

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NELSON CARABALLO, on Behalf of  
Himself and All Others Similarly Situated,

Plaintiff,

vs.

ING GROEP N.V., ING FINANCIAL  
HOLDINGS CORPORATION, STICHTING  
ING AANDELEN, MICHEL J. TILMANT,  
JOHN C.R. HELE, CEES MAAS, J. HANS  
VAN BARNEVELD, ERIC F. BOYER DE  
LA GIRODAY, FRED S. HUBBELL, ELI P.  
LEENAARS, ALEXANDER H.G. RINNOOY  
KAN, HANS K. VERKOREN, JOHN K.  
EGAN, A.H.J. RISSEEUW, H.J. BLAISSE,  
P.M.L. FRENTROP, T. REGTUIJT, J.J.M.  
VERAART, CITIGROUP GLOBAL  
MARKETS INC., WACHOVIA CAPITAL  
MARKETS, LLC, ING FINANCIAL  
MARKETS, LLC, MERRILL LYNCH,  
PIERCE, FENNER & SMITH,  
INCORPORATED, MORGAN STANLEY &  
CO. INCORPORATED, UBS SECURITIES  
LLC, RBC CAPITAL MARKETS  
CORPORATION, BANC OF AMERICA  
SECURITIES LLC, A.G. EDWARDS &  
SONS, INC., ABN AMRO  
INCORPORATED, J.P. MORGAN  
SECURITIES INC., CREDIT SUISSE  
SECURITIES (USA) LLC and HSBC  
SECURITIES (USA) INC.,

Defendants.

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**ECF CASE**

**09 CV 1284 (UA)**

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff Nelson Caraballo, by his undersigned counsel, alleges the following based upon personal knowledge as to his own acts and upon the investigation of his counsel, which includes, among other things, a review of: (a) public statements,

presentations and marketing materials by ING Groep N.V. (“ING” or the “Company”); (b) Securities and Exchange Commission (“SEC”) filings made by ING, other brokerages, financial services firms and investment companies; (c) securities analysts’ reports, press releases and media reports; and (d) interviews with purchasers of the subject securities and other knowledgeable individuals.

### **INTRODUCTION**

1. This is a class action under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the “Securities Act”) on behalf of all persons or entities who purchased 6.375% ING Perpetual Hybrid Capital Securities (“6.375% Securities”) and/or 8.50% ING Perpetual Hybrid Capital Securities (“8.50% Securities”) (collectively, the “Securities”) issued and/or traceable to the Company’s June 2007 and June 2008 initial public offering (the “Offerings”), and who were damaged thereby. Plaintiff asserts claims against ING, its affiliates, officers and directors, and the entities that underwrote the September 2007 Offering (collectively, “Defendants”). The 6.375% Securities are listed on the New York Stock Exchange under the symbol “ISF”. The 8.50% Securities are listed on the New York Stock Exchange under the symbol “IGK”.

2. The 6.375% Securities were issued pursuant to a Registration Statement and Prospectus (filed by ING with the SEC on December 1, 2005) (collectively, the “Registration Statement”) and Prospectus Supplement (filed by ING with the SEC on June 6, 2007) (the “2007 Prospectus”) at a price of \$25.00 per share. The 8.50% Securities were issued pursuant to that same Registration Statement and a separate Prospectus Supplement (filed by ING with the SEC on June 10, 2008) (the “2008 Prospectus”) also at a price of \$25.00 per share.

3. Defendants violated federal securities laws in that the Registration Statement and Prospectus they filed with the SEC misstated or omitted material facts relating to an investment in the Securities, including the facts that: (a) Defendants’ assets, including loans and mortgage-related securities, were impaired to a much larger

extent than the Company had disclosed; (b) Defendants failed to properly record losses for impaired assets; (c) The Company's internal controls were inadequate to prevent the Company from improperly reporting the value of its debt securities; and (d) ING was not as well capitalized as represented, and, notwithstanding the approximately \$1.45 billion raised in the Offering, the Company would have to raise an additional €10 billion by selling equity in the Company to the Dutch government.

4. After the Offering, ING announced €2 billion in impairment charges associated with its exposure to bad loans, mortgage-related securities and other "pressurized" assets, causing the prices of the Securities to decline. The 6.375% Securities and the 8.50% Securities now trade at approximately \$9.99 per share and \$13.65 per share, respectively.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 22 of the Securities Act, 15 U.S.C. § 77v. The claims asserted herein arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2), and 77o.

6. Venue is proper in this District pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, and 28 U.S.C. §§ 1391(b). Among other things, at all times relevant to this Complaint, a majority of the Underwriter Defendants, as defined below, maintained their principal places of business within this District and many of the acts and transactions that constitute violations of law complained of herein, including the dissemination to the public of untrue statements of material facts, occurred in substantial part in this District.

7. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

**PARTIES**

**A. Plaintiff**

8. Plaintiff Nelson Caraballo, as set forth in Attachment A incorporated by reference herein, purchased the Securities pursuant or traceable to the Offerings and has been damaged thereby.

**B. Defendants**

**i. ING Defendants**

9. Defendant ING Groep N.V. (“ING” or “the Company”) is a major global financial services provider operating in Europe, the United States, Canada, Latin America, Australia and Asia. ING is headquartered in Amsterdam, The Netherlands, and has offices in New York. ING is incorporated under the laws of The Netherlands.

10. Defendant ING Financial Holdings Corporation (“ING Holdings”) is a global financial services company which provides banking, insurance and asset management services in over 50 countries. ING Holdings is located in New York. ING Holdings is a Delaware Corporation.

11. Defendant Stichting ING Aandelen (“Stichting ING”) is an administrative trust formed under the laws of The Netherlands that holds approximately 99% of the outstanding ordinary shares of ING and that issues bearer depositary receipts for such shares and for ING’s preference shares. Stichting ING governs the rights of the holders of bearer depositary receipts relative to Stichting ING.

12. Defendants ING, ING Holdings and Stichting ING are collectively referred to herein as the “ING Defendants.”

**ii. Individual Defendants**

13. Defendant Michel J. Tilmant (“Tilmant”) was at relevant times Chairman of the Executive Board of the ING from April 2004 to January 2009.

14. Defendant John C.R. Hele (“Hele”) is Chief Financial Officer (“CFO”) of the Company and has served as a member of the Executive Board of ING since 2007.

Defendant Hele has announced his departure from the Company effective March 31, 2009.

15. Defendant Cees Maas (“Maas”) was, at relevant times, CFO of ING from July 1996 until his retirement from the Company in 2007, and Vice-Chairman of the Executive Board from April 2004 to 2007.

16. Defendant J. Hans van Barneveld (“Barneveld”) was, at all relevant times, Principal Accounting Officer of ING.

17. Defendant Eric Boyer de la Giroday (“de la Giroday”) is, and at all relevant times was, a member of the Executive Board of ING since April 2004.

18. Defendant Fred S. Hubbell (“Hubbell”) was, at relevant times, a member of the Executive Board of ING until April 2006.

19. Defendant Eli P. Leenaars (“Leenaars”) is, and at all relevant times was, a member of the Executive Board of ING.

20. Defendant Alexander H.G. Rinnooy Kan (“Rinnooy Kan”) was, at relevant times, a member of the Executive Board of ING until April 2006.

21. Defendant Hans K. Verkoren (“Verkoren”) was, at relevant times, a member of the Executive Board of ING until April 2006.

22. Defendant John K. Egan (“Egan”) is, and at all relevant times was, CFO and Managing Director of ING Holdings.

23. Defendant A.H.J. Risseeuw (“Risseeuw”) was, at relevant times, Chairman of the Executive Board of Stichting ING until December 2006.

24. Defendant H.J. Blaisse (“Blaisse”) is, and at all relevant times was, a member of the Executive Board of Stichting ING since December 1999.

25. Defendant P.M.L. Frentrop (“Frentrop”) is, and at all relevant times was, a member of the Executive Board of Stichting ING since July 2004.

26. Defendant T. Regtuijt (“Regtuijt”) is, and at all relevant times was, a member of the Executive Board of Stichting ING since May 1996.

27. Defendant J.J.M. Veraart (“Veraart”) is, and at relevant times was, a member of the Executive Board of Stichting ING from August 2001, and Chairman of the Executive Board since December 2006.

28. Defendants Tilmant, Hele, Maas, Barneveld, de la Giroday, Hubbell, Leenaars, Rinnooy Kan, Verkoren, Egan, Risseeuw, Blaisse, Frentrop, Regtuijt and Veraart are collectively referred to herein as the “Individual Defendants.”

29. Each of the Individual Defendants signed the false and misleading Registration Statement.

**iii. Underwriter Defendants**

30. Defendant Citigroup Global Markets Inc. (“Citigroup”), through subsidiaries and divisions, provides commercial and investment banking services, commercial loans and acts as underwriter in the sale of corporate securities. Citigroup is a New York Corporation that has its principal place of business in New York.

31. Defendant Wachovia Capital Markets, LLC (“Wachovia”) offers financial advisory and asset management services. Wachovia is a Delaware limited liability company that has its principal place of business in North Carolina.

32. Defendant ING Financial Markets, LLC (“ING Financial”) is a subsidiary of ING and offers investment banking and corporate financial services. ING Financial is a Delaware limited liability company that has its principal place of business in New York.

33. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) provides capital markets services, investment banking and advisory services, wealth management, asset management, insurance, banking and related products and services on a global basis. Merrill Lynch is a Delaware corporation that has its principal place of business in New York.

34. Defendant Morgan Stanley & Co. Incorporated (“Morgan Stanley”), through its subsidiaries and affiliates, assists public and private corporations in raising

funds in the capital markets and provides advisory services for mergers, acquisitions and other types of financial transactions. Morgan Stanley is a Delaware corporation that has its principal place of business in New York.

35. Defendant UBS Securities LLC (“UBS”) is a wholly owned subsidiary of UBS AG, one of the world’s leading financial firms. UBS Securities is a Delaware corporation with its principal place of business in Connecticut.

36. Defendant RBC Capital Markets Corporation (“RBC”), formerly RBC Dain Rauscher, provides investment advice and services to individual investors and investment banking services to corporate and governmental clients. RBC is a Minnesota corporation that has its principal place of business in New York.

37. Defendant Banc of America Securities LLC (“Banc of America”) is the investment banking arm of Bank of America. Banc of America provides trading and brokerage services, debt and securities underwriting, debt and equity research and advice on public offerings, leveraged buyouts, and mergers and acquisitions. Banc of America is a Delaware corporation that has its principal place of business in North Carolina.

38. Defendant A.G. Edwards & Sons, Inc. (“A.G. Edwards”) provides securities and commodities brokerage, investment banking, trust services, asset management, financial and retirement planning, private client services, investment management, and other related financial services. A.G. Edwards is a Delaware Corporation that has its principal place of business in Missouri.

39. Defendant ABN AMRO Incorporated (“ABN AMRO”) is a banking and fixed-income capital markets firm. ABN AMRO is a New York Corporation that has its principal place of business in Illinois.

40. Defendant J.P. Morgan Securities Inc. (“J.P. Morgan”) provides investment banking, financial services, asset and wealth management and private equity services. J.P. Morgan is a Delaware corporation that has its principal place of business in New York.

41. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) provides securities underwriting, sales and trading, investment banking, private equity, alternative assets, financial advisory, investment research and asset management services. Credit Suisse is a Delaware limited liability company that has its principal place of business in New York.

42. Defendant HSBC Securities (USA) Inc. (“HSBC”) is an investment banking firm that provides financial advisory services. HSBC is a Delaware corporation that has its principal place of business in New York.

43. Defendants Wachovia, ING Financial, Merrill Lynch, UBS, RBC, Banc of America, A.G. Edwards, ABN AMRO, J.P. Morgan, Credit Suisse and HSBC are collectively referred to herein as the “Underwriter Defendants.”

44. Defendants Citigroup, ING Financial, Morgan Stanley, Merrill Lynch, UBS, Wachovia, A.G. Edwards, RBC, ABN AMRO, Banc of America and J.P. Morgan were underwriters for the 6.375% Securities.

45. Defendants Citigroup, ING Financial, Merrill Lynch, Morgan Stanley, UBS, Wachovia, Banc of America, RBC, Credit Suisse, HSBC and J.P. Morgan were underwriters for the 8.50% Securities.

46. The Underwriter Defendants are liable for the false and misleading statements in the Registration Statement and Prospectuses. In connection with the Offerings, the Underwriter Defendants drafted and disseminated the Registration Statement and Prospectus and were paid fees in connection therewith. The Underwriter Defendants’ failure to conduct an adequate due diligence investigation was a substantial factor leading to the harm complained of herein.

### **CLASS ACTION ALLEGATIONS**

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1), (b)(2) and/or (b)(3), and 23(c)(4) on behalf of a Class consisting of all persons or entities who purchased or acquired the Securities pursuant or

traceable to the Company's false and misleading Registration Statement and Prospectuses for the Offerings and who were damaged thereby (the "Class").

48. Excluded from the Class are Defendants; the subsidiaries and affiliates of any Defendant; any person or entity who is a partner, officer, director, employee or controlling person of any Defendant; members of Defendants' immediate families and their legal representatives, heirs, successors or assigns; and any entity in which any Defendant has or had a controlling interest.

49. The members of the Class are so numerous that joinder of all members is impracticable. The Securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members in the proposed Class.

50. Record owners and other members of the Class may be identified from records maintained by ING or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

51. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether the Securities Act was violated by Defendants' acts as alleged herein;
- (b) Whether Defendants made misrepresentations and/or omissions of material fact about the business, operations and management of ING in the Registration Statement and Prospectus; and
- (c) Whether Class members have sustained damages and the proper measure of damages.

52. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

53. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

54. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

55. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, is in fact manageable, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. The benefits of adjudicating this controversy as a class action far outweigh any difficulties in managing the Class.

56. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P. 23(b)(1), 23(b)(2) and/or 23(c)(4) because:

- (a) the prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants;

- (b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;
- (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and
- (d) The claims of Class members are comprised of common issues that are appropriate for certification under Rule 23(c)(4).

**FACTUAL ALLEGATIONS**

57. On or about December 1, 2005, ING filed with the SEC the Registration Statement on Form F-3. The Securities were to be issued by ING. The Form F-3 incorporated by reference subsequently filed prospectuses:

[F]or the purpose of determining liability under the Securities Act of 1933 to any purchaser:

\* \* \*

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof, provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

58. On or about June 8, 2007, ING filed with the SEC, pursuant to Rule 424(b)(5) of the 1933 Act, its Prospectus for the 2007 Offering, which formed part of the Registration Statement. The 2007 Prospectus reported that, as of March 31, 2007, ING shareholder equity of €40.117 billion.

59. The 2007 Prospectus also stated:

We have filed a registration statement on Form F-3 under the Securities Act of 1933, as amended, with the SEC covering the Securities. For further information on the Securities, you should review our registration statement and its exhibits.

\* \* \*

We incorporate by reference the documents listed below, which we filed with or furnished to the SEC:

- Our Annual Report on Form 20-F for the year ended December 31, 2006, filed on April 20, 2007; [and]

\* \* \*

- Our Current Report on Form 6-K filed on June 4, 2007.

60. The Form 20-F that ING filed with the SEC on April 20, 2007, and which was incorporated by reference into the Registration Statement and 2007 Prospectus, stated:

[O]ur financial position – thanks to focused portfolio management over the past three years – enables us to allocate our capital across businesses and client segments in such a way that it optimizes the highest growth and return.

\* \* \*

We believe ING's financial results demonstrate that our underlying performance in all business lines remains strong. . . . ING Real Estate experienced another year of strong growth, both in profits and assets under management.

\* \* \*

Our residential mortgage portfolio reached EUR 69 billion, and in terms of profit, mortgage business achieved break-even in 2006.

\* \* \*

### Managing risks

Important progress has been made in 2006 in improving risk modelling and measurement techniques. At Group level, we are developing risk metrics that capture bank and insurance risk into a single view. We significantly improved the quantification and our understanding of the credit risk in our banking book in line with Basel II, and on the insurance side, we have introduced a market consistent framework which enables more accurate pricing of complex products.

ING strengthened the risk management organisation and centralised the risk function by means of creating the position of (deputy) Chief Risk Officer (CRO) who is responsible for managing and controlling risk on a consolidated level. These improvements further enhance the full integration of risk management in our daily business activities and strategic planning . . . .

61. The Form 20-F also reported ING's financial performance for 2006. Among other things, it reported a total annual income of \$62.378 billion and a net annual profit of \$8.949 billion.

62. The Form 6-K that ING filed with the SEC on June 4, 2007, and which was incorporated by reference into the Registration Statement, reported ING's condensed consolidated interim accounts for the period ended March 31, 2007. It reported, *inter alia*, total income of €18.516 billion and net profit (before minority interests) of €1.958 billion.

63. On or about June 12, 2008, ING filed with the SEC, pursuant to Rule 424(b)(5) of the 1933 Act, its Prospectus for the 2008 Offering, which formed part of the Registration Statement. The 2008 Prospectus reported that, as of March 31, 2008, ING shareholder equity of €539 million.

64. The 2008 Prospectus also stated:

We have filed a registration statement on Form F-3 under the Securities Act of 1933, as amended, with the SEC covering the Securities. For further information on the Securities, you should review our registration statement and its exhibits.

\* \* \*

We incorporate by reference the documents listed below, which we filed with or furnished to the SEC:

\* \* \*

- Our Current Report on Form 6-K filed on May 15, 2008 (our consolidated condensed interim accounts for the three-month period ended March 31, 2008); [and]

\* \* \*

- Our Annual Report on Form 20-F for the year ended December 31, 2007, filed on March 19, 2008.

65. The Form 20-F that ING filed with the SEC on March 19, 2008, and which was incorporated by reference into the Registration Statement and 2008 Prospectus, stated:

In a very challenging environment in 2007, ING performed strongly, both on the commercial front and in the areas of risk management and capital allocation.

\* \* \*

ING has weathered the turmoil in credit markets with limited direct impact. All in all, we believe that our performance in 2007 demonstrates that the fundamentals underpinning our business are sound.

66. The Form 20-F also reported ING's financial performance for 2007. Among other things, it reported total annual income of \$117.707 billion and net annual profit of \$14.202 billion.

67. The Form 6-K ING filed with the SEC on May 15, 2008, and which was incorporated by reference into the Registration Statement and 2008 Prospectus, reported ING's condensed consolidated interim accounts for the three-month period ended March 31, 2008. It reported, *inter alia*, total income of €19.998 billion and net profit (before minority interests) of €1.564 billion.

68. Defendants sold 6.375% Securities and 8.50% Securities to the public at \$25 per share pursuant to the Registration Statement and Prospectuses.

69. The Registration Statement and Prospectuses contained untrue statements of material fact or omitted to state other facts necessary to make the statements made therein not misleading, and were not prepared in accordance with applicable SEC rules and regulations.

70. The true facts that were omitted from the Registration Statement and Prospectuses were:

- (a) Defendants' assets, including loans and mortgage-related securities, were impaired to a much larger extent than the Company had disclosed;
- (b) Defendants failed to properly record losses for impaired assets;
- (c) The Company's internal controls were inadequate to prevent the Company from improperly reporting the value of its assets; and
- (d) ING was not as well capitalized as represented, and, notwithstanding the approximately \$1.45 billion raised in the Offering, the Company would have to raise an additional €10 billion by selling equity in the Company to the Dutch government.

71. On October 17, 2008, ING issued a press release entitled "ING's capital position in line with targets despite market turmoil in third quarter," which stated in part:

Turmoil in financial markets and declining asset prices inevitably impacted ING's results in the third quarter, with impairments on equity and bond investments, pressurised asset classes, losses attributable to financial counterparties and fair value changes on real estate totalling approximately EUR 1.6 billion before tax. Loan loss provisioning at the bank also increased to approximately EUR 400 million. That is expected to result in a net loss of approximately EUR 500 million in the third quarter, based on preliminary numbers.

Negative revaluations on ING's Alt-A, subprime and CDO investments of approximately EUR 1.5 billion after tax were reflected in shareholders' equity in the third quarter, bringing total shareholders' equity to EUR 23.9 billion at the end of September.

72. On this news, the price of the 6.375% Securities lost over 8% of its value to close at \$11.79, a drop of more than 52% from its \$25.00 offering price; the price of the 8.50% Securities lost over 10% of its value to close at \$15.94, a drop of more than 36% from its \$25.00 offering price.

73. On October 19, 2008, ING issued a press release entitled "ING to strengthen core capital by EUR 10 billion," which stated in part:

ING announced today that it has reached an agreement with the Dutch government to strengthen its capital position, creating a strong buffer to navigate the current market and economic environment. ING will issue non-voting core Tier-1 securities for a total consideration of EUR 10 billion to the Dutch State.

\* \* \*

ING Group will use the proceeds of the transaction to increase shareholders' equity in ING Bank by EUR 5 billion and to strengthen the balance sheet of ING Insurance by EUR 2 billion. The remaining EUR 3 billion will be used to reduce the Debt/Equity ratio at ING Group from 15% to around 10%. After this transaction, ING Bank's core Tier-1 ratio will be around 8%, with ING Bank's Tier-1 ratio above 10%.

74. On October 23, 2008, ING announced that Defendant Hele, ING's CFO, was stepping down effective March 31, 2009.

75. On January 26, 2009, ING issued a press release entitled "ING update on results and measures to reduce risk and costs," which announced, *inter alia*:

an underlying net result of EUR -3.3 billion for the fourth quarter [2008], based on preliminary and unaudited figures. Results were impacted by impairments and losses on pressurized assets (subprime RMBS, Alt-A RMBS and CDOs/CLOs) of EUR -2.0 billion, on equity securities of EUR -0.7 billion and on debt securities of EUR -0.3 billion, all on a pre-tax basis.

76. Also on January 26, 2009, ING announced that Defendant Tilmant, chair of ING's Executive Board, was stepping down effective immediately.

#### **NO SAFE HARBOR**

77. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.

78. The statements pleaded herein were not identified as "forward-looking statements" when made.

79. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

80. Alternatively, to the extent that the statutory safe harbor applies to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by a director or an executive officer of Defendants who knew that those statements were false when made.

### **COUNT I**

#### **Violations of Section 11 of the Securities Act**

##### **Against All Defendants**

81. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Plaintiff brings this cause of action for violation of Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of himself and the Class against all Defendants.

82. For purposes of this cause of action, Plaintiff explicitly disclaims and excludes any statement that alleges or can be construed to allege that Defendants committed intentional or reckless misconduct or that Defendants acted with scienter or intent to defraud.

83. The Registration Statement was false and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

84. Plaintiff and the Class acquired the Securities pursuant and/or traceable to the Registration Statement for the Offerings.

85. ING is the registrant for the Offerings. As the issuer of the Securities, ING is strictly liable to Plaintiff and the Class for the misstatements and omissions. ING also caused the Registration Statement to be signed on its behalf by Defendant Maas.

86. ING Holdings, Stichting ING and the Individual Defendants named herein were responsible for the contents and dissemination of the Registration Statement. ING Holdings caused the Registration Statement to be signed on its behalf by Defendant Egan. Stichting ING caused the Registration Statement to be signed on its behalf by Defendants Risseeuw and Regtuijt. Each of the Individual Defendants signed the Registration Statement or authorized the signing of the Registration Statement or were identified in the Prospectuses.

87. The Underwriter Defendants named herein were responsible for the contents and dissemination of the Registration Statement.

88. Defendants owed to the purchasers of the Securities the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement and all incorporated documents at the time it became effective to ensure that those statements were true and that there were no omissions of material fact which rendered the statements therein materially untrue and misleading.

89. Defendants failed to make a reasonable investigation and failed to possess reasonable grounds to believe that the statements contained in the Registration Statement and all incorporated documents were true, did not contain omissions of any material facts, and were not misleading. Accordingly, Defendants acted negligently and are therefore liable to the members of the Class who purchased the Securities.

90. Plaintiff and members of the Class did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Registration Statement and all incorporated documents.

91. Less than one year elapsed between the time that Plaintiff discovered or reasonably could have discovered the facts upon which this Complaint is based and the filing of this Complaint. Less than three years elapsed between the time the Securities were offered in good faith to the public and the filing of this Complaint.

92. Plaintiff and members of the Class have sustained damages. The value of the Securities has declined substantially as a direct and proximate result of Defendants' violations of Section 11 of the Securities Act.

93. By reason of the foregoing, Defendants are liable for violations of Section 11 of the Securities Act to Plaintiff and members of the Class.

## **COUNT II**

### **Violations of Section 12(a)(2) of the Securities Act**

#### **Against The Underwriter Defendants**

94. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Plaintiff brings this cause of action for violation of Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77k, on behalf of himself and the Class against the Underwriter Defendants.

95. For purposes of this cause of action, Plaintiff explicitly disclaims and excludes any statement that alleges or can be construed to allege that Defendants committed intentional or reckless misconduct or that Defendants acted with scienter or intent to defraud.

96. Each of the Underwriter Defendants was a seller, offeror, and/or solicitor of sales of one or both of the Securities offered pursuant to the Prospectuses and documents incorporated therein by reference issued in connection with the Offerings. These documents contained untrue statements of material fact and omitted other material facts necessary to make the statements not misleading.

97. The Prospectuses contained untrue statements of material fact, and concealed and failed to disclose material facts, as detailed above. The Underwriter Defendants owed Plaintiff and the other members of the Class who purchased the Securities pursuant to the Prospectuses the duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses to ensure that such statements were true and that there was no omission to state a material fact required to be

stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Prospectuses as set forth above.

98. The Underwriter Defendants failed to make a reasonable investigation and failed to possess reasonable grounds to believe that the statements contained and incorporated by reference in the Prospectuses at the time of the Offerings were true and that there were no omissions of material fact which rendered the statements therein materially untrue and misleading. Accordingly, each of the Underwriter Defendants is liable to Plaintiff and the other members of the Class who purchased the Securities.

99. Plaintiff and members of the Class purchased the Securities in the Offerings pursuant to the materially untrue and misleading Prospectuses and did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in those documents.

100. Plaintiff and members of the Class offer to tender the Securities they purchased on Offerings and continue to own in return for the consideration paid for those securities, together with interest thereon.

101. By virtue of the conduct alleged in this Complaint, the Underwriter Defendants violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who purchased the Securities in the Offerings pursuant to the Prospectuses have the right to rescind and recover the consideration paid for their securities, and hereby elect to rescind and tender their securities. To the extent that Plaintiff and Class members have sold the Securities at a loss, they are entitled to damages.

**COUNT III**

**Violations of Section 15 of the Securities Act**

**Against the Individual Defendants**

102. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Plaintiff brings this cause of action for violation of Section 15 of the Securities Act on behalf of himself and the Class against the Individual Defendants.

103. For purposes of this cause of action, however, Plaintiff explicitly disclaims and excludes any statement that alleges or can be construed to allege that Defendants committed intentional or reckless misconduct or that Defendants acted with scienter or intent to defraud.

104. The Individual Defendants acted as controlling persons of the ING Defendants within the meaning of Section 15 of the Securities Act as alleged herein. By virtue of their high-level positions, stock ownership, management, and/or participation in the operations of the ING Defendants, the Individual Defendants had and exercised the power to influence and control the decision-making of the ING Defendants, including the content and dissemination of the Registration Statement and Prospectuses that contained the untrue statements and omissions of material fact described herein.

105. Each of the Individual Defendants was a culpable participant in the violations of Sections 11 and 12(a)(2) of the Securities Act by virtue of having influenced and controlled the decision-making of the ING Defendants, including the content and dissemination of the Registration Statement and Prospectuses that contained the untrue statements and omissions of material fact described herein.

106. As a direct and proximate result of the conduct of the ING Defendants and the Individual Defendants, Plaintiff and members of the Class suffered damages in connection with their purchase of the Securities.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, certifying Plaintiff as a representative of the Class under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as counsel for the Class;

B. Awarding Plaintiff and members of the Class compensatory damages against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongful conduct in an amount to be proven at trial;

C. Awarding Plaintiff and members of the Class rescission or a rescissionary measure of damages;

D. Awarding Plaintiff and members of the Class pre-judgment and post-judgment interest;

E. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

F. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder; and

G. Granting such other and further relief as the Court may deem just and proper.

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**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: February 12, 2009

Respectfully submitted,

**ZWERLING, SCHACHTER &  
ZWERLING, LLP**

By:           s/Richard A. Speirs          

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Counsel for Individual and Representative  
Plaintiff Nelson Caraballo

**CERTIFICATION OF PROPOSED LEAD PLAINTIFF  
PURSUANT TO THE FEDERAL SECURITIES LAWS**

I, Nelson Caraballo, declare the following as to the claims asserted, or to be asserted, under the federal securities laws:

1. I have reviewed the complaint against ING Groep N.V. and others prepared by Girard Gibbs LLP, whom I designate as my counsel in this action for all purposes.

2. I did not acquire the 8.50% ING Hybrid Capital Securities (IGK) at the direction of Girard Gibbs LLP or in order to participate in any private action under the federal securities laws.

3. I am willing to serve as a lead plaintiff either individually or as part of a group. I understand that a lead plaintiff is a representative party who acts on behalf of other class members in directing the litigation, and whose duties may include testifying at deposition or trial.

4. I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the Court pursuant to law.

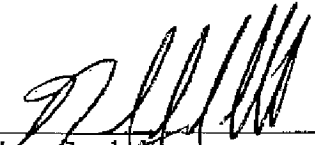
5. I have not sought to serve or served as a representative party for a class in an action under the federal securities laws within the past three years.

6. I understand that this is not a claim form, and that my ability to share in any recovery as a class member is not affected by my decision to serve as a representative party.

7. My purchases and sales of 8.50% ING Hybrid Capital Securities (IGK) issued pursuant and/or traceable to the company's June 2008 offering are listed in **Attachment A** to this document.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10 day of February, 2009.

  
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Nelson Caraballo

**ATTACHMENT A**

**NELSON CARABALLO'S TRANSACTIONS**

<b>TRADE DATE</b>	<b>SECURITY</b>	<b>NUMBER OF SHARES</b>	<b>PRICE PER NOTE/UNIT</b>	<b>BUY OR SELL</b>
6/10/2008	ING Groep N.V. 8.50% Hybrid Capital Securities (IGK)	1,000	\$25.00	Bought