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November 5, 2010

Via email to rule-comments@sec.gov

Elizabeth Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Mutual Fund Distribution Fees; Confirmations (File No. S7-15-10)

Dear Ms. Murphy:

Franklin Templeton Investments[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission's") proposed new rule and rule amendments that would replace Rule 12b-1 under the Investment Company Act of 1940.[2] Franklin Templeton Investments serves as investment adviser and principal underwriter of over 140 registered open-end funds, with aggregate assets in excess of $353 billion as of September 30, 2010. Most of these mutual funds offer multiple classes with varying distribution fee arrangements that are designed to give investors choices to suit their needs, including access to funds that might otherwise not be available to them, as well as alternatives for paying sales costs. The Franklin Templeton funds are distributed through a network of independent retail broker-dealers, registered investment advisers, and retirement products. Accordingly, the funds would be significantly affected by the proposed changes in the current regulatory framework for the distribution of mutual fund shares.

We commend the Commission and its staff for undertaking its comprehensive review of mutual fund distribution fee arrangements, and for its proposals to make such arrangements more transparent for investors. We believe, however, that certain aspects of the proposed new regulatory framework raise a number of questions and concerns that the Commission should consider before finalizing its proposals. We endorse the letter submitted by the Investment Company Institute,[3] and generally support the recommendations made to further improve the proposed new rule and rule amendments.

1 Franklin Resources, Inc. [NYSE: BEN] is a global investment organization operating as Franklin Templeton Investments. Franklin Templeton Investments provides global and domestic investment management solutions managed by its Franklin, Templeton, Mutual Series, Fiduciary Trust, Darby and Bissett investment teams. The San Mateo, CA-based company has more than 60 years of investment experience and over $644 billion in assets under management as of September 30, 2010. For more information, please visit franklinresources.com.

2 Mutual Fund Distribution Fees; Confirmations, SEC Release Nos. 33-9128; 34-62544; IC-29367 (July 21, 2010), 75 FR 47064 (August 4, 2010) (the "Release").

3 See Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission from Karrie McMillan, General Counsel, Investment Company Institute, dated November 5, 2010 ("ICI Letter").

Summary of Recommendations

We are writing separately to underscore the importance of the following key ICI recommendations that we believe are important to the success of the new regulatory framework: (1) the "reference load" used to cap ongoing sales charges under the new framework should be generally uniform for all funds and based on the FINRA sales charge limits (currently 6.25%); (2) fiduciary standards should continue to provide the proper framework for fund boards overseeing distribution fees and therefore the final rule need not, and should not, include any specific guidance or "factors" as these tend to become rapidly outmoded; (3) given the mix of views and related uncertainty regarding account-level sales charges, the Commission should further study the full range of views and likely outcomes before proceeding on proposed rule 6c-10(c); (4) the Commission should confirm that the prevailing standards of what constitutes "distribution" would be unchanged by the new proposals rather than attempting to provide any one specific definition of "distribution" in the final rule as we do not believe it would be practical to do so; and (5) the Commission should take steps to ensure that fund share classes offered in the retirement plan context are permitted to provide ongoing compensation for ongoing services without having to treat that compensation as a form of ongoing sales charges. These comments and recommendations are described more fully below.

Discussion of Recommendations

(1) ***"Reference Load" Used to Cap Ongoing Sales Charges***. The Commission proposes to permit funds to deduct asset-based distribution fees in excess of the marketing and service fee permitted under new Rule 12b-2, provided that the excess amount is considered an "ongoing sales charge." The cumulative limit for ongoing sales charges would be based on the amount of the highest front-end sales load that the investor would have paid had the investor purchased shares of another class of the same fund that does not charge an ongoing sales charge (*i.e.*, the "reference load"). If a fund does not offer a class with a front-end sales load, or offers a front-end sales load class with asset-based distribution fees of more than 25 basis points, the reference load would be the maximum sales charge permitted under NASD Conduct Rule 2830(d)(2), which is currently 6.25%.

We agree with the ICI Letter that the most troublesome element of this proposal is that each fund would have to calculate its own reference load for purposes of the aggregate sale charge limit. Individualized reference loads would lead to a variety of ongoing sales charge limits and conversion schedules for the Franklin Templeton funds, because our funds currently have different front-end sales loads depending on the fund's specific asset class (*e.g.*, long-term fixed income versus intermediate fixed income) as well as various legacy arrangements. We believe that having a wide range of different reference loads for our funds (as well as our competitors' funds) would likely lead to greater investor and dealer confusion, and further complicate an already complicated framework. We also believe this proposal will present significant operational challenges for our funds' service providers in tracking the ongoing sales charge limits and conversion schedules across our complex, complicated further with accounting for fund exchanges. We believe a uniform, industry-wide reference load for all funds would ease these operational challenges and help minimize investor confusion.

(2) ***Board Guidance and the Role of Directors***. We especially commend the Commission for proposing to relieve fund directors of some of the formalistic findings and approvals currently required under Rule 12b-1, including initial and annual review of Rule 12b-1 plans and quarterly review of Rule 12b-1 fee payments.

We believe, however, that in proposing new guidance in connection with board oversight of ongoing sales charges, the Commission is introducing new theories of director responsibility that go beyond their general fiduciary duties and specific responsibilities under the 1940 Act, and also appear to be inconsistent with the Commission's goal of finding a "more appropriate role for fund directors." In particular, we do not believe that boards have a duty to determine whether sales charges—which are not borne by the fund—are "fair and reasonable." Accordingly, since the ongoing sales charges would, under the proposal, simply be another way for an investor to pay what he or she otherwise would have paid in the form of a front-end load, it would be equally inappropriate to require fund boards to determine that the ongoing sales charge is "fair and reasonable."

Moreover, the proposed new rule would unnecessarily restrict a board's discretion to give weight to factors it believes are important when approving underwriting agreements and overseeing distribution arrangements generally. Indeed, experience has proved the point that today's specific factors and checklists, typically proposed as helpful "guidance," become tomorrow's outdated and irrelevant formalistic findings that can actually hamper effective board oversight. Current Rule 12b-1 is an instructive case in point for this phenomenon. Accordingly, we strongly support the letter submitted by the Independent Directors Council[4] and the ICI Letter, both of which advise against the issuance of any new "guidance" for fund directors in this regard. Directors will continue to be guided and well served by their fiduciary standards with respect to the oversight of distribution arrangements; their fiduciary obligations provide the principles and framework for making sound judgments in evolving circumstances.

(3) ***Proposed Amendment to Rule 6c-10; Account-Level Sales Charges***. The Commission has proposed to amend Rule 6c-10 and grant an exemption from Section 22(d) to allow mutual funds to establish a share class for which brokers-dealers selling the shares would determine their own sales compensation, rather than imposing the sales charges described in the prospectus as required under current law. We support the ICI's recommendation urging the Commission to further study this proposal before proceeding, given the diversity of views on this proposal, the related uncertainty of the likely outcomes and their potential impact on fund operations, as discussed in the ICI Letter.

(4) ***Proposed Rule 12b-2; the Marketing and Services Fee.*** While the Release requested comment on whether the SEC should provide more guidance or define "distribution activity" differently, it also pointed out that that the proposed rule "does not attempt to delineate permissible distribution expenses because [the Commission's] experience with rule 12b-1 has shown that new distribution methods continually evolve." We urge the Commission to refrain from attempting to provide any one specific definition of distribution in the final rule for this, and other important reasons. As proposed, the rule 12b-2 fee is in the nature of a "safe harbor," and precise definitions are antithetical to the concept and purpose of safe harbors. We also think it would be exceedingly impractical, if not impossible, for the Commission to define precisely what is inside of, and outside of, a safe harbor in a manner that would stand the test of time, given the dynamic nature of distribution channels, services, and providers. We frankly believe the question defies any precise single definition as fees and services will not always neatly fall within pre-determined categories.

Finally, we note that this is not a new issue—mutual funds and their boards currently must make reasonable and thoughtful determinations of what payments are "distribution-related" and, hence, are required to fall under a rule 12b-1 plan, and which ones are not. We suggest that the Commission simply

[4] See Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission from Dorothy A. Berry, Chair, IDC Governing Council, dated November 5, 2010.

confirm that nothing in the new rule or proposed rule is intended to change the standards for what constitutes "distribution activities"—standards under current rule 12b-1 that both the industry and the SEC have successfully applied over the past two decades.

(5) ***Retirement Class Shares***. The Commission recognizes that current 12b-1 fees for mutual fund retirement class shares are typically in the 50 to 100 bps range (*i.e.*, above the proposed 25 bps safe harbor limit), thus potentially requiring some portion of the fees to be classified as ongoing sales charges subject to aggregate limits and conversion under the new regulatory framework. The Commission also recognizes that many retirement plan administrators will be unable to track and age shares for purposes of calculating the sales charge limit and the required conversion date, and will thus be less inclined to offer retirement class fund shares as an option in their plans. We agree with the Commission's assessments.

We do not believe, however, that retirement class shares should be subject to the same 25 basis points safe harbor limit that would apply to non-retirement class shares, because the nature of the services provided by broker-dealers in the retirement plan context is significantly different from those provided in the non-retirement context. The ICI Letter correctly points out that broker-dealers provide a number of additional services, considered important to retirement plans and not typically provided to retail investors, including early assistance plan administration, ongoing education, Section 404(c) compliance, annual investment and plan operational reviews, and assistance at termination of the plan. Thus, we believe that the SEC should ensure that funds would be able to continue to provide ongoing compensation for such services in the retirement context without having to consider that compensation a form of ongoing sales charges—since such compensation is clearly not the functional equivalent of a front-end sale charge.

This could be easily accomplished by simple changes in the proposed regulatory framework or SEC guidance. For example, the Commission could provide an exception for share classes sold exclusively or predominantly to retirement plans, or it could direct FINRA to establish a higher safe harbor limit for shares sold in the retirement channel in recognition of the higher level of services provided. Alternatively, if the Commission prefers to maintain a single safe harbor limit, the Commission should provide guidance by way of confirmation that the additional services provided by broker-dealers in the retirement plan context are not primarily intended to result in the sale of fund shares and therefore can be fairly characterized as non-distribution for these purposes.

Sincerely,

/s/
Craig S. Tyle
Executive Vice President and General Counsel