

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

V.)

IB CAPITAL FX, LLC (A/K/A IB CAPITAL FX (NZ) LLP))
D/B/A IB CAPITAL, MICHEL GEURKINK, AND)
EMADE ECHADI,)

Defendants.)

CASE NO. 1:12-CV-0862-LY

RESPONSE TO ING’S EMERGENCY MOTION TO STAY OR VACATE TURNOVER ORDER

Comes now Guy M. Hohmann, this Court’s appointed Receiver (“Receiver”), and files this Response to ING’s Emergency Motion to Stay and Vacate Turnover Order (“Motion”), and respectfully shows unto the Court as follows:

I. ARGUMENT

A. ING Bank N.V.’s Significant Contacts with the State of Texas and the United States

In response to the argument advanced by ING Bank N.V. (“ING”) that the Court lacks personal jurisdiction over ING and in seeking to stay or vacate this Court’s Turnover Order, simply stated, nothing could be further from the truth. On June 25, 2017, ING placed a notice in the Dallas Morning News daily newspaper stating, “a notice was being filed with the Federal Reserve Board to establish a representative office in Dallas, Texas”. (See exhibit “1”). On October 20,

2017, the Federal Reserve Board granted ING's application to establish a representative office in Dallas.¹ (See exhibit "2").

According to ING's website, ING also maintains offices in Houston, New York and Los Angeles.² (See exhibit "3"). Consistent with its conducting business in the State of Texas, ING has designated a registered agent in the State of Texas, Mr. Daniel Lamprecht. (See exhibit "4"). Also consistent with conducting banking operations in the State of Texas, ING made filings with the Texas Department of Banking. (See exhibit "5"). As noted in exhibit "5", ING's "Headquarters" are located in Dallas, Texas.

ING's website has a web page dedicated to "ING in the United States" which describes how ING's financial services division offers a broad range of financial products and services to its clients through their offices in "Dallas, Houston, Los Angeles and New York".² (See exhibit "3"). ING's website also contains references to specific transactions on a web page labeled "ING's leading global position in oil and gas grows US franchise".³ (See exhibit "6"). The first transaction describes how ING's Management Board Banking and ING's Supervisory Board made a recent trip to Quintana Island, Texas to visit the Freeport Liquefied Natural Gas ("LNG") facility. According to ING, it was a "lead manager on the LNG project". Finally, ING touts in exhibit "6", that it is "playing a critical role in financing the transformation of the Oil and Gas industry "both in the US and globally".³

¹ Board of Governors of the Federal Reserve System. (n.d.). News & Events. Retrieved November 21, 2019 from <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20171020a1.pdf>

² ING. (n.d.). Network & offices. Retrieved November 21, 2019 from <https://www.ingwb.com/network-offices/americas/united-states-of-america>

³ ING. (n.d.). Insights. Retrieved November 21, 2019 from <https://www.ingwb.com/insights/articles/ings-leading-global-position-in-oil-and-gas-grows-us-franchise>

ING's reference in its Motion to *Daimler AG v. Bauman*, 571 U.S.117 (2014) is misplaced. The facts in *Daimler* are completely distinguishable from the facts in the instant case. Daimler involved a suit by twenty-two residents of Argentina who filed suit in California District Court against a German Company. Their Complaint alleged that Mercedes-Benz Argentina ("MB Argentina") an Argentinian subsidiary of Daimler, collaborated with state securities forces from Argentina to kidnap, detain, torture and kill certain MB Argentina workers, among them, plaintiffs or persons closely related to plaintiffs. The Court held Daimler is not amenable to suit in California for injuries that took place entirely outside of the United States.

In the instant case, approximately two-thirds of the IB Capital victims are residents of the United States. As recognized by the Ninth Circuit in *Klein v. Cornelius*, 786 F. 3d 1310, 1317 (9th Cir. 2015), "As an initial matter, federal law allows nationwide service of process under the CEA (Commodities Exchange Act)." The *Klein* opinion cited to a 10th Circuit Opinion, *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d. 1206, 1209 (10th Cir. 2000). To defeat federal question jurisdiction under a statute that allows for nationwide service of process, a defendant must establish "the chosen forum will make litigation ... gravely difficult and inconvenient" or in other words, the forum district burdens the defendant with "constitutionally significant inconvenience" *Id.* at 1318. The fact of the matter is, if ING will simply comply with this Court's previous Turnover Order, there will be no further litigation between the Receiver and ING in the United States.

The Ninth Circuit in *Klein* provided a list of non-exclusive factors which should be analyzed in determining whether defendants have met the burden of showing "constitutionally significant inconvenience": (1) the extent of contact with the forum state, (2) the inconvenience of having to litigate in a foreign jurisdiction, (3) judicial economy, (4) the probable situs of discovery

proceedings and (5) the nature of the defendant's activities and its impact beyond state borders. *Id.* at 1318.

Factors one and two clearly weigh in favor of allowing the litigation to proceed in Texas given ING's significant contacts with Texas. Factor three also favors allowing the litigation to proceed in Texas given this Courts seven-year history with the case. Factor four is a toss-up; the Receiver has previously requested discovery in Texas of Dallas resident David Lamprecht. In addition, to the extent discovery of ING representatives in Amsterdam becomes necessary, the Receiver would be amenable to taking those depositions in Amsterdam. Turning to factor five, ING understands full well how its failure to follow "Know Your Customer" ("KYC") rules impacts persons beyond state borders. In this regard, ING paid a fine of EUR 675 million and disgorged profits of another EUR 100 million for admittedly violating KYC rules during the timeframe of 2010-2016. (The IB Capital fraud was committed in 2012.) In return for making the above payments, ING was able to avoid criminal prosecution in the Netherlands. At the time ING announced its settlement with the Dutch State, it also issued a press release: "ING sincerely regrets that as a result of the above shortcomings, ING Netherlands did not adequately fulfil its role as gatekeeper to the financial system, helping fight financial crime."⁴ (See exhibit "7"). Given ING's highly touted "global" operations as referenced above and in exhibit "6", ING had to have understood full well how its failure to fulfill its role as "gatekeeper to the financial system" would be felt around the world.

On page two of its Motion, ING cites *Bollere S.A. v. Import Warehouse, Inc.* 448 F.3d 317 (5th Cir.) for the proposition that a turnover proceeding under the Texas turnover statute cannot

⁴ ING. (n.d.). Newsroom. Retrieved November 21, 2019 from <https://www.ing.com/Newsroom/News/Press-releases/ING-reaches-settlement-agreement-with-Dutch-authorities-on-regulatory-issues-in-the-ING-Netherlands-business.htm>

be used to establish personal jurisdiction over a party not already amenable to personal jurisdiction. As set forth in section A above, there is abundant evidence that ING is subject to this Court's jurisdiction. Quoting from ING's Motion, they also cite *Bollore* on page four for the proposition that the "Texas turnover statute can only be used to reach the assets of the parties to the judgment". ING's reference to the language in *Bollore* is incomplete. What the *Bollore* opinion actually says is the turnover statute "may be used to reach only the assets of parties to the judgment, not the assets of non-judgment third parties." *Id.* at 322. (emphasis added). *Bollore* might have some application to the facts of this case if ING was contending the funds in the IB Capital and Maverick accounts belonged to ING, which clearly, they do not.

IB Capital is indisputably a party to the \$35 million judgment entered by this Court. Four of the five ING accounts at issue are in the name of IB Capital. The fifth account is in the name of Maverick. As established through uncontroverted evidence appended to the Receiver's Motion for Turnover Order, the funds in Maverick's account were wrongfully misappropriated from IB Capital. Lastly, *Bollore* involved completely distinguishable facts. The judgment creditor in *Bollore* sought to execute on assets owned by the judgment debtor's mother (Najat Mackie) and a gas station the judgment creditor alleged she owned (Freetown Mini Mart Inc.)The judgment creditor alleged that Freetown Mini Mart was the alter ego of the judgment debtor (Ali Mackie).The Fifth circuit reversed the trial court's alter ego and veil piercing findings. Neither of those issues are before this Court.

ING cites *Walden v. Fiore*, 571 U.S. 277, (2014) for the proposition that specific personal jurisdiction requires a link between the controversy, the party against whom the relief is sought and the forum. *Walden* has no application here because the Receiver is asserting the court has general jurisdiction over ING, not specific. For the very same reason, ING's reference to *In re*

Deutsche Bank Sec. Inc., 2015 WL 4079280 (Tex. App.-Austin July 3, 2015, orig. proceeding) has no application to the facts of this case given the Receiver has clearly established general jurisdiction over ING.

ING's citation to Judge Godbey's decision in *SEC v. Stanford Int'l. Bank Ltd.*, 776 F. Supp 2d 323, (N.D. Tex. 2011) is also misplaced. In that case, the receiver for the Stanford Group of Companies sought to obtain discovery from a Swiss Bank (SG Suisse). The issue in that case was whether the receiver should seek discovery under the Federal Rules of Civil Procedure or under the Hauge Convention. The receiver had attempted the former and the court concluded he should have done so pursuant to the Hague Convention. Discovery issues and the rules under which discovery should be conducted are simply not before the Court in connection with the Receiver's Motion for Turnover Order. Also, unlike the present case, the Swiss Bank in *Stanford* had not registered with the Texas Department of Banking, had not appointed a registered agent in the State of Texas and did not have two offices in the State of Texas, one of which was designated as its "Headquarters". (See exhibit "5").

Finally, ING's citation to *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102 (1987) is also easily distinguishable. *Asahi* involved a Taiwanese manufacturer of valve stems that had been sued in a products liability action in State court in California. The issue in *Asahi* was whether the manufacturer was aware that some valve stems would be incorporated into tire tubes sold in the State of California. The court held, even assuming that is was, California's exercise of personal jurisdiction would exceed the limits of due process absent action by the manufacturer to avail itself of the California market. The court in *Asahi* pointed out: "Asahi does not do business in California. It has no office, agents, employees or property in California. It does not advertise or otherwise solicit business in California." *Id.* at 112. As noted above, ING has two

offices in the State of Texas, employees in the State of Texas and most assuredly owns property in the State of Texas at those two offices. Finally, why would ING file an application with the Federal Reserve System to “establish a representative office in Dallas, Texas” if it did not intend to solicit business in Texas? (See exhibit “2”).

B. The Exercise of Jurisdiction Over ING is Neither Unreasonable Nor does it Offend International Comity

As set forth in section A above, there is an abundance of evidence that ING is clearly subject to this Court’s jurisdiction. ING has two offices in the State of Texas and has availed itself of the right to conduct banking operations in this state both through the Federal Reserve Board and the Texas Banking Department.

Addressing ING’s comity arguments will not take much ink. There are simply no treaties between the Netherlands and the United States under which Dutch court judgments, let alone attachments, should be recognized.

As this Court is well aware, this consolidated case has been on file for over seven years. The victims of the IB Capital fraud have been deprived of their funds, many of which had been set aside for retirement, for over seven and one-half years. Over three years ago, on October 14, 2016, this Court entered a Consent Judgment in the amount of USD \$35 million against Emade Echadi, Michel Geurkink and IB Capital. [See Dkt. # 24].

On page 11 of the Court’s January 15, 2016, Order of Preliminary Injunction and Other Equitable Relief [See Dkt. # 16], the Receiver was authorized and directed to:

- b. Take exclusive custody, control and possession of all the funds, property, mail and other assets in the possession of or under the control of the Defendants, wherever located.

The Receiver has located approximately USD \$7 million in funds on deposit with ING Bank. While ING argues in its Motion that these funds are on deposit in Amsterdam, money is fungible. The very bank at which those funds are deposited has a presence in the United States with two offices located in Texas (in Dallas and Houston). (See exhibit “3”).

On page three of its Motion, beyond the IB Capital victims, ING references its understanding there were additional victims Capilo/Spot Forex (the “CSF victims”) of Ecahde and Geurkink. ING is presumably referring to the Capilo/Spot Forex fraud previously referenced in paragraphs 14 and 15 of the Receiver’s Status Report filed on July 31, 2019. [See Dkt. #130]. However, the funds on deposit at ING are traceable solely to the IB Capital victims. (See the affidavit of the Receiver’s Dutch counsel, Jurjen de Korte, attached as exhibit “8”). As set forth in Mr. de Korte’s affidavit, his observations in this regard, are made after having reviewed the contents of the Dutch Public Prosecutor’s Office files in the criminal proceedings against Echade and Geurkink. Thus, the entirety of the funds on deposit at ING should be turned over to the Receiver.

III. Title to the Assets Subject to the Turnover Order is of no Consequence

Irrespective of whether IB Capital and Maverick may have been stricken from the United Kingdom’s Registrar of Companies, that does not change the fact that a USD \$35 million judgment has been entered by this Court. The Receiver has been charged with collecting assets that were misappropriated from IB Capital in satisfaction of the Court’s judgment.

As set forth in the Receiver’s Motion for Turnover Order in paragraph’s 17 and 18 of the Receiver’s affidavit, exhibit “A-4” to that affidavit diagrams the misappropriation of USD \$25 million in funds from IB Capital, USD \$5 million of which was transferred to Maverick’s account at ING

Bank. According to counsel for ING, as of July 12, 2019, the Maverick account balance was EUR 4,301,088.11. [See Dkt. # 137, paragraph 10 of the Receiver's affidavit and page seven of exhibit "A-2" of the Motion for Turnover Order]. That same email from ING's counsel stated there was EUR 1,980,347.83 in IB Capital's account. None of these funds have been transferred to "the Crown" as they are still in ING's possession.

Securities and Exchange Commission v. Faulkner, 2018 WL 4362729, (N.D. Tex. 2018) is a case with strikingly similar facts. The receiver in *Faulkner* was initially appointed receiver for Christopher A. Faulkner and other defendants alleging that Faulkner orchestrated a massive fraud scheme by which he swindled investors out of millions of dollars. The Securities and Exchange Commission ("SEC") initially brought the action in June of 2016.

In August of 2017, the court in *Faulkner* appointed a temporary receiver over Faulkner and two other entities. The receiver later moved to expand the Receivership to include additional parties which had received funds from the original defendants in the case. As stated in *Faulkner*, "The court may also exercise its equitable powers over an entity that has *not* (italicized in original) engaged in wrongdoing, but nonetheless (1) has received ill-gotten funds and; (2) does not have a legitimate claim to those funds." Citing to *Janvey v. Adams*, 588 F.3d 831, 835 n.2 (5th Cir. 2009) (quoting *SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005)). There is no question that ING is (1) in possession of ill-gotten funds and (2) does not have a legitimate claim to those funds.

IV. Conclusion and Prayer

The Court's previous Order requiring ING to turn over the proceeds in the IB Capital and Maverick accounts was, and remains, entirely appropriate. The overwhelming evidence suggests

ING is subject to this Court's jurisdiction. Accordingly, the Receiver respectfully requests that ING's Emergency Motion to Stay or Vacate Turnover Order be denied with due dispatch.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 22, 2019, I electronically submitted the foregoing document with the clerk of the U.S. District Court, Western District of Texas, using the electronic case filing system of the Court.

I hereby certify that I will serve parties and ING Bank N.V. individually or through their counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

I also hereby certify that I have provided copies of the exhibits to the Receiver's Motion for Turnover Order to ING Bank N.V.'s counsel as requested in footnote one on page two of the Motion.

By: /s/ Guy Hohmann
Guy Hohmann

Legal Notices

Notification is hereby given by ING Bank N.V. of Amsterdam, the Netherlands ("ING Bank"), that a notice is being filed with the Federal Reserve Board to establish a representative office of ING Bank at 5420 Lyndon B Johnson Freeway, Suite 1225, Dallas, Texas pursuant to the International Banking Act of 1978.

Interested parties may submit written comments on the notice to Mr. Ivan Hurwitz, Vice President, Federal Reserve Bank of New York, Bank Applications Department, 33 Liberty Street, New York, New York, 10045-0001. The thirty-day comment period will not end before July 25, 2017. If you need more information about how to submit your written comments on the application, contact Mr. Ivan J. Hurwitz, Vice President, Federal Reserve Bank of New York, at (212) 720-5885.

FRB Order No. 2017-27
October 20, 2017

FEDERAL RESERVE SYSTEM

ING Bank N.V.
Amsterdam, The Netherlands

Order Approving the Establishment of a Representative Office

ING Bank N.V. (“ING Bank”), Amsterdam, The Netherlands, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Dallas, Texas. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Dallas, Texas (*The Dallas Morning News*, June 25, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

ING Bank is a wholly owned subsidiary of ING Groep N.V. (“ING Group”), Amsterdam, The Netherlands. ING Group, with total assets of \$983.5 billion, is one of the world’s largest financial services providers, offering commercial and investment banking, asset management, and related products and services. ING Group shares are widely held, with BlackRock, Inc., New York, New York, being the only shareholder that holds five percent or more of its voting shares.²

¹ 12 U.S.C. § 3107(a).

² Stichting Continuïteit ING, Amsterdam, The Netherlands (“Stichting”), a foundation organized to ensure ING Group’s continuity in the event of a hostile takeover attempt, holds call options exercisable for as much as one-third of ING Group’s issued share capital. Stichting engages in no activities other than holding the ING Group call options

ING Bank, with total assets of approximately \$983.5 billion, is the largest bank in the Netherlands by asset size.³ ING Bank engages in retail, wholesale, and international banking and operates in Europe, North and South America, Asia, and Australia. In the United States, ING Bank operates a representative office in New York, New York (the “New York Representative Office”), and operates subsidiaries that engage in securities brokerage and dealing, swaps dealing, and wholesale financial lending and advisory services.

The proposed representative office would act as a liaison with U.S. clients and prospective clients of ING Bank. The proposed representative office also would engage in other representational activities, including marketing and conducting research.⁴

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their

and is not regulated as a financial institution by De Nederlandsche Bank or the European Central Bank.

³ Asset and ranking data are as of June 30, 2017.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

home country supervisor.⁵ The Board also considers additional standards set forth in the IBA and Regulation K.⁶

The Board previously determined, in connection with ING Bank's application to establish the New York Representative Office, that ING Bank was subject to comprehensive supervision on a consolidated basis by De Nederlandsche Bank ("DNB").⁷ As of November 4, 2014, ING Bank is subject to the direct prudential supervision of the European Central Bank ("ECB") within the context of the Single Supervisory Mechanism ("SSM") because the total value of its assets exceeds €30 billion

⁵ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

⁶ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include the following: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁷ ING Bank, N.V., 85 Federal Reserve Bulletin 448 (1999).

and it is one of the three largest banks in a Member State of the European Union. The SSM is a system of financial supervision composed of the ECB and the national competent authorities of the participating Member States in which specific tasks are allocated between the ECB and each national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for ING Bank, while the DNB, as the relevant national competent authority for ING Bank, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The Board has previously found that three other European banking organizations supervised by the SSM and the relevant national competent authority are subject to comprehensive consolidated supervision.⁸ The supervisory processes of the DNB and the system of supervision applied to all large banks within the European Union have not changed materially since they were last considered by the Board.

Based on all the facts of record, including the above information, the Board determined that ING Bank is subject to comprehensive supervision on a consolidated basis by the ECB and the DNB acting through the SSM.

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank;

⁸ See Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and Unione di Banche Italiane, S.p.A., FRB Order 2016-01 (January 19, 2016).

(3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.⁹

The Netherlands is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, the Netherlands has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in the Netherlands, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. ING Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

ING Bank appears to have the experience and capacity to support the proposed representative office. In addition, ING Bank has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration ING Bank's record of operations in its home country and in the United States, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

ING Bank has committed to make available to the Board such information on the operations of ING Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, ING Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that

⁹ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the ECB and the DNB may share information on ING Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that ING Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the ECB has no objection to the establishment of the proposed representative office.

The Board has also considered whether ING Bank's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of ING Bank in its home country; the scope of ING Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising ING Bank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by ING Bank, ING Bank's application to establish the proposed representative office is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁰ Should any restrictions on access to information on the operations or activities of ING Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by ING Bank or its affiliates with applicable federal statutes, the Board may require termination of any of ING Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by ING Bank with the conditions imposed in this

¹⁰ 12 CFR 265.7(d)(12).

order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 20, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

¹¹ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of Texas to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Texas or its agent, the Texas Department of Banking, to license the proposed office of ING in accordance with any terms or conditions that they may impose.



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Award winning in United States of America

ING Americas 2018 award wins

ING in the Americas wins several deal awards in 2017

ING in

the United States



In the United States, ING's financial services division offers a broad range of innovative financial products and services to domestic and international corporate and institutional clients through our offices in Dallas, Houston, Los Angeles and New York.



Gerald Walker

CEO ING Financial Services, LLC

[Email](#)

Our core areas of business excellence include Structured Finance, Corporate Finance, Corporate & FI Lending and Financial Markets services.

Structured Finance

Our specialized lending arm providing clients with creative solutions through a broad range of structured finance products. SF has lending products in the fields of, among others: Utilities, Natural Resources, Acquisition Finance Group, Structured Acquisition Finance, Telecoms & Media, and Structured Export Finance.

Financial Markets

We offer clients access to more than 60 securities markets and offer financing solutions through Debt Capital Markets, Foreign Exchange, Global Securities Finance, Rates, Credits, Money Markets, and Multi-Asset Derivatives products and services.

Corporate Clients

A sector specialized approach to offer large US multinational clients access to our European & International network of products and services, including Payments & Cash Management, Foreign Exchange, Interest Rate and Commodities Hedging, Working Capital Solutions, Debt Capital Markets, and Corporate & Event based Lending.

Please note that ING Bank does not have a banking license in the US and is therefore not permitted to conduct banking activities in the US. Through its wholly owned subsidiary ING Financial Holdings Corporation and its affiliates, ING offers a full array of wholesale

financial products such as lending, corporate finance and a full range of financial markets products and services to its corporate and institutional clients.

[Contacts in the US](#)

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New York: Growing A Sustainable Future for All

October, 2019

New York City can, and should, be a role model for creating sustainable cities, and city parks are central to that vision—offering not only essential green space, but also programs and initiatives that support people, communities—and the planet.

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As-a-service in demand: circular thinking helps HP get ahead of the curve

March, 2019

Nate Hurst, chief sustainability and social impact officer at HP, says business and consumer appetite for “as-a-service” models is on the rise. As a forerunner in adopting the circular economy philosophy, HP is well-positioned to respond.

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ING Americas 2018 award wins

March, 2019



2018 was another successful year for ING Americas with a number of industry award wins with IJGlobal, Global Transport Finance, Bond & Loans and PFI.

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TEXAS SECRETARY of STATE
RUTH R. HUGHS

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	802700323	Entity Type:	Foreign Financial Institution
Original Date of Filing:	April 17, 2017	Entity Status:	In existence
Formation Date:	N/A	Non-Profit Type:	N/A
Tax ID:		FEIN:	132946164
Name:	ING Bank NV		
Address:	Bijlmerplein 888 Amsterdam, [STATE NOT PROVIDED] 1102MG NLD		
Fictitious Name:	N/A		
Jurisdiction:	, NLD		
Foreign Formation Date:	November 12, 1927		

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
Name	Address				Inactive Date
Daniel Lamprecht	5420 Lyndon B Johnson Frwy, Ste. 1225 Dallas, TX 75244 USA				

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ING Bank N.V.

Headquarters Contact Info

Physical Address: 5430 LBJ Fwy., Ste. 1010 Dallas, TX 75240 Agent: Daniel Lamprecht Date Opened: 11/15/2017 Phone: Web:	Mailing Address: 5430 LBJ Fwy., Ste. 1010 Dallas, TX, 75240	Status: Open License No: 5554-43 FDIC No:
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ING's leading global position in oil and gas grows US franchise



On a recent trip by ING's Management Board Banking and ING's Supervisory Board to visit the Freeport Liquefied Natural Gas (LNG) facility on Quintana Island, Texas, Bill Connelly, head of ING Commercial Banking and Richard Ennis, ING's head of natural resources Americas, discussed the changing nature of the US energy business and how the bank is leveraging its leading global position in the oil and gas sector to continue growing its US energy finance operations.

Dramatic renaissance

The US oil and gas industry has undergone a dramatic renaissance over the past few years, in large part as a result of the shale revolution. GDP impact from the energy sector is predicted to surpass \$500 billion by 2025, up from \$284 billion in 2012. The global energy industry has suffered under the steep drop in oil prices with West Texas Intermediate oil prices down from around \$90 a barrel in October 2014 to \$46 in September 2015. But in the US, industry players are adjusting rapidly to changing conditions and adapting to the current environment. ING is playing a critical role in financing that transformation - with a strong franchise throughout the energy value chain, both in the US and globally.





Freeport LNG project

ING was a lead arranger on the Freeport LNG project. The first stage of this project realised ship docking facilities, two large LNG storage tanks as well as regasification equipment, which serve to revaporise the liquid gas, to prepare it to be stored and transported at minus 260 degrees Fahrenheit. As a consequence of the dramatically increased availability and production of US natural gas, Freeport LNG is currently realising an expansion of its terminal to enable liquefaction and export of US natural gas in the form of LNG. The terminal will still be able to import LNG if it is needed for the domestic market.

"Structurally, the US is going from being an importer to a very large exporter of energy. For us as a bank, it is a very positive development - and we are excited about it because this is exactly what we finance, and feel comfortable doing." - Richard Ennis, ING US

US reliable market

US energy exporters have a key advantage over some of their global competition. "A lot of the potential customers of US energy exporters are electric utilities. And, for them, the cost of gas may be secondary to reliability and the diversity of supply. The US is a lot more reliable than just about any other place," says

Bill Connelly. "As a gas utility, the one thing you want to make sure is that you've got a reliable supply of gas coming your way. In the US, the combination of ample supply, the infrastructure investment that is taking place - and therefore the confidence that the gas is there and can be exported - combined with a very reliable commercial code, makes it very attractive from an export perspective."

Global clients, global business

ING is uniquely positioned to support the US market. "Going back to the international network, a lot of the electric utilities that are the customers of these facilities, at the other end of these take-or-pay contracts, are our clients, globally. So, when something like Freeport LNG comes along, we feel comfortable with the risk because we are banking the contracts and the contracts are iron clad." This is one of the reasons why ING, despite its large oil and gas business, has limited exposure to oil price risk.

"Given the export potential for US energy companies, we see a real opportunity to grow our franchise here." - Bill Connelly, ING CB

Double digit growth

ING is active in over 40 countries around the world, with a long history in the energy sector. "As a major European bank, we have been active in financing natural resources - including energy - for over 30

years," says Connelly. "We were among the first banks to participate in trade and commodity financing worldwide. We are financing almost every aspect of the energy value chain and have built that into one global business within ING."

"Given the export potential for US energy companies, we see a real opportunity to grow our franchise here," says Connelly. "So we are investing in terms of capital and people to continue developing our natural resources business, which has been developing at a double digit growth rate over the past few years."



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ING reaches settlement agreement with Dutch authorities on regulatory issues in the ING Netherlands business

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Amsterdam, 4 September, 6:59 am CET

- Settlement agreement with Dutch Public Prosecution Service: ING agrees to pay a fine of €675 million and €100 million for disgorgement;
- ING acknowledges serious shortcomings in the execution of customer due diligence policies to prevent financial economic crime at ING Netherlands in the period investigated (2010-2016);
- ING sincerely regrets that these shortcomings enabled customers to misuse accounts of ING Netherlands;
- ING has initiated measures against a number of (former) senior employees with broader responsibility for the safeguarding and execution of FEC CDD policies and procedures in ING Netherlands, including holdbacks of variable remuneration and suspension of duties;
- ING Netherlands has taken various steps to enhance its compliance risk management and will further strengthen its compliance culture and awareness;
- ING is committed to conducting its business with integrity, which includes compliance with applicable laws, regulations and standards in each of the markets and jurisdictions in which it operates;
- US Securities and Exchange Commission expected not to take further actions.

ING announced today that it has entered into a settlement agreement with the Dutch Public Prosecution Service (DPPS) relating to previously disclosed investigations regarding various requirements for client onboarding and the prevention of money laundering and corrupt practices. Under the terms of the agreement ING has agreed to pay a fine of €675 million and €100 million for disgorgement.

ING has fully cooperated with the DPPS investigation. It has also undertaken an internal

investigation, the results of which have been shared with the Dutch Central Bank (DNB). The investigation established serious shortcomings in the execution of policies to prevent financial economic crime (FEC) at ING Netherlands in the period investigated (2010-2016). The identified broader shortcomings include: CDD files missing or being incomplete, assignment of incorrect risk classifications, the failure to have the (periodic) CDD review process in order, failure to exit business relationships in a timely manner, insufficient functioning of the post-transaction monitoring system, classifying clients in the wrong segments and insufficient availability of qualitative and quantitative human resources.

During the period investigated the execution of ING Netherlands' FEC policies resulted in the termination of ING's relationship with thousands of clients. Nevertheless the shortcomings identified resulted in clients having been able to use their bank accounts for, inter alia, money laundering practices for a number of years.

ING sincerely regrets that as a result of the above shortcomings ING Netherlands did not adequately fulfil its role as gatekeeper to the financial system, helping fight financial crime. "As a bank we have the obligation to ensure that our operations meet the highest standards, especially where it comes to preventing criminals from misusing the financial system. Not meeting those standards is unacceptable and ING takes full responsibility," said Ralph Hamers, CEO of ING.

"We take this very seriously. We are taking a number of robust measures to strengthen our

compliance risk management and support a strong risk culture and will be making further improvements to ensure we can play a full role in contributing to protecting the integrity of the financial system," said Vincent van den Boogert, CEO of ING in the Netherlands.

In the investigations no evidence or indications were found of (former) employees having actively cooperated with clients who used or may have used banking services for potential criminal activities nor indications of (former) employees having received personal gains. The identified shortcomings that occurred in the period investigated are not attributable to some individual persons but rather collective shortcomings at all responsible management levels, i.e. business, compliance and control functions.

ING has initiated measures against a number of (former) employees in senior management positions who had a broader responsibility for the safeguarding and execution of FEC CDD policies and procedures in the Netherlands. These measures include holdbacks of variable remuneration and suspension of duties. In the context of today's announcement the members of the Executive Board of ING Group, in consultation with the Supervisory Board, find it appropriate to forego their variable remuneration over 2018.

ING is committed to conducting its business with integrity, which includes compliance with applicable laws, regulations and standards in each of the markets and jurisdictions in which it operates. Meeting the highest standards wherever we do business is an ongoing effort. ING has started various initiatives at ING Netherlands to further strengthen its compliance risk management:

- An enhancement programme to ensure compliance with 'know your customer' (KYC) and 'client activity monitoring' requirements. This includes enhancing management of customer information and improving effectiveness of the control framework applicable to the FEC domain, especially with respect to client activity monitoring capabilities.
- Centralising and simplifying operational KYC activities into one 'KYC Centre' across divisions, introducing standard processes and tooling, allowing ING Netherlands to manage these activities more effectively.
- Set up Client Risk Committees across business units, deciding on client on boarding and exit escalations to ensure KYC risk mitigation.
- An engagement programme to strengthen the internal compliance culture and awareness by better enabling employees to act in both the letter and the spirit of the law, empowered by their organisation and supported (and enforced) by compliance departments.
- Active involvement in and contribution to the taskforce FEC RAAD, where Dutch authorities that have supervisory, control, prosecution or investigation tasks cooperate with financial sector actors to strengthen the integrity of the sector. It does this by taking preventive action to identify and combat threats to this integrity. ING also joined forces with DNB and the Dutch Banking Association (NVB) to harmonise efforts and knowledge in the fight against financial crime and actively participates in various taskforces and project teams in this field.

As part of the settlement announced today, ING has agreed to pay a fine of €675 million and €100 million for disgorgement. In determining the amount of the fine, the DPPS has taken into account the financial strength of ING ('ability to pay'). Next to that, the amount reflects the seriousness, extent and duration of the identified shortcomings but also expresses the fact that it was not possible to determine to which extent and for what amounts bank accounts at ING Netherlands were actually misused. The disgorgement amount represents the underspend by ING Netherlands over the period in scope on staffing for implementation and execution of FEC CDD policies and procedures. These amounts will have a combined impact on ING Group's third quarter 2018 net result of €775 million, to be recorded as a special item. The settlement announced today does not affect the strength of ING, the execution of our strategy nor our commitment to our customers, shareholders and other stakeholders.

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As previously noted, in connection with the investigations ING has also received information requests from the US Securities and Exchange Commission (SEC). ING has been cooperating with these requests. Based on the settlement agreement announced today, ING expects that this matter will also be resolved with the SEC without further payment or the imposition of further conditions.

AFFIDAVIT OF JURJEN DE KORTE

I, Jurjen de Korte, duly sworn, state as follows:

1. My name is Jurjen, de Korte. I am a resident of Hilversum, The Netherlands. I am a practicing attorney licensed in Amsterdam, The Netherlands.
2. On or about 12 January, 2017, I was retained to represent Guy Hohmann (the "Receiver") in his capacity as the temporary receiver for IB Capital, FX, LLC (A/K/A IB Capital FX (NZ) LLP D/B/A IB Capital ("IB Capital")).
3. During the course of my representation of the Receiver, my law firm filed a motion to obtain copies of files maintained by Dutch Public Prosecutor's Office ("DPPO") in their pending criminal case against Emade Echadi ("Echadi"), Michel Geurkink ("Geurkink") and others with the District Court for North-Holland, location Haarlem.
4. The motion seeking access to the DPPO's files in the Echadi and Geurkink criminal proceedings was granted following a 29 October 2018 hearing. All the documents attached to my affidavit were produced to my law firm by the DPPO in response to our motion. I understand the index numbers in the upper right-hand corner of the documents attached to my affidavit were placed there by representatives of the DPPO.
5. In the matter at hand, a distinction must be made between:
 - on the one hand the fraud(s) (also referred to by the DPPO as the 'Capilo Spot Forex fraud', the "CSF fraud") as a result of which money (in total EUR 2,489,559 and USD 2,843,942) of certain (legal) persons (the "CSF victims") would have been transferred directly or indirectly in the period January 2011 up to and including December 2011, whether or not in favour of the New Zealand entity IB Capital LP, to bank accounts in the name of:
 - a. IB Capital Corp (Seychelles) at Bank of Cyprus in Cyprus,

- b. IB Capital Corp (Seychelles) at USB Bank in Cyprus,
 - c. IB Capital Corp (Seychelles) at FBME Bank in Cyprus,
 - d. IB Capital Corp (Seychelles) at BMI Offshore Bank in the Seychelles,
 - e. IB Capital Ltd (Belize) at Marfin Laiki Bank in Cyprus,
 - f. Spot Forex Services Ltd at ING Bank N.V. ("ING Bank") in the Netherlands,
and
 - g. Capilo Ltd at Choice Bank Ltd in Belize
(collectively "CSF"); and
- on the other hand the fraud (the "IB Capital fraud") as a result of which money (in total USD 50,016,740, EUR 4,631,808 and GBP 3,840,808) of certain (legal) persons (the "IB Capital victims"), in the period December 2011 (or, alternatively, January 2012) until September 2012, was transferred directly to four bank accounts in the name of the UK entity IB Capital at ING Bank in the Netherlands in December 2011 and January 2012.
6. In the records I have reviewed that were originally contained within the DPPO's files, the DPPO confirmed the following (translated from Dutch to English by me):
- "However, the existing capital, derived from the investments by the customers then gained via Spot Forex Services (...) is not transferred to the new bank accounts at [ING Bank]. Instead, that money is distributed to Michel Geurkink, Emade Echadi, Michael Dion and Patrick Galagher and their affiliated entities. For that, the bank accounts in the name of IB Capital Corp at the USB Bank in Cyprus, at the FBME Bank in Cyprus and at the BMI Offshore Bank in the Seychelles are used" (see Exhibit "1-OPV p. 74");
 - "In the investigation no transfers were discovered from the bank accounts in the name of IB Capital Corp. to the ING bank accounts in the name of [IB Capital]" (see Exhibit "1-OPV p. 56");

Exhibit 8

- "As of January 2012, on the bank accounts in the name of [IB Capital] at [ING Bank] a start is made to build up a new capital coming from other investors" (see Exhibit "1-OPV p. 74").
7. On 17 July 2012, USD 5,000,000 and EUR 250,000 were transferred from the bank accounts in the name of IB Capital at ING Bank to the bank account of Maverick (Venture) Capital Holding Ltd ("Maverick") at ING Bank (see Exhibits "D-926/1", "D-926/2" and "D-794 3/10"). As far as I am aware, no money has been transferred to the bank account in the name of Maverick at ING Bank from a source other than the IB Capital victims.
 8. Although the CSF fraud and IB Capital fraud have been subject of a criminal investigation as of 2012, to date, the DPPO has not provided any evidence that funds of CSF victims would have ended up in bank accounts in the name of IB Capital and Maverick at ING, despite the fact that the DPPO has repeatedly been asked to provide such evidence.
 9. In light of the above, it is my understanding that the funds in the bank accounts in the name of IB Capital and Maverick at ING Bank were derived solely from the IB Capital victims.
 10. Further affiant sayeth not.

Date: 21 November 2019



Jurjen de Korte

SUBSCRIBED AND SWORN TO before me this 21 day of November 2019.



Witness G. J. Wiles