

ENFORCEABLE UNDERTAKING

**Australian Securities and Investments Commission Act 2001 (Cth),
Section 93AA**

**The commitments in this undertaking are offered on a voluntary
basis to
the Australian Securities and Investments Commission ("ASIC")
by**

ING Australia Limited (INGA)
ABN 60 000 000 779

ING Life Limited
ABN 33 009 657 176, AFSL No 238341

ING Funds Management Limited
ABN 21 003 002 800, AFSL No 238342

Optimix Investment Management Limited
ABN 45 006 790 629, AFSL No 238343

ING Custodians Pty Limited
ABN 12 008 508 496, AFSL No 238346

ANZ Managed Investments Limited
ABN 61 004 392 269, AFSL No 238344

ANZ Life Assurance Company Limited
ABN 63 008 425 652, AFSL 238345

1 INGA's business and relevant parties

1.1 ING Australia Limited ("**INGA**") is a joint venture between ING Australia Holdings Limited [ABN 27 008 459 596] ("**ING Holdings**") (which owns 51%) and ANZ Orchard Investments Pty Ltd [ABN 98 098 285 244] ("**ANZ**") (which owns 49%). The INGA joint venture was formed on 1 May 2002.

1.2 INGA is the holding company of a number of subsidiaries which provide superannuation, life insurance and managed investment products ("**INGA Group**"). INGA does not itself provide financial products to clients. INGA's subsidiaries are:

- ING Life Limited ("**ING LIFE**"), which is a registered life insurance company under the Life Insurance Act 1995 (Cth) ("**Life Insurance Act**");
- ING Funds Management Limited ("**INGFM**") which is a Responsible Entity of registered managed investment schemes under the Corporations Act 2001 (Cth) ("**Corporations Act**");
- ING Custodians Pty Limited ("**INGC**") which is an approved trustee under the Superannuation Industry (Supervision) Act 1993 (Cth) ("**SIS**");
- Optimix Investment Management Limited ("**OIML**") which is a Responsible Entity of registered managed investment schemes under the Corporations Act and also an approved trustee under SIS;
- ANZ Managed Investments Limited ("**ANZMI**") which is a Responsible Entity of registered managed investment schemes under the Corporations Act and also an approved trustee under SIS;
- ANZ Life Assurance Company Limited ("**ANZ Life**") which is a registered life insurance company under the Life Insurance Act. On 30 June 2005 all of ANZ Life's life insurance business was transferred to ING Life as part of INGA's continuing integration process.

Each of these subsidiaries is the holder of an Australian Financial Services Licence, and in this document each subsidiary is referred to as a "**Licensee**".

1.3 The Licensees are variously licensed to provide product offerings including superannuation (personal and corporate), pensions, personal and wholesale investments and life insurance. INGA's Licensees have over \$33 billion in funds under management for over 1 million investors.

As detailed in section 2, INGA and the Licensees have commenced a comprehensive Unit Pricing Program ("**Unit Pricing Program**") to re-examine and improve their Unit Pricing control environment. The initial results of this work identified that the historical unit prices for a number of Affected Products required adjustment.

During the progression of the Unit Pricing Program, the Licensees will publish regularly updated information to investors on the INGA website in accordance with the procedures described in paragraph 4.7 of this undertaking.

2 INGA Unit Pricing

2.1 At INGA, the unit pricing function is responsible for the delivery of unit prices for all unit linked products. Unit pricing at INGA is carried out on an in house unit pricing system.

2.2 When the INGA joint venture was formed on 1 May 2002, it combined the Australian and New Zealand life insurance and funds management businesses of ANZ and ING Holdings. This involved substantial management change including the appointment of a new executive team. The joint venture required complex integration of entities, and numerous products and systems. The initial integration was expected to last 12 months, with a broader integration to be progressively implemented over several years.

2.3 As the integration progressed, reconciliation issues were identified in respect of:

- fund capital and cash movements;
- bank reconciliations, due to the manual nature of these reconciliations;
- financial reconciliation between the unit pricing system and the general ledger; and
- tax accrual reconciliations in funds.

Some of these reconciliation issues preceded the INGA joint venture.

In late 2003, three specific initiatives were established to address these issues:

- The Funding Project – This initiative was established to address two of the issues identified above, namely:

- a. the appropriate control environment to ensure that investor application, redemption and distribution bank accounts could be reconciled in a more automated manner and more efficiently; and
 - b. the reconciliation of fund capital and cash movements.
- Asset Alignment Project – This initiative was established to investigate reconciliation differences between the unit pricing system and the general ledger.
 - A third initiative to complete outstanding tax accrual reconciliations.

These initiatives have now been absorbed into the Unit Pricing Program.

- 2.4 From 2002 to 2004, Financial Services Reform requirements were being implemented throughout the business requiring more rigorous policies and processes. A new CEO was appointed in July 2003 and a dedicated risk and compliance division was established with overall responsibility for risk and compliance in November 2003.
- 2.5 As new issues were being identified and to ensure the integration was addressing all relevant unit pricing issues, in May 2004 Executive Management considered it appropriate to contract external consultants PricewaterhouseCoopers (“PwC”) to undertake a review of unit pricing processes. PwC delivered a report in July 2004 (“PwC Report”). The PwC report identified a number of issues relating to INGA’s unit pricing:
- outstanding adjustments arising from integration of entities and products, and system migration processes, including different treatments of buy/sell spreads and future income tax benefits across products;
 - the need for recalibration of tax provisioning in unit pricing to tax returns, including franking credits and foreign tax credits;
 - unit pricing policies, processes and controls not fully or clearly documented, including in relation to manual adjustments;
 - weaknesses within monitoring and reporting processes and risk management and compliance resourcing;
 - poorly defined unit pricing roles and responsibilities and inadequate service level agreements between relevant parties; and
 - the consequential risk of unit pricing errors.
- 2.6 The PwC Report made a range of recommendations concerning unit pricing policy and methodology, process and control, and risk management, monitoring and reporting.

2.7 INGA sent breach notifications to ASIC on 30 July 2004, 9 August 2004, 27 August 2004 and 5 May 2005 pursuant to sections 912D and 601FC of the Corporations Act. APRA was also notified.

2.8 In the remainder of this document:

- **Affected Investment Option** means an investment option within a financial product provided by a Licensee where a unit price error has been identified;
- **Affected Product** means a financial product provided by a Licensee where a unit price error has been identified within an Affected Investment Option;
- **Affected Investor** means an investor who will be entitled to receive compensation in accordance with the INGA Investor Compensation Policy
- **External Unit Pricing Expert** means a person appointed by INGA, subject to ASIC's prior written approval, who has the experience and qualifications necessary to be regarded as an expert in the field of Unit Pricing.

2.9 The existing reconciliation projects (referred to in clause 2.3 above) were expanded during April 2004 into a comprehensive unit pricing program which has subsequently been allocated further substantial resources and a dedicated management team to address the issues identified in the PwC Report and the matters referred to in this Undertaking. INGA asserts that this Program:

- a. has strengthened current and ongoing unit pricing processes, controls and policies in a manner that is designed to ensure that unit pricing is effective, is isolating and resolving past issues, and minimising the risk of any future errors;
- b. has implemented substantial improvements to the unit pricing processes and controls designed to address recommendations in the PwC Report, including automation of the funding process, improved asset valuation, income monitoring and reconciliation processes; and
- c. has identified historic unit pricing errors and is continuing with this identification and remediation process.

In relation to the correction of historical errors within unit pricing, the Unit Pricing Program has designed and continues to develop the infrastructure to remediate funds and where required, compensate Affected Investors.

This infrastructure includes but is not limited to policies, processes, calculators and systems to address the various types of funds, products, unit pricing issues and regulatory environments. Each stage of the infrastructure development has, and continues to be, reviewed by external experts for the appropriateness of the design and application.

At the date of this undertaking, the infrastructure development is in the final stage for Managed Investment products with Superannuation, Pension and Life products to be finished shortly.

The Licensees will compensate Affected Investors, identified in the Unit Pricing Program, in accordance with the INGA Investor Compensation Policy that is being finalised and will be agreed with ASIC ("INGA Investor Compensation Policy"). INGA will provide ASIC with an opinion from an external expert on the reasonableness of the INGA Investor Compensation Policy prior to agreement being sought.

- 2.10 Executive Management engaged PwC in September 2004 to perform reviews at December 2004, June 2005 and June 2006 to monitor the progress of the Unit Pricing Program.

In the period to December 2004, significant improvements were made to the unit pricing control environment, which have resulted in a much reduced number of errors occurring (with any material errors being compensated). The Board and Executive Management believe that from December 2004, INGA has maintained effective unit pricing processes and controls.

In addition, Executive Management engaged PwC in March 2005 to provide advice on a number of matters arising during remediation, and in relation to compensation methodologies.

- 2.11 The Board and Executive Management will continue to monitor the effectiveness of the strengthened processes and controls. The Unit Pricing Program is reviewing and reconciling all funds for the identification of historic errors and to identify any further Affected Investors.

3 ASIC's Role, Disclosures to ASIC and Co-operation of INGA

- 3.1 ASIC is the consumer protection regulator of the financial services industry and accordingly is responsible for the monitoring and promoting of market integrity in the Australian financial system.
- 3.2 In July and August 2004 and May 2005, INGA lodged formal breach notifications with ASIC. INGA has provided further detailed information

and progress reports to ASIC. Similar disclosures and reports have been provided to APRA since August 2004.

- 3.3 Licensees are required to provide their financial services efficiently, honestly and fairly in accordance with section 912A of the Corporations Act. As a result of being notified, under sections 912D and 601FC of the Corporations Act, of the issues identified in the PwC Report, ASIC is concerned that the Licensees may not have been meeting this requirement as imposed by the Act.

ASIC, INGA and the Licensees are also concerned to ensure that:

- Affected Investors are appropriately compensated;
- appropriate disclosure of unit pricing errors identified is made to investors and members; and
- identified deficiencies in unit pricing practices and processes have been remedied.

4 Correction, Compensation and Communication

- 4.1 INGA asserts that the Unit Pricing Program has been comprehensively examining and correcting unit pricing and financial records, and identifying past unit pricing errors.

- 4.2 This process involves:

- a. reconciling the financial and unit pricing records for all Affected Products of the Licensees as at 1 September 2004 (when new funding processes were implemented);
- b. reconciling unit pricing tax accruals to the tax returns for three years to 31 December 2003 for ING Life and four years to 31 December 2003 for ANZ Life; and
- c. resolving any other unit pricing related issues which are identified.

- 4.3 Where material errors to unit prices are identified, Affected Investors will be compensated in accordance with the INGA Investor Compensation Policy. Affected Investors will be communicated with in accordance with the INGA Unit Pricing Program Communication Policy dated July 2005 ("INGA Unit Pricing Program Communication Policy") which has been provided to ASIC.

- 4.4. Restitution methodologies and price adjustments are being developed by the Licensees. These methodologies are designed to:

- correct the unit prices of Affected Products; and
- be used in calculating and delivering compensation to Affected Investors.

The methodologies will be consistent with the legal obligations of the Licensees, industry practices relating to restitution processes to locate Affected Investors and/or use regulator approved processes in delivering the compensation.

These methodologies are being reviewed by appropriately qualified experts.

4.5 INGA will use its best endeavours to ensure that no Affected Investor is materially disadvantaged as a consequence of identified unit pricing errors. INGA has made provision in its accounts to provide for the Unit Pricing Program including investor compensation, and the amount of this provision is regularly reviewed. This provision is funded out of shareholder funds of INGA and the Licensees.

4.6 At 31st August 2005:

- a. compensation to be paid to Affected Investors, either through unit adjustments or cash payments, is estimated at \$14.0 million; and
- b. compensation to be paid to Affected Investment Options is estimated at \$10.5 million.

Further remediation work to be undertaken during the Unit Pricing Program may result in higher compensation amounts being paid.

4.7 INGA will concurrently but not later than 14 days after the completion of the compensation process for each Affected Product, publish information relating to the unit price error on INGA's website, with status being updated regularly.

4.8 INGA will engage an External Unit Pricing Expert, to regularly review compliance with the INGA Investor Compensation Policy and the INGA Unit Pricing Program Communication Policy in relation to compliance with this undertaking.

4.9 Subject to paragraph 6.1, INGA, INGFM, ANZMI, OIML, INGC and ING Life have offered, without admission of any contraventions or liability, and ASIC has accepted, this Enforceable Undertaking. By accepting this undertaking, ASIC will not take any action against INGA or the Licensees in relation to the matters the subject of the PwC Report and otherwise the subject of this Undertaking.

5 Undertakings

- 5.1 Pursuant to section 93AA of the ASIC Act, INGA and the Licensees offer the following undertakings to ASIC.
- 5.2 In respect of the matters referred to in paragraph 4.2 INGFM, ANZMI, OIML, INGC and ING Life will apply the INGA Investor Compensation Policy and the INGA Unit Pricing Program Communications Policy, referred to in paragraph 4.3. The final version of the INGA Investor Compensation Policy will be provided to ASIC prior to commencement of compensation payments.
- 5.3 INGA will use all reasonable endeavours to ensure compliance by INGFM, ANZMI, OIML, INGC and ING Life with the undertaking in paragraph 5.2 above.
- 5.4 Within 60 days of the execution of the Undertaking, INGA, on behalf of INGFM, ANZMI, OIML, INGC and ING Life, will provide a project plan, to be agreed with ASIC, setting out key milestones for the completion of payment of compensation to Affected Investors and including a strategy for locating all Affected Investors for which INGA and the Licensees do not hold a current address or means of contact.
- 5.5 INGA and the Licensees will comply with the requirements of the project plan. In the event that INGA and the Licensees are unable to comply with any requirement of the project plan, they will:
- a. give notice to ASIC forthwith; and
 - b. rectify the non-compliance by a date to be agreed with ASIC.
- If required, INGA and the Licensees may request ASIC's consent to extend the time to complete the project (such consent not to be unreasonably withheld).
- 5.6 INGA will engage the services of an External Unit Pricing Expert to review and report to INGA and to ASIC at the times and in the form to be agreed by INGA and ASIC on whether:
- a. investor compensation methodologies are consistent with, and give effect to the INGA Investor Compensation Policy prior to commencement of the restitution and compensation process. The report will include an opinion as to whether the investor compensation methodologies are reasonable;

- b. in all material respects, the INGA Investor Compensation Policy has been applied;
- c. in all material respects, the INGA Unit Pricing Program Communication Policy has been applied;
- d. subject to paragraph 5.5, investor compensation has been completed in accordance with the project plan referred to under paragraph 5.4;
- e. a list of Affected Products requiring investor compensation (once quantified) has been published on INGA's website, with status being updated regularly;
- f. there are any recommendations the External Unit Pricing Expert considers appropriate having regard to any potential or possible failures in compliance with this undertaking.

INGA Group will meet the costs of the review by the External Unit Pricing Expert.

5.7 INGA will, not later than 3 months after the completion of the compensation process for each Affected Product, report to ASIC providing the following particulars of its records as to:

- a. the number of Affected Investors (remaining and exited);
- b. the total and average investor compensation paid;
- c. the number of investors who have not been located; and
- d. confirmation that all Affected Investors have been notified in accordance with the INGA Unit Pricing Program Communication Policy.

6 Acknowledgements

6.1 INGA acknowledges that:

- a. ASIC may refer publicly to this Undertaking;
- b. ASIC may issue a media release on execution of this Undertaking;
- c. ASIC will place a copy of this Undertaking on a public register;
- d. ASIC's acceptance of this Undertaking is based on the completeness and accuracy of the information already provided by INGA and the Licensees to ASIC in connection with this Undertaking;

- e. ASIC's acceptance of this Undertaking does not constrain ASIC's power to investigate or take action in relation to future conduct; and
- f. this Undertaking does not derogate from the rights and remedies available to other persons arising from matters the subject of this undertaking.

6.2 ASIC acknowledges that INGA and the Licensees:

- a. have assured ASIC that they have used their best endeavours and have acted in good faith to ensure that information provided to ASIC is complete and accurate;
- b. have fully co-operated with ASIC; and
- c. may issue a media release on execution of this Undertaking.

EXECUTED ~~as a deed~~ on 20 September 2005

Signed on behalf of **ING Australia Limited** (ABN 60 000 000 779)
by its authorised representative
in the presence of:

M. Mezrani

Signature of witness,
Margaret Mezrani

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)
)

P. Bedbrook

Signature of authorised
representative, Paul Bedbrook, CEO

Signed on behalf of **ING Life Limited** (ABN 33 009 657 176)
by its authorised representative
in the presence of:

M. Mezrani

Signature of witness,
Margaret Mezrani

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)

P. Bedbrook

Signature of authorised
representative, Paul Bedbrook, CEO

Signed on behalf of **ING Funds Management Limited**
(ABN 21 003 002 800)
by its authorised representative
in the presence of:

M. Mezrani

Signature of witness,
Margaret Mezrani

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[Signature]

Signature of authorised
representative, Paul Bedbrook, CEO

Signed on behalf of **Optimix Investment Management Limited**
(ABN 45 006 790 629)
by its authorised representative
in the presence of:

M. Mezrani

Signature of witness,
Margaret Mezrani

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)

[Signature]

Signature of authorised
representative, Paul Bedbrook, CEO

Signed on behalf of **ING Custodians Pty Limited** (ABN 12 008 508 496)
in accordance with s127
Corporations Act:

M. Mezrani

Signature of Company Secretary,
Margaret Mezrani

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[Signature]

Signature of Director

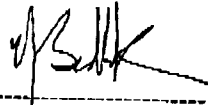
ROSS BOWDEN

Name of Director

Signed on behalf of ANZ Managed
Investments Limited)
(ABN 61 004 392 269))
by its authorised representative)
in the presence of:)

M. Mezrani

Signature of witness,
Margaret Mczrani

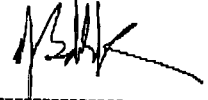


Signature of authorised
representative, Paul Bedbrook, CEO

Signed on behalf of ANZ Life
Assurance Company Limited)
(ABN 63 008 425 652))
by its authorised representative)
in the presence of:)

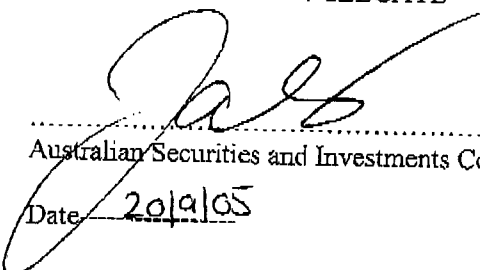
M. Mezrani

Signature of witness,
Margaret Mezrani



Signature of authorised
representative, Paul Bedbrook, CEO

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS
DULY AUTHORISED DELEGATE


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Australian Securities and Investments Commission

Date 20/9/05