SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.
FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

May 5, 2005

Via Facsimile and Federal Express

Douglas J. Scheidt, Esq.,
Associate Director and Chief Counsel,
Division of Investment Management,
U.S. Securities and Exchange Commission,
450 Fifth Street, N.W. Mail Stop 0506,
Washington, D.C. 20549.

Re: In the Matter of ING Bank N.V.

Dear Mr. Scheidt:

We submit this letter on behalf of our client ING Bank N.V. (the "Settling Firm") in connection with a settlement agreement (the "Settlement") with the staff of the Division of Enforcement of the Securities and Exchange Commission (the "Commission"), arising out of an internal review by the Settling Firm regarding the sale of unregistered securities.

The Settling Firm, a European bank organized under the laws of the Netherlands, seeks the confirmation of the staff of the Division of Investment Management ("Staff") that the prohibition in Section 206(4) of the Investment Advisers Act of 1940, or Rule 206(4)-3 thereunder (the "Rule") does not apply to the Settling Firm.

BACKGROUND

The Settling Firm and the Commission have settled the investigation in connection with the matters described above. In the Settlement, the Commission finds that the Settling Firm violated Section 5 of the Securities Act of 1933 ("Securities Act"), but the Commission makes no finding that such violation was willful. The Settling Firm neither admits nor denies any of the allegations in the Settlement, except as to jurisdiction, but consents to the entry of a cease and desist order against it. The cease and desist order, among other things, orders the Settling Firm to cease and desist from committing or causing any violations of Section 5 of the Securities Act.

EFFECT OF RULE 206(4)-3

The Rule prohibits an investment adviser from paying a cash fee to any solicitor that has been found by the Commission to have willfully violated the Securities Act. Our understanding is that the prohibition in the Rule is not triggered by the Settlement because the Settlement does not contain a finding that the Settling Firm willfully violated Section 5 of the Securities Act.

DISCUSSION

The Rule's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

> [b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[1]

The Settlement does not bar, suspend, or limit the Settling Firm or any person currently associated with the Settling Firm from acting in any capacity under the federal securities laws.[2] The Settling Firm has not been sanctioned for activities relating to its activities as an investment adviser or its solicitation of advisory clients.[3] Accordingly, consistent with the rationale for the Rule articulated by the Commission, there does not appear to be any reason to prohibit an adviser from paying the Settling Firm or its associated persons for engaging in solicitation activities under the Rule.

In the release adopting the Rule, the Commission stated that it "would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar."[4] The Staff previously has granted numerous

---

[1] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

[2] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295, at note 10.

[3] The Settling Firm additionally notes that it has not violated, or aided and abetted another person in violation of, the Rule, nor have individuals performing solicitation activities on behalf of the Settling Firm been personally disqualified under the Rule.

[4] *See* footnote 2.

requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder and SRO rules or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.[5]

CONCLUSION

We respectfully request that the Staff confirm our understanding that, because the Settlement does not contain a finding that the Settling Firm willfully violated the Securities Act, Section 206(4) of the Investment Advisers Act and Rule 206(4)-3 promulgated thereunder do not prohibit an investment adviser that is required to be registered with the Commission from paying the Settling Firm, or any of its associated persons, a cash payment for the solicitation of advisory clients.

Please do not hesitate to call the undersigned at (212) 558-4837 regarding this request.

Sincerely,

Penny Shane

---

[5] *See, e.g.*, Goldman, Sachs & Co., SEC No-Action Letter, 2005 WL 484404 (pub. avail. Feb. 23, 2005); Prime Advisors, Inc., SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); Prudential Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Paine Webber, Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); NationsBanc Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Carnegie Asset Management, SEC No-Action Letter (pub. avail. July 11, 1994); Salomon Brothers Inc., SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City Capital Corp., SEC No-Action Letter (pub. avail. Feb. 9, 1990); RNC Capital Management Co., SEC No-Action Letter (pub. avail. Feb. 7, 1989); and Stein Roe & Farnham, Inc., SEC No-Action Letter (pub. avail. Aug. 25, 1988).