

ACT ICA  
SECTION §§ 5(b)(1) + § 34(b)  
RULE \_\_\_\_\_  
PUBLIC AVAILABILITY 5/21/99

May 21, 1999  
Our Ref. No. 99-239-CC  
Franklin Templeton Group  
of Funds, *et al.*  
File No. 811-730

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

By letter dated May 17, 1999 you request our assurance that we would not recommend enforcement action to the Commission under Section 34(b) of the Investment Company Act of 1940 (the "Act") if, as more fully described in your letter, the registered investment companies within the Franklin Templeton Group of Funds that hold themselves out as diversified in their registration statements (the "Funds") treat an investment in the shares of a trust that is excepted from the definition of "investment company" pursuant to Section 3(c)(7) of the Act (the "Trust") as an investment in the securities of an investment company for the purposes of Section 5(b)(1) of the Act.

Facts

You state that the Funds intend to invest their uninvested cash<sup>1</sup> in shares of the Trust.<sup>2</sup> You state that the Trust intends to privately offer its shares in separate series (the "Series"), each of which will represent a separate portfolio. You represent that each Series will be excepted from the definition of investment company pursuant to Section 3(c)(7) of the Act.<sup>3</sup> You state that the Trust will not be registered under the Act in order to take advantage of certain administrative efficiencies, enjoy certain flexibility in its operations, and reduce certain costs typically associated with registration.

You represent that each Series will: (1) comply with certain provisions of the Act, including but not limited to, Sections 17(a), (d), (e), 18, and 22(e); (2) engage primarily in the

<sup>1</sup> You state that uninvested cash includes cash held for temporary defensive purposes, cash not invested from day to day pending investment in securities or debt obligations, cash that is set aside to cover an obligation or commitment to purchase securities or other assets at a later date and cash that is held for strategic cash investment reasons.

<sup>2</sup> You state that the Funds will not invest in the Trust until they receive appropriate exemptive relief from the Commission permitting such investment.

<sup>3</sup> Section 3(c)(7) of the Act excepts from the definition of "investment company" any issuer whose outstanding securities are owned exclusively by "qualified purchasers," as defined in Section 2(a)(51) of the Act, and which is not making and does not propose to make a public offering of its securities (a "3(c)(7) fund").

business of investing, reinvesting, or trading in securities;<sup>4</sup> (3) operate in all material respects as an open-end management investment company, except that it will offer its shares privately and exclusively to persons who are qualified purchasers; (4) not concentrate its investments in a particular industry or group of industries; (5) comply with the diversification requirements of Section 5(b)(1) of the Act; (6) invest no more than 10% of its net assets in illiquid securities; and (7) comply with Rule 2a-7 under the Act.<sup>5</sup>

You state that each Series will offer its shares for purchase and redemption, and will value its shares, on each business day on which the New York Stock Exchange and the San Francisco Federal Reserve Bank are open for business. You also state that the shares of each Series will be purchased and redeemed at the respective Series' net asset value per share next determined after receipt of a purchase or redemption order, respectively. You state that the "amortized cost method," as defined in Rule 2a-7 under the Act, will be used to determine each Series' net asset value per share.

You assert that permitting the Funds to invest their uninvested cash in shares of the Trust will enable the Funds to invest in a vehicle that is similar to a registered money market fund in terms of the diversity, liquidity and quality of its investments while permitting the Funds to benefit from the efficiency, flexibility and reduced costs expected to result from the Trust's operation as an unregistered fund. You state that each Fund anticipates that it can achieve greater diversification, enjoy greater returns, create more liquidity, and reduce its transaction costs by investing uninvested cash in the Trust rather than in money market instruments directly. You represent that, prior to investing in a Series, a Fund's board of trustees or board of directors, as appropriate, will approve revisions to the Fund's investment policies to permit the Fund to invest its uninvested cash in shares of the Trust.

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<sup>4</sup> Section 3(a)(1)(A) of the Act defines an "investment company" as "any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Each Series will engage primarily in the business of investing, reinvesting, or trading in securities, but will be excepted from the definition of investment company pursuant to Section 3(c)(7) of the Act.

<sup>5</sup> You state that the Series will not hold themselves out to investors as money market funds or the equivalent thereof.

## Analysis

### **Sections 34(b) and 5(b)(1)**

Section 34(b) of the Act provides, in relevant part, that:

It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this title....

You state that the Funds are registered with the Commission and hold themselves out as diversified companies. Section 5(b)(1) of the Act defines a “diversified company” as a management company that meets the following requirements:

At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

For purposes of this discussion, the portion of a diversified investment company’s assets that is not subject to the five and ten percent limitations described in Section 5(b)(1) shall be referred to as the “25% portion.”

Because the Series are excepted from the definition of investment company by Section 3(c)(7) of the Act, a Fund’s investment in a Series would not be considered to be an investment in the securities of an investment company and, therefore, would be subject to the investment limitations of Section 5(b)(1). You propose that the Funds invest in the Series in excess of the limitations of Section 5(b)(1) while holding themselves out as diversified companies in their registration statements, which must be filed with the Commission.

You state that, given the operation of the Funds and composition of their portfolios, some of the Funds may be unable to include their investments in a Series within the Funds’ 25% portion. You state that, although the Series will be excepted from the definition of investment company pursuant to Section 3(c)(7) of the Act, each Series intends to operate generally as an open-end investment company, and will comply with several sections of the Act, as well as Rule 2a-7 under the Act. You believe that an investment in shares of a Series should be treated as an investment in the securities of an investment company for purposes of Section 5(b)(1) because each Series will operate in all material respects as an open-end

management investment company, except for the Series' reliance on Section 3(c)(7) of the Act.<sup>6</sup>

Congress enacted Section 5(b)(1) to ensure that an investment company that holds itself out as diversified in fact consists of a diversified portfolio of investments.<sup>7</sup> You represent that a Fund would achieve diversification with respect to its investment in a Series indirectly through its proportionate interest in the Series' underlying portfolio securities. You represent further that each Series will comply with the diversification requirements of Section 5(b)(1). You believe that this result would be consistent with the purpose of the diversification requirement under Section 5(b)(1).

### **Section 12(d)(1)**

Section 5(b)(1) does not, by its terms, limit a Fund's investments in the securities of other investment companies, but Section 12(d)(1) of the Act does limit those investments.<sup>8</sup>

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<sup>6</sup> You state that the Funds do not anticipate seeking relief from the Internal Revenue Service with respect to the diversification requirements of Section 851 of the Internal Revenue Code. Section 851 generally requires a "regulated investment company" ("RIC") to invest at least 50 percent of the value of its total assets in: (1) cash, cash items, government securities, securities of other RICs; and (2) other securities that must be limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the RIC and to not more than 10 percent of the outstanding voting securities of the issuer. In addition, not more than 25 percent of the value of the RIC's total assets may be invested in the securities (other than government securities or the securities of other RICs) of any one issuer, or of two or more issuers which the RIC controls and which are engaged in the same, similar or related trades or businesses.

<sup>7</sup> See *Hearings Before a Subcomm. of the Comm. on Banking and Currency on S. 3580*, 76th Cong., 3d Sess. 188 (1940).

<sup>8</sup> Section 12(d)(1)(A)(i) of the Act generally prohibits any registered investment company (the "acquiring company") from purchasing or otherwise acquiring any security issued by any other investment company (the "acquired company"), if the acquiring company immediately after such purchase or acquisition owns in the aggregate more than three percent of the total outstanding voting stock of the acquired company.

Section 12(d)(1)(B)(i) of the Act generally prohibits any registered open-end investment company (the "acquired company") from selling its shares to any other investment company (the "acquiring company") if immediately after such sale more than three percent of the total outstanding voting stock of the acquired company is owned by the acquiring company.

You assert that relief from Section 12(d)(1) is not necessary for the Funds to invest in the Series because each Series is excepted from the definition of investment company under Section 3(c)(7) of the Act. We agree that Section 12(d)(1) does not apply to the Funds' investments in the Series. Section 3(c)(7) applies certain of the limitations of Section 12(d)(1) to investments by 3(c)(7) funds in registered investment companies, although investments by registered investment companies in 3(c)(7) funds are not subject to those limitations.<sup>9</sup>

### Conclusion

Based on the facts and representations in your letter, we would not recommend enforcement action to the Commission under Section 34(b) of the Act if the Funds hold themselves out as diversified companies in their registration statements and treat their investment in the shares of the Series of the Trust as an investment in the securities of an investment company solely for purposes of Section 5(b)(1) of the Act.<sup>10</sup> This position is based particularly on your representations that each Series will: (1) operate in all material respects as an open-end management investment company (except for the Series' reliance on Section 3(c)(7) of the Act); and (2) comply with the diversification requirements of Section 5(b)(1) of the Act.

Because our response is based on the facts and representations made in your letter, you should note that any different facts or circumstances may require a different conclusion.<sup>11</sup>

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<sup>9</sup> Section 3(c)(7)(D) of the Act provides that:

An issuer that is excepted under this paragraph shall nonetheless be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of [S]ection 12(d)(1) relating to the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.

<sup>10</sup> The staff also would not recommend enforcement action to the Commission under Section 34(b) of the Act if, solely for purposes of Section 5(b)(1) of the Act, a diversified management investment company treats its investment in the shares of an issuer that is excepted from the definition of "investment company" under Section 3(c)(1) of the Act as an investment in the securities of an investment company, provided that the issuer: (1) operates in all material respects as an open-end management investment company; and (2) complies with the diversification requirements of Section 5(b)(1) of the Act.

<sup>11</sup> For example, we would not consider an issuer that does not comply with the portions of Section 18 of the Act that apply to open-end companies (e.g., limiting their ability to issue senior  
(footnote continued)

This response represents the views of the staff only on enforcement action, and does not purport to state any legal conclusion on the issue presented.



Alison M. Fuller  
Assistant Chief Counsel

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securities) to be operating in all material respects as an open-end management investment company.

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1940 Act/Sections 5(b)(1) and 34(b)

Direct Dial: (215) 564-8115

May 17, 1999



Office of Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, D.C. 20549

Attn: Alison M. Fuller

Re: Definition of "Securities of Other Investment Companies" under  
Section 5(b)(1) of the Investment Company Act of 1940

Ladies and Gentlemen:

On behalf of the following investment advisers registered under the Investment Advisers Act of 1940: Franklin Advisers, Inc.; Franklin Advisory Services, Inc.; Franklin Investment Advisory Services, Inc.; Franklin Institutional Services Corporation; Templeton Asset Management Ltd.; Templeton Global Advisors Limited; Franklin Mutual Advisers, Inc.; Templeton Investment Counsel, Inc.; Templeton Investment Management Ltd; Templeton/Franklin Investment Services, Inc.; Templeton Direct Advisors, Inc.; Templeton Global Value Investors, Inc.; and TDA Emerging Europe Fund, LLC (each an "Adviser" and collectively the "Advisers"); as well as the 54 registered investment companies (including their 170 separate series) within the Franklin Templeton Group of Funds for which one or more of the

Advisers serves as investment adviser (individually, a "Fund" and collectively, the "Funds")<sup>1</sup>, we hereby request confirmation by the staff of the Division of Investment Management of the U.S. Securities and Exchange Commission (the "Commission") that the staff would not recommend enforcement action to the Commission under Section 34(b) of the Act if the Funds that hold themselves out as diversified in their registration statements treat an investment in shares of a private investment company, which is excluded from the definition of "investment company" pursuant to Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "1940 Act") and the rules thereunder, as an investment in "securities of other investment companies" for the purpose of determining compliance with the diversification requirement contained in Section 5(b)(1) of the 1940 Act, as set forth below.

## BACKGROUND

The Funds intend to invest Uninvested Cash, as defined below, in shares of a trust to be created under Section 3(c)(7) of the 1940 Act (the "Trust").<sup>2</sup> Uninvested Cash consists of cash held for temporary defensive purposes, cash not invested from day to day pending investment in securities or debt obligations, cash that is set aside to cover an obligation or commitment to purchase securities or other assets at a later date and cash that is held for strategic cash investment reasons (i.e., where a Fund's Adviser determines the Fund should hold a portion of its assets in cash), all of the foregoing in accordance with the respective investment objectives and policies of the Funds.

The Trust intends to privately offer for sale shares of beneficial interest ("Shares") issued in separate series each of which will represent a separate portfolio (the "Series"). Each Series will be a private investment company excluded from the definition of "investment company" pursuant to Section 3(c)(7) of the 1940 Act and the rules thereunder. However, each Series intends to comply with major substantive provisions of the 1940 Act, including, but not limited to, Sections 17(a), (d), (e), 18 and 22(e). Each Series will engage primarily in the business of investing, reinvesting or trading in securities. Each Series will operate in all material respects as a diversified open-end management investment company except that it will privately offer its securities and will offer its securities exclusively to persons who are qualified purchasers. Each Series will comply with the diversification requirements contained in Section 5(b)(1) of the 1940 Act. Each Series also will operate generally as a money market fund and will comply with the provisions of Rule 2a-7 under the 1940 Act and any interpretations of such rule applicable to an investment company that is a "money market fund." The Series will not hold themselves out to investors as money market funds or the equivalent thereof. Each Series will invest no more than 10% of its net assets in illiquid securities. Thus, the Series will invest their

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<sup>1</sup> Exhibit A to this letter contains a complete listing of each of the registered investment companies (and series thereof) within the Franklin Templeton Group of Funds for which one of the Advisers serves as investment adviser. The Franklin Templeton Group of Funds is made up of the registered investment companies within both the Franklin Group of Funds® and the Templeton Group.

<sup>2</sup> The Funds will not invest in the Trust until they receive appropriate exemptive relief from the Commission permitting such investment.

assets in high quality, short-term instruments and will meet the portfolio diversification and liquidity requirements contained in Rule 2a-7 under the 1940 Act. None of the Series will concentrate their investments in a particular industry or group of industries.

Each Series intends to maintain the value of each of its Shares at one U.S. dollar (\$1.00). In order to better ensure that it can maintain a stable price, each Series, consistent with Rule 2a-7, will maintain a dollar-weighted average portfolio maturity that does not exceed 90 days. The Series will buy only instruments having remaining maturities of 397 calendar days or less. The Series also will invest only in those U.S. dollar-denominated securities that the Trust's Board of Trustees determines present minimal credit risks and that are rated in one of the two highest rating categories by nationally recognized statistical rating organizations, or if unrated are deemed comparable in quality, or are instruments issued by an issuer that, with respect to an outstanding issue of short-term debt that is comparable in priority and protection, has received a rating within the two highest rating categories. Portfolio securities subject to floating or variable interest rates with demand features that comply with applicable Commission rules may have stated maturities in excess of one year. Each Series will declare on a daily basis a dividend or distribution of accrued interest and capital changes and such dividends or distributions will be paid to owners of its Shares on a monthly basis.

The Shares will be offered for purchase and redemption on each business day on which the New York Stock Exchange ("NYSE") and San Francisco Federal Reserve Bank are open for business. Shares will be purchased and redeemed at the respective Series' net asset value per share next determined after receipt of a purchase or redemption order, respectively. The Shares of each Series will be valued as of the close of business on each day on which the NYSE and San Francisco Federal Reserve Bank are open for business. The "amortized cost method," as defined in Rule 2a-7 under the Act, (the "ACV Method") will be used to determine each Series' net asset value per share. With respect to monitoring the deviation between the value of Shares using the ACV Method and the market value of such Shares, each Series will comply with Rule 2a-7(c)(6) and, subject to approval by the Trust's Board, will adopt procedures described in that provision. The Series' investment adviser will monitor such procedures and take such other actions as are required to be taken pursuant to that provision.

The Trust will not be registered under the 1940 Act in order to take advantage of certain administrative efficiencies, enjoy certain flexibility in the operation of the Trust, and reduce certain costs typically associated with registration. For example, the Trust will not be required to pay registration fees or file a Form N-1A or other periodic reports as a 3(c)(7) private investment company. Permitting the Funds to invest Uninvested Cash in Shares of the Trust will enable the Funds to invest in a vehicle that is similar to a registered money market fund in terms of the diversity, liquidity, and quality of its investments while permitting the Funds to benefit from the efficiency, flexibility and reduced costs expected to result from the Trust's operation as an unregistered fund. Each Fund anticipates that it can achieve greater diversification, enjoy greater returns, create more liquidity, and reduce its transaction costs by investing Uninvested Cash in Shares of the Trust rather than in money market instruments directly. Prior to investing in the Series of the Trust, the Board of Trustees or Board of Directors, as applicable, of each

Fund will approve revisions to each Fund's investment policies to permit the investment of Uninvested Cash in Shares of the Trust.

## DISCUSSION

Section 34(b). Section 34(b) of the 1940 Act states that:

It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement . . . or other document filed or transmitted pursuant to this title.

The Funds that hold themselves out as diversified companies under Section 5(b)(1) in their registration statements intend to invest Uninvested Cash in shares of the Series. Since the Series do not fit within the definition of "investment company" due to the exclusion contained in Section 3(c)(7) of the 1940 Act, absent relief under Section 34(b), such Funds could under circumstances further described below, no longer hold themselves out as diversified.

Section 5(b). Certain Funds and series of the Funds are registered as diversified companies under Section 5(b) of the 1940 Act (the "Diversified Funds"). Section 5(b)(1) of the Investment Company Act defines a diversified management company as one which meets the following requirements:

At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purpose of this calculation limited in respect to any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

The purpose of Section 5(b)(1) is to ensure that registered investment companies that describe themselves to investors as having a "diversified" portfolio are in fact adequately diversified.<sup>3</sup>

Thus, Section 5(b)(1) limits the amount that each Diversified Fund may invest in any one issuer to 5% of such Fund's total assets and to 10% of such issuer's voting securities, with respect to 75% of the Fund's total assets. By the express terms of Section 5(b)(1), these limits do not apply to an investment in securities of other investment companies. We respectfully submit that an investment in Shares of each Series of the Trust by a Fund should be treated as an investment in securities of an investment company for the purpose of determining compliance with Section 5(b)(1), because each Series will operate in all material respects as an

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<sup>3</sup> Senate Hearings before the Subcommittee of the Committee on Banking and Currency at 188, 192 (statement of David Schenker)(Apr. 3, 1940).

open-end management investment company, except for the Series' reliance on Section 3(c)(7) of the Act.<sup>4</sup>

Although each Series of the Trust will be excluded from the definition of "investment company" pursuant to Section 3(c)(7) of the 1940 Act and the rules thereunder, each Series intends to operate generally as an open-end investment company and, as discussed above, to comply with the major substantive provisions of the 1940 Act, including Rule 2a-7, which governs the operation of money market funds. Shares of the Series are intended to provide the Funds with a vehicle that is similar to a registered investment company that is a money market fund in terms of the diversity, liquidity, and quality of its investments. Each Series of the Trust will invest its portfolio in conformance with the diversification and liquidity requirements contained in the provisions of Rule 2a-7 under the 1940 Act. Each Series of the Trust also will comply with the diversification requirements contained in Section 5(b)(1) of the 1940 Act. It is expected that by investing in Shares of the Series each Fund can achieve, among other things, greater diversification and reduced costs with respect to its investment of Uninvested Cash albeit indirectly through its proportionate interest in the respective Series' underlying portfolio securities.

Given the operation of the Funds and composition of their portfolios, some Diversified Funds may be unable to include their investment in Shares of a Series in the 25% portion of their total assets which is not subject to the 5% and 10% limitations of Section 5(b)(1). Consequently, absent the relief requested in this letter, such a Fund would be required to limit its investment in Shares of each Series to comply with the 5% and 10% limitations. By treating an investment in Shares of each Series as an investment in "securities of other investment companies," such a Fund would be permitted to invest in Shares of each Series in excess of the 5% and 10% limitations as the Fund would be permitted to do if the Trust were registered as an investment company. The Fund would, however, achieve diversification with respect to its investment of Uninvested Cash, albeit indirectly through its proportionate interest in the respective Series' underlying portfolio securities. This result would be consistent with the purpose of the diversification requirement under Section 5(b)(1) which is to ensure that registered investment companies that describe themselves as having a "diversified" portfolio, such as the Diversified Funds, are in fact adequately diversified.

To our knowledge, there has never been a written staff interpretation of the phrase "securities of other investment companies" under Section 5(b)(1) of the 1940 Act in connection with investments in private investment companies.

Section 12(d)(1). Relief from Section 12(d)(1) of the 1940 Act is not necessary for the Funds to invest Uninvested Cash in the Series of the Trust because each Series is excepted from the definition of "investment company" under Section 3(c)(7) of the 1940 Act.

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<sup>4</sup> The Funds do not anticipate seeking similar relief from the Internal Revenue Service with respect to the diversification requirements of Section 851 of the Internal Revenue Code. Consequently, each Fund will be limited as to 50% of its total assets from investing in shares of the Trust to 5% of such Fund's total assets and to 10% of the Trust's voting securities.

Paragraph (A) of Section 12(d)(1) contains percentage limits on investing by registered investment companies in other investment companies and paragraph (B) contains percentage limits on sales of shares by registered investment companies to other investment companies. Since the Trust is excluded from the definition of "investment company" under Section 3(c)(7) of the 1940 Act, Section 12(d)(1) on its face does not apply to investments by the Funds in the Series or sales of Shares by the Series to the Funds.

Section 3(c)(7) of the 1940 Act contains certain language which, recognizing the statutory language of Section 12(d)(1) coupled with the Congressional intent of the section, pulls Section 3(c)(7) entities back into Section 12(d)(1) for certain purposes. Section 3(c)(7)(D) of the 1940 Act provides that an issuer that is excepted under Section 3(c)(7) is nonetheless "deemed to be an investment company for purposes of" the 3% limitation set forth in Section 12(d)(1)(A)(i) and (B)(i) "relating to the **purchase or other acquisition** by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer." (Emphasis supplied.) Only acquisitions by, or sales to, such issuer are limited. Accordingly, the sale of Shares of each Series, which is such an issuer, is not otherwise limited by Section 12(d)(1). The Funds may invest in the Series in excess of the limitations of Section 12(d) without violating Section 12(d) since each Series is not itself an investment company.

The conclusion that purchases by the Funds of Shares of the Series and sales of Shares of the Series to the Funds are permitted under Section 12(d)(1) is consistent with the policy reasons behind that section. Section 12(d)(1) was put into effect in order to protect an investment company's shareholders from: (1) undue influence over portfolio management through the threat of large scale redemptions, loss of advisory fees to the adviser, and the disruption of orderly management of the investment company through the maintenance of large cash balances to meet potential redemptions; (2) the acquisition of voting control of the investment company; (3) the layering of sales charges or advisory fees; and (4) a complex structure that dissuades a stockholder from ascertaining the true value of the subject security. However, none of these perceived abuses is created by the proposed investment by the Funds in Shares of the Series.

Due to the highly liquid nature of each of the Series and its normal daily receipt and disbursement of cash, there will be no need to maintain any special balances to meet redemptions. Furthermore, the Advisers will serve as investment advisers to both the Funds and the Series and will not derive any investment advisory compensation with respect to Shares of the Series purchased or sold by the Funds. Because of the common advisory organization, the proposal raises no danger that an unaffiliated fund may gain control of a Series by acquiring voting shares. In addition to there being no advisory compensation, no sales load, redemption fee, or asset-based sales charges will be charged in connection with the purchase and sale of Shares of the Series by the Funds. Finally, since the net asset value of each Series will be maintained at a constant \$1.00 per share, the value of the Funds' investments in the Series will be easily determinable.

For the reasons discussed above, the proposed transactions do not give rise to the dangers against which Section 12(d)(1) is intended to guard. In addition, the proposed

transactions provide the Funds, the Series and their shareholders with a means of increasing their return, reducing transaction costs, and avoiding a reduction in or possible loss of investment opportunities.

## CONCLUSION

Although the Trust is excluded from the definition of "investment company" pursuant to Section 3(c)(7) of the 1940 Act and the rules thereunder, each Series of the Trust intends to operate structurally and from a portfolio composition point of view as an open-end investment company that is a money market fund. Shares of the Series are similar to the securities of a registered investment company that is a money market fund in several important respects, including diversity, liquidity and quality of investments. Treating an investment in Shares of a Series as an investment in "securities of other investment companies" would permit a Diversified Fund to invest in Shares of a Series in excess of the 5% and 10% limitations and, in turn, would be expected, to the extent discussed above, to increase the diversity of a Diversified Fund's investment of Uninvested Cash.

For the reasons outlined above, we hereby request that the staff of the Division of Investment Management confirm that it would not recommend enforcement action to the Commission if the Funds treat an investment in shares of a private investment company, which is excluded from the definition of "investment company" pursuant to Section 3(c)(7) of the 1940 Act and the rules thereunder, as an investment in "securities of other investment companies" for the purpose of determining compliance with the diversification requirement contained in Section 5(b)(1) of the 1940 Act and for the purpose of holding themselves out as diversified investment companies in conformance with the prohibitions contained in Section 34(b) of the 1940 Act.

If you have any questions regarding this request, please contact me at (215) 564-8115 or, in my absence, Lisa M. King, Esquire at (215) 564-8077.

Very truly yours,

  
Bruce G. Leto

**EXHIBIT A**

**FRANKLIN TEMPLETON GROUP OF FUNDS**

**LIST OF FUNDS (AND SERIES)**

**Franklin Gold Fund**  
**Franklin Asset Allocation Fund**  
**Franklin Equity Fund**  
**Franklin High Income Trust**  
    AGE High Income Fund  
**Franklin Custodian Funds, Inc.**  
    Growth Series  
    Utilities Series  
    Dynatech Series  
    Income Series  
    U.S. Government Securities Series  
**Franklin Money Fund**  
**Franklin Templeton Money Fund Trust**  
    Franklin Templeton Money Fund II  
**Franklin California Tax-Free Income Fund, Inc.**  
**Franklin Federal Money Fund**  
**Franklin Tax-Exempt Money Fund**  
**Franklin New York Tax-Free Income Fund**  
**Franklin Federal Tax-Free Income Fund**  
**Franklin Tax-Free Trust**  
    Franklin Alabama Tax-Free Income Fund  
    Franklin Arizona Insured Tax-Free Income Fund  
    Franklin Arizona Tax-Free Income Fund  
    Franklin Colorado Tax-Free Income Fund  
    Franklin Connecticut Tax-Free Income Fund  
    Franklin Florida Tax-Free Income Fund  
    Franklin Florida Insured Tax-Free Income Fund  
    Franklin Georgia Tax-Free Income Fund  
    Franklin Indiana Tax-Free Income Fund  
    Franklin Kentucky Tax-Free Income Fund  
    Franklin Louisiana Tax-Free Income Fund  
    Franklin Maryland Tax-Free Income Fund  
    Franklin Massachusetts Insured Tax-Free Income Fund  
    Franklin Michigan Tax-Free Income Fund  
    Franklin Michigan Insured Tax-Free Income Fund  
    Franklin Minnesota Insured Tax-Free Income Fund  
    Franklin Missouri Tax-Free Income Fund  
    Franklin New Jersey Tax-Free Income Fund  
    Franklin North Carolina Tax-Free Income Fund  
    Franklin Ohio Insured Tax-Free Income Fund

Franklin Oregon Tax-Free Income Fund  
Franklin Pennsylvania Tax-Free Income Fund  
Franklin Puerto Rico Tax-Free Income Fund  
Franklin Texas Tax-Free Income Fund  
Franklin Virginia Tax-Free Income Fund  
Franklin Federal Intermediate-Term Tax-Free Income Fund  
Franklin High Yield Tax-Free Income Fund  
Franklin Insured Tax-Free Income Fund  
**Franklin California Tax-Free Trust**  
Franklin California Insured Tax-Free Income Fund  
Franklin California Tax-Exempt Money Fund  
Franklin California Intermediate-Term Tax-Free Income Fund  
**Franklin New York Tax-Free Trust**  
Franklin New York Tax-Exempt Money Fund  
Franklin New York Insured Tax-Free Income Fund  
Franklin New York Intermediate-Term Tax-Free Income Fund  
**Franklin Investors Securities Trust**  
Franklin Global Government Income Fund  
Franklin Short-Intermediate U.S. Government Securities Fund  
Franklin Convertible Securities Fund  
Franklin Adjustable U.S. Government Securities Fund  
Franklin Equity Income Fund  
Franklin Adjustable Rate Securities Fund  
Franklin Bond Fund  
**Institutional Fiduciary Trust**  
Money Market Portfolio  
Franklin U.S. Government Securities Money Market Portfolio  
Franklin U.S. Treasury Money Market Portfolio  
Franklin Institutional Adjustable U.S. Government Securities Fund  
Franklin Institutional Adjustable Rate Securities Fund  
Franklin U.S. Government Agency Money Market Fund  
Franklin Cash Reserves Fund  
**Franklin Value Investors Trust**  
Franklin Balance Sheet Investment Fund  
Franklin MicroCap Value Fund  
Franklin Value Fund  
**Franklin Strategic Mortgage Portfolio**  
**Franklin Municipal Securities Trust**  
Franklin Hawaii Municipal Bond Fund  
Franklin California High Yield Municipal Fund  
Franklin Washington Municipal Bond Fund  
Franklin Tennessee Municipal Bond Fund  
Franklin Arkansas Municipal Bond Fund  
**Franklin Managed Trust**  
Franklin Corporate Qualified Dividend Fund  
Franklin Rising Dividends Fund

Franklin Investment Grade Income Fund  
**Franklin Strategic Series**  
Franklin California Growth Fund  
Franklin Biotechnology Discovery Fund  
Franklin Strategic Income Fund  
Franklin MidCap Growth Fund  
Franklin Global Utilities Fund  
Franklin Small Cap Growth Fund  
Franklin Global Health Care Fund  
Franklin Natural Resources Fund  
Franklin Blue Chip Fund  
**Adjustable Rate Securities Portfolios**  
U.S. Government Adjustable Rate Mortgage Portfolio  
Adjustable Rate Securities Portfolio  
**The Money Market Portfolios**  
The Money Market Portfolio  
The U.S. Government Securities Money Market Portfolio  
**Franklin Templeton International Trust**  
Templeton Pacific Growth Fund  
Templeton Foreign Smaller Companies Fund  
**Franklin Real Estate Securities Trust**  
Franklin Real Estate Securities Fund  
**Franklin Templeton Global Trust**  
Franklin Templeton German Government Bond Fund  
Franklin Templeton Global Currency Fund  
Franklin Templeton Hard Currency Fund  
Franklin Templeton High Income Currency Fund  
**Franklin Valuemark Funds**  
Money Market Fund  
Growth and Income Fund  
Natural Resources Securities Fund  
Real Estate Securities Fund  
Global Utilities Securities  
High Income Fund  
Templeton Global Income Securities Fund  
Income Securities Fund  
Mutual Discovery Securities Fund  
Mutual Shares Securities Fund  
U.S. Government Securities Fund  
Zero Coupon Fund - 2000  
Zero Coupon Fund - 2005  
Zero Coupon Fund - 2010  
Rising Dividends Fund  
Templeton Pacific Growth Fund  
Templeton International Equity Fund  
Templeton Developing Markets Equity Fund

Templeton Global Growth Fund  
Templeton Global Asset Allocation Fund  
Small Cap Fund  
Capital Growth Fund  
Templeton International Smaller Companies Fund  
Global Health Care Securities Fund  
Value Securities Fund

**Franklin Universal Trust**  
**Franklin Multi-Income Trust**  
**Franklin Mutual Series Fund Inc.**  
Mutual Shares Fund  
Mutual Qualified Fund  
Mutual Beacon Fund  
Mutual European Fund  
Mutual Discovery Fund  
Mutual Financial Services Fund

**Franklin Templeton Fund Allocator Series**  
Franklin Templeton Conservative Target Fund  
Franklin Templeton Moderate Target Fund  
Franklin Templeton Growth Target Fund

**Franklin Floating Rate Trust**  
**Templeton Growth Fund, Inc.**  
**Templeton Funds, Inc.**  
Templeton World Fund  
Templeton Foreign Fund

**Templeton Global Smaller Companies Fund, Inc.**  
**Templeton Income Trust**  
Templeton Global Bond Fund

**Templeton Global Real Estate Fund**  
**Templeton Capital Accumulator Fund, Inc.**  
**Templeton Global Opportunities Trust**  
**Templeton Institutional Funds, Inc.**  
Foreign Equity Series  
Growth Series  
Emerging Markets Series  
Emerging Fixed Income Markets Series

**Templeton Developing Markets Trust**  
**Templeton Global Investment Trust**  
Templeton Growth and Income Fund  
Templeton Global Infrastructure Fund  
Templeton Americas Government Securities Fund  
Templeton Greater European Fund  
Templeton Latin America Fund

**Templeton Emerging Markets Fund, Inc.**  
**Templeton Global Income Fund, Inc.**  
**Templeton Global Governments Income Trust**

**Templeton Emerging Markets Income Fund, Inc.**  
**Templeton China World Fund, Inc.**  
**Templeton Emerging Markets Appreciation Fund, Inc.**  
**Templeton Dragon Fund, Inc.**  
**Templeton Vietnam and Southeast Asia Fund, Inc.**  
**Templeton Russia Fund, Inc.**  
**Templeton Variable Products Series Fund**  
    Templeton Money Market Fund  
    Templeton Bond Fund  
    Templeton Stock Fund  
    Templeton Asset Allocation Fund  
    Templeton International Fund  
    Templeton Developing Markets Fund  
    Franklin Growth Investments Fund  
    Franklin Small Cap Investments Fund  
    Mutual Discovery Investments Fund  
    Mutual Shares Investments Fund