



FRANKLIN TEMPLETON  
INVESTMENTS

40-33



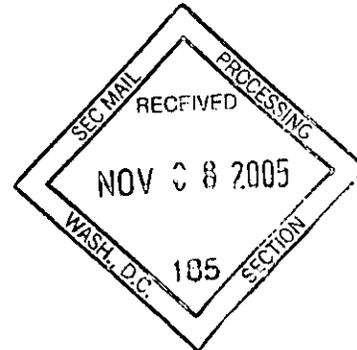
05076485

Franklin Resources, Inc.  
One Franklin Parkway  
San Mateo, CA 94403-1906  
tel 650/312.2000  
franklintempleton.com

VIA FIRST CLASS MAIL

October 31, 2005

811-02781  
(Templeton Funds)  
Branch 18



Filing Desk  
U.S. Securities and Exchange Commission  
450 Fifth Street N.W.  
Washington, DC 20549

Re: Strigliabotti, et al. v. Franklin Resources, Inc., et al., Case No. C-04-0883SI

Ladies and Gentlemen:

Pursuant to Section 33(a) of the 1940 Act, we are enclosing for filing the following additional document related to the above-mentioned action, which we previously reported to your office:

Answer to Third Amended Complaint

Please acknowledge receipt of this filing by date-stamping the enclosed copy of this letter and returning it in the envelope provided.

Please contact me with any questions at (650) 312-4843.

Sincerely,

Aliya S. Gordon  
Associate Corporate Counsel

PROCESSED  
JAN 12 2006  
THOMSON  
FINANCIAL

Encls.

1 MEREDITH N. LANDY (SB #136489)  
2 DALE EDMONDSON (SB #189793)  
3 JESSICA A. HOOGS (SB #227011)  
4 O'MELVENY & MYERS LLP  
5 2765 Sand Hill Road  
6 Menlo Park, California 94025  
7 Telephone: (650) 473-2671  
8 Facsimile: (650) 473-2601  
9 E-Mail: mlandy@omm.com  
10 dedmondson@omm.com  
11 jhoogs@omm.com

12 DANIEL A. POLLACK (*Pro Hac Vice*)  
13 EDWARD McDERMOTT (*Pro Hac Vice*)  
14 ANTHONY ZACCARIA (*Pro Hac Vice*)  
15 POLLACK & KAMINSKY  
16 114 West 47th Street  
17 New York, New York 10036  
18 Telephone: (212) 575-4700  
19 Facsimile: (212) 575-6560  
20 E-Mail: dapollack@pollacklawfirm.com  
21 etmcdermott@pollacklawfirm.com  
22 azaccaria@pollacklawfirm.com

23 Attorneys for Defendants FRANKLIN RESOURCES,  
24 INC., FRANKLIN ADVISERS, INC., FRANKLIN/  
25 TEMPLETON DISTRIBUTORS, INC., TEMPLETON  
26 GLOBAL ADVISORS LIMITED, FRANKLIN  
27 ADVISORY SERVICES, LLC, FRANKLIN MUTUAL  
28 ADVISERS, LLC, AND FRANKLIN TEMPLETON  
SERVICES, LLC

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUSAN STRIGLIABOTTI, et al., for the use  
and benefit of THE TEMPLETON GROWTH  
FUND, et al.,

Plaintiffs,

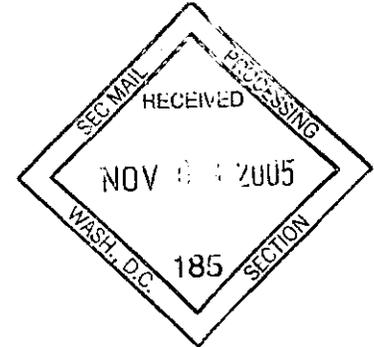
v.

FRANKLIN RESOURCES, INC., et al.,

Defendants.

Case No. C-04-0883 SI

**ANSWER TO THIRD  
AMENDED COMPLAINT**



1 Defendants Franklin Resources, Inc., Franklin Advisors, Inc., Franklin/Templeton  
2 Distributors, Inc., Templeton Global Advisors Limited, Franklin Advisory Services, LLC,  
3 Franklin Mutual Advisors, LLC, and Franklin Templeton Services, LLC (“Defendants”) hereby  
4 answer the Third Amended Complaint (the “Complaint”). To the extent not specifically admitted,  
5 each and every allegation in the Complaint is denied.

6 **INTRODUCTORY STATEMENT**

7 Answering the unnumbered introductory paragraph, to the extent that any response is  
8 required to Plaintiffs’ introductory statements, Defendants deny each and every allegation  
9 contained therein.

10 **INTRODUCTION\***

11 1. Answering Paragraph 1, Defendants lack information and knowledge sufficient to  
12 form a belief as to the truth of the allegations concerning plaintiffs’ status (or lack thereof) as  
13 shareholders in any of the Funds at issue, and on that basis, deny all such allegations. Defendants  
14 further note that this paragraph includes allegations that constitute plaintiffs’ characterizations of  
15 the action, which do not require a response. Defendants admit that Templeton Growth Fund has  
16 as its investment advisor Defendant Templeton Global Advisors Limited; that Franklin Balance  
17 Sheet Investment Fund has as its investment advisor Defendant Franklin Advisory Services, LLC;  
18 that Franklin Flex Cap Growth Fund has as its investment advisor Defendant Franklin Advisors,  
19 Inc.; that Franklin Income Fund has as its investment advisor Defendant Franklin Advisors, Inc.;  
20 that Franklin Small-Mid Cap Growth Fund has as its investment advisor Defendant Franklin  
21 Advisors, Inc.; that Franklin Biotechnology Discovery Fund has as its investment advisor  
22 Defendant Franklin Advisors, Inc.; that Mutual Shares Fund has as its investment advisor  
23 Defendant Franklin Mutual Advisors, LLC; and that Franklin Utilities Fund has as its investment  
24 advisor Defendant Franklin Advisors, Inc. Except as specifically admitted herein, Defendants  
25 deny each and every allegation set forth in Paragraph 1 of the Complaint.

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27 \_\_\_\_\_  
28 \* Defendants list certain headings for purposes of convenience only. To the extent that any of  
the headings in the Complaint purport to contain substantive allegations requiring a response,  
Defendants deny each and every allegation contained in any headings.

1           2.       Answering Paragraph 2, Defendants note that this paragraph contains legal  
2 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
3 contains factual assertions requiring a response, Defendants admit that Franklin Resources, Inc.  
4 is a publicly traded company, incorporated in Delaware, with its headquarters in San Mateo,  
5 California, and respectfully refer to the documents referenced therein for their content. Except as  
6 specifically admitted herein, Defendants deny each and every allegation set forth in Paragraph 2  
7 of the Complaint.

8           3.       Answering Paragraph 3, Defendants deny each and every allegation set forth in  
9 that Paragraph.

10          4.       Answering Paragraph 4, Defendants note that this paragraph contains legal  
11 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
12 contains factual assertions requiring a response, Defendants deny each and every allegation set  
13 forth in Paragraph 4 of the Complaint.

14          5.       Answering Paragraph 5, Defendants note that this paragraph includes allegations  
15 that constitute plaintiffs' characterizations of the action and their motivation for suing Franklin  
16 Resources, Inc. which do not require a response. To the extent that this paragraph contains  
17 factual assertions requiring a response, Defendants deny each and every allegation set forth in  
18 Paragraph 5 of the Complaint.

19          6.       Answering Paragraph 6, Defendants admit that certain defendants provide certain  
20 services to one or more Funds and receive certain fees based on a percentage of the net assets of  
21 each Fund to which they provide services. Except as specifically admitted herein, Defendants  
22 deny each and every allegation set forth in Paragraph 6 of the Complaint.

23          7.       Answering Paragraph 7, Defendants deny each and every allegation set forth in  
24 that Paragraph.

25          8.       Answering Paragraph 8, Defendants deny each and every allegation set forth in  
26 that Paragraph. To the extent that Paragraph 8 incorporates Paragraph 65 or any portion thereof,  
27 Defendants incorporate their response to Paragraph 65 as though fully set forth herein.

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1           9.       Answering Paragraph 9, Defendants admit that certain Funds have adopted  
2 Rule 12b-1 plans, and respectfully refer to those plans for their contents. Except as specifically  
3 admitted herein, Defendants deny each and every allegation set forth in Paragraph 9 of the  
4 Complaint.

5           10.       Answering Paragraph 10, Defendants admit that the Balance Sheet Investment  
6 Fund is closed to certain potential new investors. Except as specifically admitted herein,  
7 Defendants deny each and every allegation set forth in Paragraph 10 of the Complaint.

8           11.       Answering Paragraph 11, Defendants admit that the Investment Company Act of  
9 1940 has been enacted, and respectfully refer to that Act for its contents. Except as specifically  
10 admitted herein, Defendants deny each and every allegation set forth in Paragraph 11 of the  
11 Complaint.

12           12.       Answering Paragraph 12, Defendants admit that Section 36(b) of the Investment  
13 Company Act has been enacted and respectfully refer to that Section for its contents. Except as  
14 specifically admitted herein, Defendants deny each and every allegation set forth in Paragraph 12  
15 of the Complaint.

16           13.       Answering Paragraph 13, Defendants note that this paragraph contains legal  
17 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
18 contains factual assertions requiring a response, Defendants admit that Franklin Resources, Inc.  
19 went public in 1971, and that its stock was trading at \$52 per share as of January 2, 2004. Except  
20 as specifically admitted herein, Defendants deny each and every allegation set forth in  
21 Paragraph 13 of the Complaint.

22           14.       Answering Paragraph 14, Defendants respectfully refer to the 10-K Reports of  
23 Franklin Resources, Inc. referenced in this paragraph for their contents (especially as to financial  
24 information). Defendants otherwise deny each and every allegation set forth in Paragraph 14 of  
25 the Complaint.

26           15.       Answering Paragraph 15, Defendants deny each and every allegation set forth in  
27 that Paragraph.

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1           16.     Answering Paragraph 16, Defendants deny each and every allegation set forth in  
2 that Paragraph.

3           17.     Answering Paragraph 17, Defendants admit that each Fund's advisory fee contract  
4 is approved by the board for that Fund and that a majority of the board for each Fund consists of  
5 disinterested directors. Except as specifically admitted herein, Defendants deny each and every  
6 allegation set forth in Paragraph 17 of the Complaint.

7           18.     Answering Paragraph 18, Defendants respectfully refer to the speech referenced  
8 therein for its contents. Defendants otherwise deny each and every allegation set forth in  
9 Paragraph 18 of the Complaint.

10          19.     Answering Paragraph 19, Defendants note that this paragraph contains legal  
11 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
12 contains factual assertions requiring a response, Defendants respectfully refer to the document  
13 referenced therein for its contents. Defendants otherwise deny each and every allegation set forth  
14 in Paragraph 19 of the Complaint.

15          20.     Answering Paragraph 20, Defendants lack information sufficient to form a belief  
16 as to the truth of allegations set forth in that paragraph, and on that basis deny such allegations.

17          21.     Answering Paragraph 21, Defendants respectfully refer to Rule 12b-1, and *Meyer*  
18 *v. Oppenheimer*, 895 F.2d 861 (2d Cir. 1990) for their contents. Defendants otherwise deny each  
19 and every allegation set forth in Paragraph 21 of the Complaint.

20          22.     Answering Paragraph 22, Defendants note that this paragraph contains legal  
21 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
22 contains factual assertions requiring a response, Defendants deny each and every allegation set  
23 forth in Paragraph 22 of the Complaint.

24          23.     Answering Paragraph 23, Defendants deny each and every allegation set forth in  
25 that Paragraph.

26          24.     Answering Paragraph 24, Defendants admit that certain Funds have adopted  
27 Rule 12b-1 plans, and respectfully refer to those plans for their contents. Except as specifically

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1 admitted herein, Defendants deny each and every allegation set forth in Paragraph 24 of the  
2 Complaint.

3 25. Answering Paragraph 25, Defendants deny each and every allegation set forth in  
4 that Paragraph.

5 26. Answering Paragraph 26, Defendants respectfully refer to the document referenced  
6 therein for its contents. Defendants otherwise deny each and every allegation set forth in  
7 Paragraph 26 of the Complaint.

8 27. Answering Paragraph 27, Defendants deny each and every allegation set forth in  
9 that Paragraph.

10 28. Answering Paragraph 28, Defendants note that this paragraph sets forth Plaintiffs'  
11 characterization of this action as well as legal conclusions, and does not require a response from  
12 Defendants. To the extent that this paragraph contains factual assertions requiring a response,  
13 Defendants deny each and every allegation set forth in Paragraph 28 of the Complaint.

14 29. Answering Paragraph 29, Defendants note that this paragraph contains legal  
15 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
16 contains factual assertions requiring a response, Defendants deny each and every allegation set  
17 forth in Paragraph 29 of the Complaint.

18 30. Answering Paragraph 30, Defendants lack information sufficient to form a belief  
19 as to the truth of allegations set forth in that paragraph, and on that basis deny such allegations.

20 31. Answering Paragraph 31, Defendants lack information sufficient to form a belief  
21 as to the truth of allegations set forth in that paragraph, and on that basis deny such allegations.

22 32. Answering Paragraph 32, Defendants lack information sufficient to form a belief  
23 as to the truth of allegations set forth in that paragraph, and on that basis deny such allegations.

24 33. Answering Paragraph 33, Defendants lack information sufficient to form a belief  
25 as to the truth of allegations set forth in that paragraph, and on that basis deny such allegations.

26 34. Answering Paragraph 34, Defendants lack information sufficient to form a belief  
27 as to the truth of allegations set forth in that paragraph, and on that basis deny such allegations.

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1 contains factual assertions requiring a response, Defendants deny each and every allegation set  
2 forth in Paragraph 43 of the Complaint.

3 44. Answering Paragraph 44, Defendants note that this paragraph contains legal  
4 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
5 contains factual assertions requiring a response, Defendants deny each and every allegation set  
6 forth in Paragraph 44 of the Complaint.

7 45. Answering Paragraph 45, Defendants note that this paragraph contains legal  
8 conclusions as well as plaintiffs' characterizations of the action (which characterizations  
9 conflict with plaintiffs' prior representations to the Court), and does not require a response from  
10 Defendants. To the extent that this paragraph contain factual assertions requiring a response,  
11 Defendants deny each and every allegation set forth in Paragraph 45 of the Complaint.  
12 Defendants further deny that plaintiff Strigliabotti or any other plaintiff may represent any class  
13 of persons in these proceedings.

14 46. Answering Paragraph 46, Defendants note that this paragraph contains legal  
15 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
16 contains factual assertions requiring a response, Defendants deny each and every allegation set  
17 forth in Paragraph 46 of the Complaint. Defendants further deny that plaintiff Strigliabotti or  
18 any other plaintiff may represent any class of persons in these proceedings.

19 47. Answering Paragraph 47, Defendants note that this paragraph contains legal  
20 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
21 contains factual assertions requiring a response, Defendants deny each and every allegation set  
22 forth in Paragraph 47 of the Complaint. Defendants further deny that this action is maintainable  
23 as a class action in any respect.

24 48. Answering Paragraph 48, Defendants note that this paragraph contains legal  
25 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
26 contains factual assertions requiring a response, Defendants deny each and every allegation set  
27 forth in Paragraph 48 of the Complaint. Defendants further deny that this action is maintainable  
28 as a class action in any respect.



1           59.     Answering Paragraph 59, Defendants deny each and every allegation set forth in  
2 that Paragraph.

3           60.     Answering Paragraph 60, Defendants note that this paragraph contains legal  
4 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
5 contains factual assertions requiring a response, Defendants admit that Franklin Resources, Inc.  
6 went public in 1971, and that its stock was trading at \$52 per share as of January 2, 2004. Except  
7 as specifically admitted herein, Defendants deny each and every allegation set forth in  
8 Paragraph 60 of the Complaint.

9           61.     Answering Paragraph 61, Defendants respectfully refer to the documents  
10 referenced therein for their contents. Defendants otherwise deny each and every allegation set  
11 forth in Paragraph 61 of the Complaint.

12          62.     Answering Paragraph 62, Defendants respectfully refer to the document referenced  
13 therein for its contents. Defendants otherwise deny each and every allegation set forth in  
14 Paragraph 62 of the Complaint.

15          63.     Answering Paragraph 63, Defendants deny each and every allegation set forth in  
16 that paragraph.

17          64.     Answering Paragraph 64, Defendants respectfully refer to the documents  
18 referenced therein for their contents. Defendants otherwise deny each and every allegation set  
19 forth in Paragraph 64 of the Complaint.

20          65.     Answering Paragraph 65, Defendants respectfully refer to the document referenced  
21 therein for its contents. Defendants otherwise deny each and every allegation set forth in  
22 Paragraph 65 of the Complaint.

23          66.     Answering Paragraph 66, Defendants respectfully refer to the 10K Reports filed  
24 by Franklin Resources, Inc. for financial information about Franklin Resources, Inc. and other  
25 defendants. Defendants otherwise deny each and every allegation set forth in Paragraph 66 of the  
26 Complaint.

27          67.     Answering Paragraph 67, Defendants respectfully refer to the 10K Reports filed  
28 by Franklin Resources, Inc. for financial information about Franklin Resources, Inc. and other

1 defendants. Defendants otherwise deny each and every allegation set forth in Paragraph 67 of the  
2 Complaint.

3 68. Answering Paragraph 68, Defendants deny each and every allegation set forth in  
4 that Paragraph.

5 69. Answering Paragraph 69, Defendants respectfully refer to the document referenced  
6 therein for its contents. Defendants otherwise deny each and every allegation set forth in  
7 Paragraph 69 of the Complaint.

8 70. Answering Paragraph 70, Defendants respectfully refer to the testimony referenced  
9 therein for its contents. Defendants otherwise deny each and every allegation set forth in  
10 Paragraph 70 of the Complaint.

11 71. Answering Paragraph 71, Defendants deny each and every allegation set forth  
12 in that Paragraph.

13 71(a) Answering Sub-Paragraph 71(a), Defendants deny each and every  
14 allegation set forth in that Sub-Paragraph.

15 71(b) Answering Sub-Paragraph 71(b), Defendants note that this paragraph  
16 contains hypothetical allegations, and does not require a response from Defendants. Defendants  
17 otherwise deny each and every allegation set forth in that Sub-Paragraph.

18 72. Answering Paragraph 72, Defendants deny each and every allegation set forth in  
19 that Paragraph.

20 73. Answering Paragraph 73, Defendants deny each and every allegation set forth in  
21 that Paragraph.

22 74. Answering Paragraph 74, Defendants deny each and every allegation set forth in  
23 that Paragraph.

24 75. Answering Paragraph 75, Defendants deny each and every allegation set forth in  
25 that Paragraph.

26 76. Answering Paragraph 76, Defendants deny each and every allegation set forth in  
27 that Paragraph.

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1           77.     Answering Paragraph 77, Defendants deny each and every allegation set forth  
2 in that Paragraph.

3           78.     Answering Paragraph 78, Defendants note that this paragraph contains legal  
4 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
5 contains factual assertions requiring a response, Defendants respectfully refer to the document  
6 referenced therein for its contents. Defendants otherwise deny each and every allegation set forth  
7 in Paragraph 78 of the Complaint.

8           79.     Answering Paragraph 79, Defendants note that this paragraph contains legal  
9 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
10 contains factual assertions requiring a response, Defendants respectfully refer to the document  
11 referenced therein for its contents. Defendants otherwise deny each and every allegation set forth  
12 in Paragraph 79 of the Complaint.

13          80.     Answering Paragraph 80, Defendants note that this paragraph contains legal  
14 conclusions, and does not require a response from Defendants. To the extent that this paragraph  
15 contains factual assertions requiring a response, Defendants respectfully refer to the document  
16 referenced therein for its contents. Defendants otherwise deny each and every allegation set forth  
17 in Paragraph 80 of the Complaint.

18          81.     Answering Paragraph 81, Defendants deny each and every allegation set forth in  
19 that Paragraph.

20                 81(a). Answering Sub-Paragraph 81(a), Defendants deny each and every  
21 allegation set forth in that Sub-Paragraph.

22                 81(b). Answering Sub-Paragraph 81(b), Defendants deny each and every  
23 allegation set forth in that Sub-Paragraph.

24                 81(c). Answering Sub-Paragraph 81(c), Defendants deny each and every  
25 allegation set forth in that Sub-Paragraph.

26                 81(d). Answering Sub-Paragraph 81(d), Defendants deny each and every  
27 allegation set forth in that Sub-Paragraph.

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1 COUNT IX

2 126. Answering Paragraph 126, Defendants incorporate herein their responses to each  
3 and every foregoing paragraph as though set forth fully herein.

4 127. Answering Paragraph 127, Defendants deny each and every allegation set forth in  
5 that Paragraph.

6 128. Answering Paragraph 128, Defendants deny each and every allegation set forth in  
7 that Paragraph.

8 129. Answering Paragraph 129, Defendants deny each and every allegation set forth in  
9 that Paragraph.

10 CLAIM FOR RELIEF

11 To the extent that any response is required to Plaintiffs' prayer for relief and judgment,  
12 Defendants deny each and every allegation contained therein.

13  
14 AFFIRMATIVE DEFENSES

15 Defendants allege the following separate and affirmative defenses to the Complaint,  
16 and in so doing, do not assume the burden to establish any fact or proposition necessary to that  
17 affirmative defense where that burden is properly imposed on Plaintiffs.

18 FIRST AFFIRMATIVE DEFENSE

19 The Complaint, and each cause of action alleged therein, fails to state a claim upon which  
20 relief can be granted.

21 SECOND AFFIRMATIVE DEFENSE

22 The challenged fees are fair and not so disproportionately large in relation to the services  
23 rendered that they bear no reasonable relationship to the services rendered.

24 THIRD AFFIRMATIVE DEFENSE

25 Plaintiffs lack standing to bring the claims asserted.

26 FOURTH AFFIRMATIVE DEFENSE

27 A majority of the disinterested directors approved the challenged fees.

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**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs, by purchasing shares of a particular Fund and reinvesting, agreed with, accepted, endorsed and otherwise approved the level of challenged fees. Accordingly, plaintiffs are estopped and otherwise barred from complaining about those fees.

**SIXTH AFFIRMATIVE DEFENSE**

The 12b-1 fees, as calculated, are expressly permitted by the National Association of Securities Dealers Rule 2830 and Section 22(b) of the Investment Company Act.

**SEVENTH AFFIRMATIVE DEFENSE**

The claims are barred in whole or in part by the applicable statutes of limitation.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to challenge 12b-1 fees paid with respect to classes of shares of their Funds other than the class of shares which they own.

**NINTH AFFIRMATIVE DEFENSE**

The Investment Company Act prohibits recovery of any damages allegedly incurred prior to one year before the institution of this action.

**TENTH AFFIRMATIVE DEFENSE**

Defendants fully and timely disclosed all relevant information regarding the challenged advisory and distribution fees.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs knew, or with the exercise of reasonable care should have known, all of the relevant information concerning the challenged advisory and distribution fees. In addition, they were free at all relevant times to sell the shares they owned in the particular Funds. Accordingly, their claims are barred.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, estoppel, ratification, and/or unclean hands.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

Each and every one of the Defendants acted in good faith and did not materially assist in any violation of law or directly or indirectly induce any act or acts constituting any alleged violations or causes of action.

**FOURTEENTH AFFIRMATIVE DEFENSE**

An irreconcilable conflict exists between the claims offered on behalf of the Funds in Counts I-III and the claims offered on behalf of the individuals in the remaining claims, such that plaintiffs cannot assert both sets of claims in this action.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Some or all of the matters now claimed by the Complaint to be the subject of misrepresentations and omissions were publicly disclosed or were in the public domain and, as such, were available to the Plaintiffs.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs were negligent and did not exercise due care to discover the existence of some or all the purported facts alleged in the Complaint upon which they assert liability against the Defendants. Thus, the actual and proximate cause of the damage to Plaintiffs, if any, in whole or in part, is Plaintiffs' negligence and their failure to exercise reasonable care.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Any recovery for damages allegedly incurred by Plaintiffs, if any, is subject to offset in the amount of any tax benefits actually received by Plaintiffs through their investments.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from claiming injury or damages, if any, because they failed to make reasonable efforts to mitigate such injury or damages, which would have prevented or reduced their injury or damages, if any.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for secondary liability (including without limitation for conspiracy, aiding and abetting, and action in concert) are barred in whole or in part because Plaintiffs cannot establish the primary liability necessary to support such claims.

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**TWENTIETH AFFIRMATIVE DEFENSE**

In executing or authorizing the execution and/or publication of any document containing the statements complained of in the Complaint, Defendants were entitled to, and did, reasonably and in good faith, rely upon the work and conclusions of other professionals and experts.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Factors other than the alleged actions by the Defendants caused some or all of the alleged damages.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs would be unjustly enriched if they were allowed to recover anything in this action.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Defendants, and each of them, were under no duty to disclose any of the purported information that Plaintiffs allege was not disclosed.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Defendants are not liable for the injuries and damages, if any, sustained by the plaintiffs at the times and places alleged in the Complaint because any injuries and damages were a direct and proximate result of the acts, omissions, or negligence of other persons and/or entities not within the knowledge or control of Defendants, and were sustained, if at all, without any negligence or wrongful act or omission on the part of Defendants. Should Plaintiffs recover damages from Defendants, these Defendants are entitled to indemnification and/or contribution, either in whole or in part, from all persons or entities whose negligence and/or fault proximately contributed to Plaintiffs' damages, if any.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the application of the business judgment rule.

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WHEREFORE, Defendants pray that this Court enter judgment as follows:

1. That judgment be entered in favor of Defendants;
2. That Plaintiffs take nothing from Defendants by their Complaint, and that the same be dismissed with prejudice;
3. For costs, attorneys' fees, expert witness fees, and court costs incurred herein; and
4. For such other and further relief as this Court deems just and proper.

Dated: October 20, 2005

MEREDITH N. LANDY  
DALE M. EDMONDSON  
JESSICA A. HOOGS  
O'MELVENY & MYERS LLP

By:           /s/ Meredith N. Landy            
Meredith N. Landy

Daniel A. Pollack (*Pro Hac Vice*)  
Edward McDermott (*Pro Hac Vice*)  
Anthony Zaccaria (*Pro Hac Vice*)  
POLLACK & KAMINSKY  
114 West 47<sup>th</sup> Street  
New York, New York 10036  
Telephone: (212) 575-4700  
Facsimile: (212) 575-6560

Attorneys for Defendants  
Franklin Resources, Inc., Franklin Advisors,  
Inc., Franklin/Templeton Distributors, Inc.,  
Templeton Global Advisors Limited, Franklin  
Advisory Services LLC, Franklin Mutual  
Advisors, LLC, and Franklin Templeton  
Services, LLC

MP1:966322.2