ING (NZ) Limited / ANZ National Bank Limited:
Response to Commerce Commission's report on its investigation into promotion, marketing and distribution of DYF/RIF

ANZN and ING (NZ) have carefully considered the Commerce Commission's investigation summary. We do not agree with all of the Commission's views and note that we have not had the opportunity to test, or defend, these with the Commission.

ANZN does accept that some of the advice provided by some if its advisers may not have been of an appropriate standard. It has publicly acknowledged this and has worked (often in conjunction with the Banking Ombudsman) to review the advice provided to dissatisfied customers. ANZN has made additional compensation available where appropriate.

However, ANZN and ING (NZ) do not accept that the features of the Funds, and particularly the risks, were misrepresented in marketing and disclosure documents. Many of the issues raised by the Commission are matters of opinion, and would be subject to rigorous debate in court. As well, we do not believe the Commission has given sufficient weight to the extent to which the performance of these Funds (like so many others) was impacted by the 2007 / 2008 Global Financial Crisis.

ANZN and ING (NZ) have already made significant compensation (totalling more than NZ$500 million) available to investors in these Funds. Regardless, in the best interests of investors, ANZN and ING (NZ) chose to settle this matter and to pay an additional NZ$45 million to investors, rather than engage in lengthy and complex legal proceedings. Consistent with this, we have chosen not to provide a detailed response to the Commission's report, but we offer the following in response to some of the Commission's primary concerns (see Appendix 1).

Appendix 1: ING (NZ) factual responses to key issues raised by the Commission

Para No.	Commission's view	ING (NZ) Response
8.	The marketing and promotional documents prepared by ING (NZ) and distributed by ING (NZ) and/or ANZN (including through their advisors) over the period (**ING (NZ) documents**):	
	(a) contained various misrepresentations as to the "moderate" risk profile for the DYF and "low to moderate risk" profile for the RIF;	ING (NZ)'s statements as to the "moderate" risk profile for the DYF and "low to moderate risk" profile for the RIF were not false or misleading given: • the diversified make-up of the CDO portfolios; • the "BBB" targeted average rating; • the absence of interest rate risk; and • the overall make-up of the Funds, including the portion of the Funds held in cash.
	(b) made misleading and inaccurate comparisons with traditional fixed interest rate securities such as government, local authority stock and bank deposits which were reinforced by the stated benchmark of 90 day bank bill rates (i.e. three month term deposits) plus 2% (for the DYF) and 1% (for the RIF);	The comparisons made by ING (NZ) between the Funds and traditional fixed interest rate securities were not false or misleading: the overall impression given was the (correct) impression that the Funds were less risky than finance company debentures, but more risky than government bonds or term deposits. Expressing the benchmark return of a floating-rate fund as a margin over bank bill rates does not imply that the risk profile of the fund is the same as a bank bill - in fact quite the reverse, in that the existence of the margin implies that additional risk is being taken. It is common industry practice to reference fund returns in many asset classes to interest rate benchmarks.
	(c) failed to adequately disclose in the registered prospectuses all the relevant risks associated with the investment – the key one being pricing spread duration risk;	Under the Securities Regulations, risks are generally described in the investment statement, not the prospectus. The Investment Statement is explicit about risks: "The risks include; not achieving the returns you expect; not receiving all your investment back; and the Fund becoming insolvent." "A reduction in the value of a CDO in which the Fund invests may reduce the net

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		asset value of the fund, which in turn determines the unit price of your units." The Investment Statements for the DYF and RIF stated that ratings and CDO prices can be volatile, and that a 3-5 year investment horizon was appropriate for investments into the Funds. It was clear from the context that CDO prices could, depending on events, vary over time.
	(d) did not amend the risk profiles over time, even though ING (NZ) purchased more risky tranches as it tried to maintain the benchmark returns promised; and	Each of the Funds targeted an investment grade weighted average rating, and that target did not change over time. The average credit quality of the Funds declined somewhat over time, but that was within mandate and to be expected in the circumstances given the return targets. It also had no effect whatsoever on the losses caused by the GFC.
	(e) made representations as to the level of management expertise and skill which would be exercised by ING (NZ) as fund manager, which would (together with the principals [sic] of diversification) reduce the risks even further of investing in the Funds.	The Funds were run by experienced and hands-on portfolio managers with significant securities market experience. The proactive management of the Funds is illustrated by the decision to reduce sub-prime exposure in 2006, well ahead of the problems that arose in that sector. ING (NZ) also carried out extensive due diligence on every investment, and rejected many. In addition, almost all CDOs invested into were of a "managed" variety, where the CDO manager itself was actively managing the underlying portfolio.
9.	The Commission's expert is of the view that:	
	(a) representations as to the "moderate" and "low to moderate" risk profiles, were incorrect;	See 8(a) above.
	(b) the Funds, as constructed, could not usefully be compared with traditional fixed interest securities, and the use of the 90 day bank bill rate as a benchmark plus returns of 2% (DYF) and 1% (RIF), was never achievable for the Funds, as constructed; and	A degree of comparison between the Funds and traditional fixed interest securities was both necessary and appropriate - investors needed to understand where the Funds sat on the risk spectrum, and it was appropriate for the investment statements to contain information in that regard. See also 8(b) above. As to the returns targets for the Funds, within mandate, the return targets for the DYF and RIF were closely managed by the portfolio managers and reasonably achievable. Prior to the crisis in 2007, the DYF consistently met (and often exceeded) its target return.

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	(c) representations made as to the degree of expertise or level of care that ING (NZ) would exercise in management of the Funds were incorrect as ING (NZ) did not measure or manage risks, bought investments that it could not know the contents of, and did not perform appropriate returns attribution analysis or disclose the results.	ING (NZ) managed the risks in its portfolios closely, through calculation of obligor, industry and geographical concentration measures, risk calculations, and monitoring individual security ratings actions. ING (NZ) further ensured effective management of the Funds by investing in actively managed funds and maintaining a diversified portfolio of managers. See also 8(e) above.
10.	The issue of the appropriate risk profile proposed for the DYF, and known risks associated with CDOs, were discussed internally by ING (NZ) at a senior level and between the directors of ING (NZ) Admin and ING (NZ) senior staff, but despite issues raised, the DYF was approved for sale.	A robust level of debate in relation to the investor materials for a new fund is indicative of internal processes that are appropriate, not problematic. All of the issues raised were dealt with, and the DYF offer documents were ultimately signed off by both ING (NZ) and the Trustee.
11.	In addition, further material was published during the period of the Funds by ING (NZ) and distributed to advisors (both ANZ and ING (NZ) aligned advisors) updating advisors on the composition of the Funds and updating advisors / investors on returns. There were a number of false or misleading representations contained in these documents from June 2007 (when the Funds began to decline after the collapse of hedge funds in the US as the credit crisis intensified).	Updating material was provided to advisors to allow advisers to update investors as they felt appropriate. ING (NZ) did not maintain a direct relationship with investors and in many cases did not know their identities (eg wrap investors). The adviser updates sent from June 2007 were not misleading, but rather properly referred to and commented on the GFC as it unfolded. Like others in the financial sector, ING (NZ) could not have foreseen the course or extent of the GFC, and it is inappropriate to judge the statements made in hindsight.
12.	ING (NZ) sought to differentiate the Funds from the hedge fund collapses in a number of ways. One was by stating that the Funds applied no leverage which was misleading in the context, as the Funds had many underlying securities that were highly leveraged. The documents made other representations that were either false or misleading.	The Funds were in fact substantially different from hedge funds. For example, it is correct to say that the Funds were not leveraged - they did not borrow to invest. The investments themselves were leveraged in that they were debt securities, but all debt securities are leveraged in that sense.
13.	These representations appear to have been made in June 2007 and in the following months for the purpose of inducing / persuading advisors and investors to remain invested in the Funds and to prevent a run on the Funds, at a time when the returns were starting to decline, redemptions levels were increasing, and the credit crisis was affecting the price of securities.	As for 11 above, the statements made during the GFC were not false or misleading; they were matters of honestly held opinion; and should not be judged in hindsight. The statements were made in the context of ING fund manager views and were in line with market consensus views at the time. We strongly refute the suggestion that representations were made to "prevent a run on the Funds".
14.	The overall tenor of ING (NZ) updates to advisors / investors in this period was optimistic and reassuring; however, internally ING (NZ) was undertaking worst case scenario planning for the Funds (August 2007). An internal report from the Fund Manager stated that if combined redemptions reached 5% of the Funds (i.e. $45m) ING (NZ) should consider "closing the gate (suspension of repayment and	Management of liquidity is an important consideration for any open-ended fund, and it would have been imprudent for ING (NZ) *not* to undertake worst-case scenario planning for the Funds. It cannot be inferred from the fact that this planning took place that the updates in late 2007 were misleading. We note also

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	redemption under clause 8.15 of the Master Trust Deed Poll") over the next two weeks". The Funds, however, continued on until March 2008.	that general market sentiment improved after the time of this stress testing. We note that the quotation referred to at footnote 3 of this paragraph has been incorrectly cited. The correct quote does not refer to a two week period, and contemplates a 3 month suspension "to give CDO security prices a chance to bounce-back".
15-17	Even though at this time, ING (NZ) was making public statements about the state of the markets in the US, and differentiating between the Funds and the collapsing Hedge Funds, it had sent a report to the IRD dated February 2007 (6 months before) which painted quite a different picture of the nature and make up of the DYF (and suggesting a much higher than moderate potential risk of default). ... The Commission does not consider that the description of the DYF to the IRD in the above terms is consistent with the marketing material prepared by ING (NZ) for a moderate risk fund either at the launch or subsequently with its public statements a few months later when it was attempting to keep investors from redeeming units in the Funds.	The document discusses the specific risks associated with some of the less common asset types held by the DYF. The document was prepared for a specific purpose and was intended to focus on those particular classes of asset as opposed to providing a view of the overall risks associated with the DYF (taking into account all assets held and the level of diversification). This document should not be considered in isolation or taken out of context.
20-21	While it is acknowledged that ING (NZ) did disclose the fact that investors' money could be lost in the risk section of the investment statements, it also advised that these risks would be reduced through the management of the Funds by ING (NZ) and its experts. In the view of the Commission's expert, this did not happen. The language in these statements was generally benign and the overall impression was that the investment would be "without unnecessary risk" as per the cover of the DYF investment statement, and which remained on the investment statement throughout the period, despite a request from a director of ING (NZ) Admin that it be removed.	The risks of investing in the Funds *were* reduced through the diversified make-up of the Funds; the expertise of the ING (NZ) investment management team; and the expertise of the managers of the CDO investments themselves. The request that the "without unnecessary risk" statement be removed was discussed with ING (NZ) Administration in the review of the investor materials in early 2004, and it was agreed that there was no need to change it.

Annex B: ANZN factual responses to issues raised by the Commission

Para No.	Commission's view	ANZN's Response
8 - 21	ANZN has product liability for alleged misrepresentations in the Funds' product materials.	ANZN does not accept that it has any liability for the Funds' marketing documents. It had no involvement in the development or management of the Funds (see also our responses below).
23	ANZN "approved" the funds.	ANZN did not "approve" the DYF prior to launch. ING (NZ) discussed the concept of the DYF with ANZN and other possible future distributors prior to the launch of the DYF. However, the purpose of these discussions was to allow ING (NZ) to receive feedback as to how distributors thought the DYF would be received by their customers.
23	ANZN was more than a "mere distributor of the Funds".	ANZN's role as part of the Joint Venture was purely as distributor of the Funds. ANZN was not involved in developing or managing the Funds.
24	ANZN claims to have relied on Morningstar's advice, but sought no formal opinions from Morningstar.	The advice of Morningstar on 15 January 2008 to "hold on to the existing investment and not invest any additional funds" and on 29 February 2008 to "sit tight for now" was sought by and provided directly to ANZN by Morningstar. Morningstar is an international and reputable independent research house, and ANZN is entitled to rely on its advice.
25	Private Banking withdrew from the Funds.	ANZN Private Banking operated pursuant to a different model to that of ANZN Financial Advisory. Private Banking's model was to invest directly into the market wherever possible, with core holdings within each investment sector being direct securities or passive Exchange Traded Funds (ETFs) products for global exposure. There was a very limited investment in managed funds. Exiting the Funds for Private Banking customers was just one of a number of similar investment decisions taken by Private Banking from mid 2007, in order to limit its portfolio consistent with its model of direct investment in core products. As noted above, ANZN Financial Advisory sought and relied on external independent advice.
28	The balance of the Commission's report sets out its view that certain representations made by ANZN were misleading:	The particular representations referred to by the Commission need to be considered in the context of the full advice and documents (including each Fund's investment statement) provided to the customer. This can only be done on a case

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		by case basis. However, ANZN does accept that in some cases the advice provided by some advisers to some customers was not of an acceptable standard. ANZN has publicly acknowledged this issue and has worked (often in conjunction with the Banking Ombudsman) to review the advice provided to dissatisfied customers. We have made additional compensation available where appropriate. It is not correct to suggest, as the Commission does, that these products were unsuitable for defensive/conservative investors. Prudent financial planning practice recommends that even defensive investors should have exposure to all asset classes as part of a diversified portfolio. Whether the Funds were appropriate for any given customer can only be determined by reference to that customer's individual circumstances, investment objectives and risk profile.