notice, and until approximately November 2014, ING securities lending desk personnel continued borrowing pre-released ADRs from Banca IMI when ING was on notice that, at least in certain instances, it was likely that Banca IMI, ING, or ING's customers did not own the requisite underlying ordinary foreign shares.
21. During the Relevant Period, ING securities lending desk personnel routinely obtained pre-released ADRs from the ADR Brokers in order to lend them on to ING's counterparties when neither ING nor its counterparties owned the requisite underlying ordinary foreign shares.
22. In addition, the ING Employee was put on notice by at least one borrowing counterparty that the counterparty's internal policies prohibited the direct or indirect borrowing of pre-released ADRs and required ING to confirm that it was not lending pre-released ADR shares to the counterparty in violation of its policies. Despite this, in connection with certain pre-released ADR transactions, the ING Employee told that borrowing counterparty that ING was not lending pre-released ADRs when the ING Employee was on notice that some portion of the ADRs she borrowed from Banca IMI may have been obtained by Banca IMI on a pre-release basis from a Depositary Bank.²
23. During the Relevant Period, in approximately 1,500 transactions, ING's securities lending desk borrowed ADRs from the ADR Brokers, which resulted in ING indirectly receiving pre-released ADRs from the Depositary Banks. ING profited from the spread between the price at which it borrowed pre-released ADRs and the price at which it lent those securities to its customers.
24. As a result of the above, ING violated NYSE Rule 2010, which requires a member to "observe high standards of commercial honor and just and equitable principles of trade."

¹ In August 2017, Banca IMI entered into a settlement with the U.S. Securities and Exchange Commission concerning its improper handling of pre-released ADRs. See *Banca IMI Securities Corp.*, AP File No. 3-18118 (Aug. 18, 2017).

² ING voluntarily terminated the ING Employee.

SANCTIONS

B. The Firm also consents to the imposition of the following sanctions:

Censure and a fine and disgorgement totaling \$5,000,000.

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of the NYSE; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE employee; or any Regulatory Staff as defined in Rule 9120 in connection with such person's or entity's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or entity's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III. OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of the NYSE pursuant to NYSE Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Rule 9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. The NYSE shall publish a copy of the AWC on its website in accordance with NYSE Rule 8313;
 4. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 8313; and
 5. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for documents in connection with this matter, the Firm made a diligent inquiry of all persons who reasonably had possession of responsive documents, and that those documents have been produced or identified in a privilege log. The Firm acknowledges that, in agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of such document production.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.


August 2, 2018
Date

ING Financial Markets LLC,
Respondent



Marcy Cohen
General Counsel & Managing Director
ING Financial Markets LLC

August 2, 2018
Date



Timothy M. Mechar
Senior Deputy General Counsel & Director
ING Financial Markets LLC

August 3, 2018

Date

Approved as to form by:



Lewis J. Liman, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Counsel for Respondent

Accepted by NYSE Regulation:

AUGUST 3, 2018

Date



Tony M. Frouge
Catherine E. Lifeso
Senior Enforcement Counsel
NYSE Regulation

Signed on behalf of the
New York Stock Exchange LLC,
by delegated authority from its
Chief Regulatory Officer