



Franklin Templeton
One Franklin Parkway
San Mateo, CA 94403
tel (800) 632-2350
www.franklintempleton.com

December 23, 2022

Via Electronic Submission

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Subject: File Number S7-25-22
Outsourcing by Investment Advisers

Dear Ms. Countryman:

Franklin Resources, Inc. appreciates the opportunity to comment on the Commission's proposal to prohibit registered investment advisers from outsourcing certain services or functions without first meeting minimum requirements (the "Proposal").

Franklin Resources, Inc., better known as Franklin Templeton, is a global investment management organization employing over 9,500 employees with offices in over 40 countries and has over 20 SEC-registered investment advisers. Franklin Templeton currently manages approximately \$1.4 trillion in assets globally across a wide variety of investment products and strategies designed to meet the investment needs of our clients.

Franklin Templeton is a member of several industry trade associations that have taken an interest in the Proposal. These organizations include the Investment Adviser Association ("IAA"), the Investment Company Institute ("ICI") and the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC"). Franklin Templeton and our trade associations have reviewed the Proposal and have concerns with its potential impact on investment advisers and the investment management industry as a whole. We join our trade association colleagues at IAA, ICI and CCMC in the comments and concerns expressed in the letters that they have submitted.

First, it is important for the Commission to understand that large investment management complexes, like Franklin Templeton, often have multiple registered advisers and other entities under their corporate-sponsor umbrella. Within these complexes, it is common for there to be staff dedicated to a variety of functions that could be deemed "covered functions" under the Proposal, including, but not limited to, global trading desks, risk management, regulatory compliance, valuation, and customer service. These functions may not be technically housed within the registered adviser entity, but are holistically managed and operated as if they were part of one single entity. Whether an asset management firm has a matrix structure or houses everything in one legal entity should not change the regulatory requirements that are imposed upon them. We therefore believe that there should be an explicit carveout to the definition of

FRANKLIN TEMPLETON®

outsourcing where internal support groups are wholly owned by the same entity as the registered investment adviser.

In addition, we are deeply concerned that this Proposal extends the Commission's anti-fraud authority well beyond the traditional definition of fraud, including infractions due solely to negligence. Adopting a prescriptive rule under Section 206 to govern an adviser's relationship with its service providers would mean in effect that if an adviser fails to comply with or consider one of the factors listed in the proposed rule when engaging a service provider, the adviser could be sanctioned by the Commission for fraudulent or deceptive conduct. As Commissioner Peirce highlighted in her statement in response to the Proposal, "[w]hile the release states that it is being adopted as a 'means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business,' the release also seems to suggest that departing from the proposed requirements would itself be deceptive."¹ Where there is actual fraud, the Commission already has the authority to charge an investment adviser under Section 206 and should not extend its anti-fraud authority to potential "foot-faults" under a prescriptive rule.

Lastly, we query why the Commission feels the need to address this issue with a rulemaking. As others in the industry have already commented, investment advisers owe a fiduciary duty to their clients that is non-dischargeable. This principle already extends to an investment adviser's duty to conduct reasonable due diligence and oversight of service providers. There are other ways that the Commission can clarify its expectations with respect to an adviser's fiduciary obligations, including through Commission guidance such as an interpretive release or policy statement, or staff guidance such as risk alerts issued by the Division of Examinations.²

We appreciate the Commission's consideration of both our and our trade groups' comments.

Sincerely,

DocuSigned by:

Alison Baur

99AF07A1D7694E4...

ALISON BAUR

Deputy General Counsel

¹ Commissioner Hester Peirce, Outsourcing Fiduciary Duty to the Commission: Statement on Proposed Outsourcing by Investment Advisers (October 26, 2022).

² See *also* Commissioner Peirce's statement that "I could have supported Commission guidance highlighting the importance of an adviser's ongoing obligations to its clients when it has engaged a service provider."