

126 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Franklin Resources, Inc. and its
Investment Management Subsidiaries
and Applicant Funds

Docket No. EC08-111-000

ORDER ON REQUEST FOR BLANKET AUTHORIZATIONS UNDER SECTION 203
OF THE FEDERAL POWER ACT

(Issued March 19, 2009)

1. Franklin Resources, Inc. (Franklin), its Investment Management Subsidiaries,¹ and its Applicant Funds² (collectively, Applicants) have filed an application for blanket authorizations under section 203(a)(2) of the Federal Power Act (FPA) for the Investment Management Subsidiaries to acquire, on behalf of the Applicant Funds and the Investment Accounts,³ voting securities with a value in excess of \$10,000,000 issued by any Utility⁴ or its holding company. Applicants request that the blanket authorizations

¹ Investment Management Subsidiaries are the 11 entities listed in Attachment 1 of the application. *See* Appendix 1 of this order.

² Applicant Funds are the 15 U.S. Applicant Funds and 9 Foreign Applicant Funds, including series within such funds, and 9 Sub-Advised Funds (funds for which investment management services are provided by Investment Management Subsidiaries under sub-advisory agreements with unaffiliated investment advisers) listed in Attachment 2 of the application. *See* Appendix 1 of this order.

³ Applicants state that Investment Accounts are individual investment accounts for which the Investment Management Subsidiaries have the sole authority to buy and sell account holdings, and whose holdings may, consistent with client direction, include the voting securities of Utilities.

apply to any acquisition of voting securities of any particular Utility with a value in excess of \$10,000,000 even under circumstances in which a particular Applicant has filed a Schedule 13D with the Securities and Exchange Commission (SEC).⁵ Applicants also request blanket authorizations to acquire an unlimited amount of voting securities of any Utility. We will grant Applicants' request in part, and deny it in part, as discussed below.

I. Background

A. Description of Applicants in Application

1. Franklin

2. Applicants state that in its primary business segment, Franklin, through subsidiaries (including the Investment Management Subsidiaries) manages approximately \$416.2 billion in assets for more than 600 mutual funds and other investment funds (collectively, Investment Funds) and for approximately 6,000 individual investment accounts.⁶ They state that Franklin's sponsored investment products include domestic and international equity, hybrid, fixed-income and money-market mutual funds, and other

⁴ Applicants define "Utility" as any public utility, electric utility company, transmitting utility, or holding company in a holding company system that includes an electric utility company or transmitting company as those terms are used in FPA section 203.

⁵ Section 13(d) of the Securities Exchange Act of 1934 and the rules and regulations of the SEC require any person to make an informational filing with the SEC on Schedule 13D within 10 days after such person acquires beneficial ownership of more than 5 percent of any class of voting equity securities of a company that is registered under section 12 of the 1934 Act. Securities Exchange Act of 1934, 15 U.S.C. § 78a, *et seq.* (2000) (1934 Act); 17 C.F.R. § 240.13d-1, *et seq.* However, a person who would otherwise be obligated to file a statement on Schedule 13D may instead file an abbreviated statement on Schedule 13G if such person has acquired such securities in the ordinary course of business and not with the purpose of, or with the effect of, changing or influencing control over the issuer of the securities. The filing of a Schedule 13D, on the other hand, would indicate that the filing person may intend to take a more activist role in the management of the affairs of the issuer. Applicants state that the Investment Management Subsidiaries make Schedule 13 filings with the SEC with respect to holdings in the Investment Accounts that they manage and holdings by the Applicant Funds.

⁶ Investment Management Subsidiaries and Applicant Funds requesting blanket authorization are a sub-set of all of Franklin's subsidiaries and mutual funds.

investment products. Franklin's primary business segment is providing investment management services and other related services, including shareholder services, transfer agency, underwriting, distribution, custodial, trustee and other fiduciary services. Applicants state that this business segment includes all of the assets under management described above, as of December 31, 2008.⁷

3. In its secondary business and operating segment -- banking and finance -- Franklin, through bank subsidiaries Franklin Templeton Bank & Trust, F.S.B. and Fiduciary Trust Company International, provides clients with select retail banking and consumer lending services. This segment of business is not included in the application and does not include any portion of the assets described above. Applicants state that Franklin is regulated as a bank holding company under the Bank Holding Company Act of 1956⁸ (BHC Act) and as a financial holding company under the Gramm-Leach-Bliley Act.⁹

4. Franklin's common stock is traded on the New York Stock Exchange. Franklin functions solely as a holding company. Franklin states that it does not participate in the investment decisions of the Investment Management Subsidiaries, and is not a party to any of the investment management agreements between the Investment Management Subsidiaries and the Applicant Funds or the Investment Accounts.¹⁰

5. Applicants further state that Franklin and "certain intermediate subsidiaries" are holding companies for purposes of FPA section 203(a)(2) because they indirectly

⁷ Response to Deficiency Letter at 2.

⁸ Bank Holding Company Act of 1956, 12 U.S.C. § 1841, *et seq.*, as amended by Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.* (1999).

⁹ Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, *et seq.* (1999). We note that in approving Franklin's election to be a financial holding company, the Federal Reserve Board stated that it would rely heavily on the SEC's functional regulation. "The [Federal Reserve] Board notes further that a substantial proportion of Franklin's activities are conducted in subsidiaries that are subject to functional regulation by the SEC. The Board will, consistent with the provisions of section 5 of the BHC Act as amended by the Gramm-Leach-Bliley Act, rely heavily on the SEC for examination and other supervisory information in fulfilling the Board's responsibilities as holding company supervisor." Federal Reserve System, *Franklin Resources Inc.*, Order Approving Formation of a Bank Holding Company and Determination on a Financial Holding Company Election (March 21, 2001).

¹⁰ The application does not list Investment Accounts.

exercise voting rights with respect to holdings in a foreign “electric utility company.”¹¹ Applicants maintain that neither Franklin nor any of its subsidiaries owns any physical electric utility assets in the United States, is in a related business, or is a “public utility” or an “electric utility company” under the FPA.

2. Investment Management Subsidiaries

6. The Investment Management Subsidiaries consist of 11 wholly-owned direct or indirect subsidiaries of Franklin. Applicants state that the majority of Franklin’s investment management business is conducted by the Investment Management Subsidiaries on behalf of Investment Funds they manage and on behalf of individual clients such as pension funds, institutions, endowments and high net worth individuals through individual Investment Accounts. They note that each Investment Management Subsidiary is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 (Investment Advisers Act)¹² and is the investment adviser to one or more of the Applicant Funds and Investment Accounts. Investment Management Subsidiaries are contractually bound to adhere to the investment objectives and policies of each Applicant Fund and Investment Account.¹³

¹¹ Application at 7. Applicants state that the Darby Latin American Mezzanine Fund, L.P. (Darby Latin American), an Investment Fund managed by a Franklin subsidiary, indirectly holds a 27 percent equity interest in Termobarranquilla S.A. Empresa de Servicios Publicos (TEBSA), a Colombian company that owns a 980 MW gas-fired generation plant in Barranquilla, Colombia. Applicants argue that TEBSA is a “foreign utility company” and that the acquisition of its voting securities today would be authorized by the blanket authorization in 18 C.F.R. § 33.1(c)(5). In addition, the interests of Darby Latin American in TEBSA were acquired before the enactment of FPA section 203(a)(2), and therefore, they argue, such acquisition was not jurisdictional.

¹² Under the Investment Advisers Act, an investment adviser is any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 15 U.S.C. § 80b-2(a)(11) (2006).

¹³ Application at 9.

7. One of the Investment Management Subsidiaries, Franklin Mutual Advisers, LLC (Mutual Advisers), manages a discrete group of Applicant Funds (Mutual Series Funds)¹⁴ separately from the other Applicant Funds. Applicants state that Mutual Advisers conducts its investment, trading, and proxy voting activities completely independently from Franklin's other 10 Investment Management Subsidiaries.

8. Applicants state that under the 1934 Act and the rules and regulations of the SEC, Investment Management Subsidiaries (other than Mutual Advisers) are considered beneficial owners of the securities owned by the Investment Funds that they manage and those held in individual Investment Accounts for Schedule 13D or 13G reporting purposes, because they have investment discretion (and in most cases voting discretion) over purchased securities. Similarly, Mutual Advisers is considered a beneficial owner of securities owned by the Mutual Series Funds.

9. For purposes of Schedule 13D or 13G filing requirements, the SEC adopted guidelines providing for entities having common ownership or control to be treated as non-affiliates when they conduct their investment activities independently of each other. Applicants state that the functional separation of Mutual Advisers and Investment Management Subsidiaries is accomplished under Franklin's information barrier policy.¹⁵

3. Applicant Funds

10. Applicants state that the Applicant Funds are 25 Investment Funds domiciled in the U.S. (U.S. Applicant Funds)¹⁶ and 9 Investment Funds domiciled outside the United

¹⁴ U.S. Applicant Funds managed by Mutual Advisers include the Franklin Mutual Recovery Fund, the Mutual Series Funds which includes: Mutual Beacon Fund, Mutual Discovery Fund, Mutual European Fund, Mutual Financial Services, Mutual Qualified Fund, and the Mutual Shares. Foreign Applicant Funds managed by Mutual Advisers include: Mutual Beacon Fund (Canada), Mutual Discovery Fund (Canada). Sub-Advised funds managed by Mutual Advisers include: EQ Mutual Shares Portfolio, ING Franklin Mutual Shares Portfolio, and JNL/Franklin Templeton Mutual Shares Fund.

¹⁵ Applicants submit confidential Ex. 1, a "Chinese Wall Policy" detailing the informational barriers in place to prevent coordinated action between Mutual Advisers and the other Investment Management Subsidiaries to control a public utility. They say that these procedural and physical barriers restrict the flow of investment information.

¹⁶ Applicants state that there are 25 domestic Applicant Funds but only list 15. The Commission considers U.S. Applicant Funds to be those 15 specifically listed on the application, and they are the only Applicant Funds covered by the authorization granted herein.

States (Foreign Applicant Funds) and 9 additional sub-advised funds. They note that most of the Applicant Funds' assets are held by the U.S. Applicant Funds and that the ultimate owners of each Applicant Fund are its shareholders.

11. Each U.S. Applicant Fund is a stand-alone, separate legal entity, organized under state law in corporate, business trust or statutory trust form, and registered with the SEC under the Investment Company Act of 1940 (Investment Company Act).¹⁷ Each U.S. Applicant Fund has its own board of directors or trustees, each with a majority of independent directors or trustees. Applicants maintain that neither Franklin nor any of the Investment Management Subsidiaries ultimately controls the U.S. Applicant Funds. Each U.S. Applicant Fund is instead under the control of its board of directors or its trustees, who have ultimate responsibility for the operations of the fund. Applicants also state that while many of the Foreign Applicant Funds also have a majority of independent directors, some of them do not, and therefore may not, have the same degree of independence from the Investment Management Subsidiaries as do the U.S. Applicant Funds.¹⁸

12. Under written advisory agreements, each Applicant Fund has delegated responsibility for supervising and managing its securities portfolio to one of the Investment Management Subsidiaries. This includes authority to buy and sell securities for the fund's or account's portfolio. Each of the Applicant Funds has also delegated responsibility for voting the proxies of portfolio securities to an Investment Management Subsidiary, subject to board oversight in the case of the Applicant Funds. In carrying out its responsibilities, each Investment Management Subsidiary is contractually bound to adhere to the investment objectives and policies of each Applicant Fund.

4. Investment Accounts

13. Applicants state that similar to Applicant Funds, the owner of each Investment Account has delegated responsibility for supervising and managing its securities portfolio to one of the Investment Management Subsidiaries. This includes authority to buy and sell securities for the Investment Account's portfolio. Nearly all of the owners of Investment Accounts have also delegated to an Investment Management Subsidiary responsibility for voting the proxies of portfolio securities. Unlike Applicant Funds, Investment Accounts do not appear to have board oversight.¹⁹ But like Applicant Funds,

¹⁷ 15 U.S.C. § 80a-1, *et seq.* (2006).

¹⁸ Applicants do not state which Foreign Applicants Funds do not have a majority of independent directors, or to what degree their independence from the Investment Management Subsidiaries is limited. *See* Application at 9.

¹⁹ *See id.*

each Investment Management Subsidiary is contractually bound to adhere to the investment objectives and policies of each Investment Account.

B. Request for Blanket Authorization

1. Blanket Authorization Allowing Applicants to Use Schedule 13D

14. Applicants state that Mutual Advisers, on behalf of the Mutual Series Funds, has taken a slightly more activist shareholder role, and has therefore filed Schedule 13D rather than Schedule 13G for such holdings. Franklin maintains that Mutual Advisers has never sought to exercise actual control over the day-to-day management or operations of such companies, but has confined itself to measures that relate more broadly to corporate management. Applicants further state that Investment Management Subsidiaries other than Mutual Advisers could find it “desirable” to file a Schedule 13D as well with respect to acquisitions on behalf of the Applicant Funds other than the Mutual Series Funds.²⁰ Applicants request blanket authorization under section 203(a)(2) for entities that file Schedule 13D or Schedule 13G with respect to acquisitions of U.S. Traded Utilities.²¹

15. Specifically, Applicants request that each of three Reporting Groups:²² (1) Mutual Advisers, acting on behalf of the Mutual Series Funds; (2) the other Investment Management Subsidiaries, acting on behalf of the Investment Accounts and the Applicant Funds other than the Mutual Series Funds; and (3) any Investment Management Subsidiaries and Applicant Funds included within a new Reporting Group that is yet to be formed, be authorized to acquire and hold less than 10 percent of a U.S. Traded Utility under circumstances in which they would file a Schedule 13D for such holdings, without affecting the authorizations of the other Reporting Groups.

16. Applicants state that, in any case in which a Schedule 13D has been filed with respect to a particular investment: (1) no Reporting Group will exercise any actual control over the day-to-day management or operations of a Utility with respect to which such filing as been made; and (2) as long as a Schedule 13D rather than Schedule 13G

²⁰ Application at 25.

²¹ A U.S. Traded Utility is a Utility whose voting securities (including American Depository Receipts) are traded on U.S. public exchanges, including the New York Stock Exchange, the American Stock Exchange and the NASDAQ.

²² A Reporting Group includes all of the separate Investment Management Subsidiaries that are permitted to share information under Franklin’s information barrier policy. For Schedule 13D or 13G reporting purposes, a Reporting Group files independently with the SEC.

remains in effect for such holding, the Reporting Group will not acquire or hold 10 percent or more of such Utility's voting securities without case-specific Commission authorization under section 203 of the FPA.

17. To support their argument that the Commission should grant the requested blanket authorization subject to these conditions where a Schedule 13D has been filed with respect to a particular investment, Applicants state they are required to state the purpose for which voting securities have been acquired as part of the disclosure in a Schedule 13D. Those disclosures include any plans or proposals which the reporting persons may have that relate to or would result in:

- (1) The acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer;
- (2) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;
- (3) A sale or transfer of a material amount of assets of the issuer or any of its subsidiaries;
- (4) Any change in the present board of directors or management of the issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;
- (5) Any material change in the present capitalization or dividend policy of the issuer;
- (6) Any other material change in the issuer's business or corporate structure, including, but not limited to, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote is required by section 13 of the Investment Company Act of 1940;
- (7) Changes in the issuer's charter, bylaws or instruments corresponding thereto or other actions that may impede the acquisition of control of the issuer by any person;

(8) Causing a class of securities of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(9) A class of equity securities of the issuer becoming eligible for termination of registration pursuant to section 13(g)(4) of the [1934] Act; or

(10) Any action similar to any of those above.²³

18. Applicants state that they will file a Schedule 13D rather than 13G when they want to be in a position to advocate for certain activities. The activities that they would advocate for would be limited to the following matters:

(1) A spin-off, sale or purchase of an asset, or a buy-back of shares;

(2) Rejection of a “poison pill,” change in management personnel, change of a staggered board;²⁴ and

(3) Sale of the company; purchase of a company; change in tax status.

They state that neither the Reporting Group, nor any entity within the Reporting Group, would engage in activities under the authorizations requested in the application such as:

(1) Seeking board representation or the power to name a board member;

(2) Seeking to nominate or designate managerial, operational, or other personnel of the company in question;

(3) Seeking to set or influence the price at which power, fuel or any other product is sold or purchased in the marketplace;

(4) Seeking to determine or influence whether generation, transmission, distribution, or other physical assets are made available or withheld from the marketplace;

(5) Seeking to determine or influence ratemaking or rates for the sale of power or the provision of transmission or distribution service;

²³ Response to Deficiency Letter at 11 (citing 17 C.F.R. § 240.13d-101 (Schedule 13D)).

²⁴ We understand that this includes circumstances where personnel changes are advocated as part of a strategic change in the direction of the company.

(6) Seeking to determine or influence wages to be paid to labor or participate in or influence labor negotiations; or

(7) Seeking to influence any other operational decision of the company in question.²⁵

19. Applicants argue that with the commitments above, none of them will be able to exercise control over any U.S. Traded Utility. First, they note that the Commission has already adopted a rebuttable presumption that acquiring less than 10 percent of a Utility's voting securities does not result in a change in control over the Utility. Further, the Commission promulgated the blanket authorization in 18 C.F.R. § 33.1(c)(2)(ii), under which a holding company may acquire less than 10 percent of a Utility's voting securities, conditioned on it filing with the Commission any Schedules 13G or 13D or Form 13F filed with the SEC as a result of such acquisitions. Thus, even without the blanket authorizations requested in this application, the Applicants argue that any entity could today acquire less than 10 percent of a Utility and file a Schedule 13D without obtaining case-specific Commission authorization. However, Applicants made this application because they request that each Reporting Group be treated as a separate entity under section 203(a)(2) just as they are for Schedule 13D purposes.

20. Second, Applicants argue that allowing a Reporting Group to file Schedule 13D under the limited circumstances described above will have no effect on the other Reporting Groups because each of the Reporting Groups described above will be part of a separate Reporting Group for Schedule 13 purposes. As previously discussed, every Reporting Group for Schedule 13 purposes is required to maintain information barriers between itself and other Reporting Groups that meet the requirements of Franklin's information barrier policy and SEC guidelines. Thus, each Reporting Group will have no knowledge of holdings of a U.S. Traded Utility for which another Reporting Group files a Schedule 13D until such filing becomes public. Furthermore, the Applicants argue that even if different Reporting Groups have holdings in the same Utility, any sharing of information (including information about voting intentions or initiatives) will be prohibited under Franklin's information barrier policy. Applicants state that in *Capital Research and Management Co.*, the Commission ruled that different reporting groups of affiliated investment management subsidiaries and investment funds and accounts should not be treated as affiliates for purposes of FPA section 203 based on (1) information sharing restrictions, and (2) the reporting groups being treated as separate reporting

²⁵ Application at 5-6.

groups for 1934 Act reporting purposes.²⁶ Applicants argue that the same principle should apply in this case.

2. Blanket Authorization Allowing Acquisition of Unlimited Amounts of Voting Securities of U.S. Public Utilities

21. Applicants also request that the blanket authorization allow the Investment Management Subsidiaries to acquire on behalf of the Applicant Funds and the Investment Accounts (and for the Applicant Funds and Investment Accounts to hold) any amount of voting securities of any U.S. Traded Utility. The authorizations are requested for three years and would be subject to the following conditions:

- (1) The Investment Management Subsidiaries will only acquire the voting securities of Utilities whose voting securities (including American Depositary Receipts) are traded on U.S. public exchanges, including the New York Stock Exchange, the American Stock Exchange and the NASDAQ. All such Utilities are U.S. Traded Utilities.
- (2) The Applicants' commitment not to exercise any control over the day-to-day management or operations of any U.S. Traded Utility whose voting securities are acquired under the authorizations requested in this application except under separate authorizations under section 203 of the FPA.
- (3) All acquisitions of U.S. Traded Utility voting securities by the Investment Management Subsidiaries under the requested authorizations will be made in a fiduciary capacity on behalf of Applicant Funds or Investment Accounts.
- (4) Each of the Investment Management Subsidiaries will maintain its status as a registered investment adviser under the Investment Advisers Act.
- (5) The Investment Management Subsidiaries (with respect to the Applicant Funds and the Investment Accounts) will maintain their status as beneficial

²⁶ *Capital Research and Management Co.*, 116 FERC ¶ 61,267, at P 31-33 (2006) (*Capital Research*). The applicants in *Capital Research* included Capital Research and Management Company (Capital Research) and certain mutual funds it manages, listed in Attachment A of Capital Research's application. Capital Research is a subsidiary of The Capital Group Companies, Inc., and directly and through its subsidiaries (collectively Capital Research Companies) provides investment management services to mutual funds in the United States and abroad. Capital Research Companies' sole business is investment management, and neither Capital Research nor its mutual funds have energy-related subsidiaries or affiliates. *Id.* P 1-2.

owners eligible to file Schedule 13G under SEC rules under the 1934 Act with respect to the acquisition and holding of more than 5 percent of any class of voting securities of any U.S. Traded Utility, except as provided otherwise in the application.

(6) Consistent with 18 C.F.R. § 33.1(c)(4), when an Investment Management Subsidiary files a Schedule 13D or 13G with the SEC in connection with the acquisition of U.S. Traded Utility securities, it will file a copy of such schedule with the Commission.

(7) The Applicants will file additional reports with the Commission and meet other conditions described in their application.²⁷

22. The Applicants further request that the blanket authorizations for the Investment Management Subsidiaries, the Applicant Funds and the Investment Accounts be extended to other Franklin investment management subsidiaries and investment funds and investment accounts managed by Franklin Resources or its affiliates that will be formed in the future, subject to the following conditions:

(1) any such investment management subsidiary meets all of the conditions applicable to the Investment Management Subsidiaries pursuant to the application;

(2) any such investment fund meets all the conditions applicable to the Applicant Funds pursuant to the application; and

(3) Franklin files a notice of any new entity that is to receive the benefits of the blanket authorization within 45 days of the end of the calendar quarter during which it is intended that such authorization shall have attached, including:

(i) the name, functions and regulatory safeguards applicable to such entity

(ii) a reiteration of the Applicants' commitment not to acquire securities that will result in the transfer of control over a public utility.²⁸

II. Notice of Filings and Further Pleadings

23. Notice of Applicants' initial application was published in the *Federal Register*, 73 Fed. Reg. 43,738 (2008), with interventions and protests due on or before August 6, 2008. None was filed.

²⁷ Application at 3-4.

²⁸ Application at 23.

24. On November 14, 2008 Applicants supplemented their application with a revised organizational chart to replace Exhibit C of their application.

25. On December 22, 2008, Commission Staff issued a deficiency letter requesting that Applicants provide more information. Applicants filed a response on January 16, 2009.

26. Notice of Applicants' response to the Commission's December 22, 2008 deficiency letter was published in the *Federal Register*, 74 Fed. Reg. 5834 (2009), with interventions and protests due on or before January 26, 2009. None was filed.

III. Discussion

A. Standard of Review under Section 203

27. Section 203(a) of the FPA provides that the Commission must approve a transaction if it finds that the transaction "will be consistent with the public interest."²⁹ The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.³⁰ In addition, the Energy Policy Act of 2005 (EPAAct 2005) amended section 203 to specifically require that the Commission also determine that the transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.³¹ The Commission's regulations establish verification and informational requirements for applicants that seek

²⁹ 16 U.S.C. § 824b (2006).

³⁰ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997). See also *FPA section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs., ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

³¹ 16 U.S.C. § 824b(a)(4) (2006).

a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.³²

B. Analysis

28. As discussed below, we will grant in part, and deny in part Applicants' request for blanket authorizations for Applicants now in existence or hereafter formed. The blanket authorizations are granted, for a period of three years, and are conditioned on Applicants' commitments listed above, and we will also impose further conditions, as discussed below.

1. Effect on Competition

29. Applicants argue that the proposed blanket authorizations will not have an adverse effect on competition because they will not give Applicants any ability to control generation or transmission facilities, directly or indirectly.³³ Applicants state that they will be limited by the conditions described above from purchasing or holding securities with the effect or for the purpose of exercising control or management of any Utility.

a. Authorization to File Schedule 13D

30. Applicants state that the proposed transactions should be acceptable to the Commission because in *Capital Research*, the Commission ruled that different groups of affiliated investment management subsidiaries and investment funds and accounts should be treated as non-affiliates for purposes of section 203 based on the establishment of information sharing restrictions and their treatment as separate reporting groups for 1934 Act reporting purposes.³⁴ Applicants argue that if reporting groups are treated as separate entities, then any such entity should be covered by the blanket authorization in 18 C.F.R. § 33.1(c)(2)(ii), which permits a holding company in a holding company system to purchase, acquire, or take any voting security in a transmitting utility, an electric utility company, or holding company that includes a transmitting utility or an electric utility company, if the holding company will own less than 10 percent of the outstanding voting securities after the transaction is complete.³⁵ Therefore, if Applicants' Reporting Groups are treated as separate entities, each entity should be granted the blanket authorization as requested.

³² 18 C.F.R. § 33.2(j) (2008).

³³ Application at 32.

³⁴ *Id.* at 27 (citing *Capital Research*, 116 FERC ¶ 61,267 at P 31-33).

³⁵ *Id.* at 26.

Commission Determination

31. The Commission will grant Applicants' request for blanket authorization, subject to certain conditions, as set forth below, in any case in which a Schedule 13D is filed with respect to an investment in any particular U.S. Traded Utility. However, we have not previously found that Applicants' Reporting Groups should be treated as separate entities. In order for each Reporting Group to qualify as a separate entity for purposes of this authorization, Applicants must maintain their informational barrier policies and procedures according to applicable SEC guidelines to ensure that the Reporting Groups will not coordinate with each other to exercise control over a public utility or public utility holding company. We are satisfied that the Applicants' proposed condition that they be permitted to acquire less than 10 percent of voting securities of any U.S. Traded Utility under this authorization, together with the other assurances provided, are sufficient to prevent the aggregation of voting rights. Specifically, Applicants have committed to: (1) hold less than 10 percent of the outstanding voting securities of any U.S. Traded Utility for each 13D Reporting Group; and (2) limit actions related to U.S. Traded Utilities for which Schedule 13D has been filed to those discussed above. We will also require, as conditions of this blanket authorization, that Franklin file with the Commission, within 45 days from the date of formation, notice that a new Reporting Group has been formed for the purposes authorized in this order, and that Franklin inform the Commission of any changes to Franklin's information barrier policy within 45 days of such change.³⁶

32. We have previously relied on the filing of Schedule 13Gs, in addition to other filing requirements and conditions, to establish an inability to exercise control over the utility whose securities are acquired. Here, Applicants would have the Commission rely on their Schedule 13D filings as well. Applicants are requesting blanket authorization to acquire voting securities of a Utility in respect to which a Schedule 13D is filed, subject to the conditions noted above,³⁷ to enable the Applicants to advocate for positions on certain limited corporate matters. This will permit Applicants to be slightly more "activist" as to the management of public utilities than would be permissible under a Schedule 13G filing. This approach is consistent with analogous Commission precedent in which the Commission allowed investors to retain certain rights in order to protect

³⁶ If a new Reporting Group is formed, Franklin's information barrier policy will be amended to include requirements for an information barrier between that new Reporting Group and existing Reporting Groups. Therefore, this condition would require Franklin to file the change to its information barrier policy with the Commission.

³⁷ Such activities would not include those listed by Applicants in their response to Staff's deficiency letter, numbered (1) through (7) in paragraph 18 of this order. Response to Deficiency Letter at 5-6.

their investment, without regarding this as a change in control.³⁸ We find that with these conditions, and with the conditions associated with the acquisition of voting securities discussed below,³⁹ the blanket authorization granted will not result in Applicants having the right, directly or indirectly, to direct, manage or control the management, policies or operations of a public utility, and therefore will not have an adverse effect on competition.

b. Request for Unlimited Voting Securities

33. When combined with other factors, such as limitations on acquisition levels, the Commission has relied on applicants similarly situated to Franklin maintaining their eligibility to file Schedule 13G, with the associated regulatory and enforcement regime administered by the SEC, to help ensure that the applicant will not exercise control over public utilities or public utility holding companies.⁴⁰ Here, Applicants propose the use of Schedule 13G along with other measures as support for their request for blanket authorization. However, they propose that there be no condition restricting their holdings of these securities to any percentage. Applicants state that aside from their direct commitment not to exercise control over U.S. Traded Utilities, they are also required under the 1934 Act to file Schedule 13G to indicate they have no intention or purpose of exercising control over the issuer.

34. In addition, Applicants state that each of the Investment Management Subsidiaries is a registered investment adviser under the Investment Advisers Act, and therefore, each is separately obligated to maintain extensive compliance procedures with respect to the 1934 Act. Applicants note that compliance with section 203(e)(6) of the Investment Advisers Act requires, among other things, auditable compliance with the 1934 Act and related SEC rules and regulations, as well as written policies and procedures to ensure such compliance. Thus, they argue that, through regular SEC audits and requirements for

³⁸ *Milford Power Company, LLC*, 118 FERC ¶ 61,093 (2007).

³⁹ The conditions are those included in section III.B.1.b.i. of this order.

⁴⁰ *See, e.g., Legg Mason, Inc.*, 121 FERC ¶ 61,061, at P 26-30 (2007) (*Legg Mason*); *The Goldman Sachs Group, Inc.*, 121 FERC ¶ 61,059, at P 30-41 (2007) (*Goldman Sachs*); *Morgan Stanley*, 121 FERC ¶ 61,060, at P 37-49 (2007); *Capital Research*, 116 FERC ¶ 61,267 at P 16-20; *Horizon Asset Management, Inc.*, 125 FERC ¶ 61,209, at P 45 (2008) (*Horizon*).

internal policies, the Investment Advisers Act provides additional assurances that the Applicants will not attempt to exercise control over Utilities.⁴¹

35. Applicants also state that, in the case of the U.S. Applicant Funds, further protection against the exercise of control is provided by the Investment Company Act. Each U.S. Applicant Fund is a “registered investment company” under the Investment Company Act, and therefore, a majority of its board members or trustees must be independent of Franklin and the Investment Management Subsidiaries. Applicants state that the SEC’s rules under the Investment Company Act also require that each U.S. Applicant Fund adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws, including policies and procedures that provide for oversight of compliance by each U.S. Applicant Fund’s key service providers, including the investment manager.

36. Aside from the regulatory requirements discussed, Applicants state that they must also meet various contractual obligations and undertakings that ensure that Applicants cannot control public utilities. For example, Applicants note that all acquisitions under their requested blanket authorizations must be securities of U.S. Traded Utilities. Therefore, acquisitions will be driven by public market considerations rather than a privately held Utility’s ownership of particular physical assets. This requirement further restricts the authorized acquisitions to securities of Utilities traded on U.S. public exchanges, which will ensure the visibility of such acquisitions. Applicants further argue that these acquisitions will be for the account of the Applicant Funds or Investment Accounts and, subject to limited exceptions, not for the direct or indirect benefit of Franklin or any entity in which it holds an ownership interest. The exceptions include shares of some of the Investment Funds (including certain of the Applicant Funds) that were purchased in order to provide such funds with nominal capital for initial organizational purposes or to provide large enough capitalization to allow the Fund to create a diversified portfolio before or when shares of such Fund were offered to the public. Applicants state that Franklin generally seeks to sell such shares within three years.

37. In addition, Applicants argue that all acquisitions and voting of voting securities by the Investment Management Subsidiaries will be made in a fiduciary capacity on behalf of the Applicant Funds or the Investment Accounts. As fiduciaries, the Investment Management Subsidiaries are obligated to act in the interests of the Applicant Funds and the Investment Accounts, and therefore, will be unable to exercise control for their own benefit. Moreover, Applicants state that all voting of securities held by the Applicant Funds and the Investment Accounts that have been committed to the Investment

⁴¹ Application at 17 (citing *Goldman Sachs*, 121 FERC ¶ 61,059 at P 33, and *Morgan Stanley*, 121 FERC ¶ 61,060 at P 39).

Management Subsidiaries will be performed in accordance with the Proxy Voting Policies and Procedures. This will further limit Applicants' ability to vote the securities for their own benefit.

38. Applicants argue that their factual situation, the proposed conditions, and the blanket authorizations requested are similar to those in recent cases involving investments in the utility industry by financial services firms.⁴² In particular, Applicants state that the applicants in *Goldman Sachs* and *Morgan Stanley* requested authority to acquire unlimited amounts of Utility securities in order to ensure that they would be able to compete with banks in the provision of financial services. Applicants argue that their Investment Management Subsidiaries similarly compete regularly with banks as well as other financial firms for investment management business. Applicants state that their business is similar to certain activities engaged in by the applicants in *Goldman Sachs* and *Morgan Stanley*. They acknowledge that the applicants in those cases engaged in a wider range of activities. Applicants also state in their response to Staff's deficiency letter that their primary business is more like that of the applicants in *Capital Research* than *Goldman Sachs* and *Morgan Stanley*.⁴³ Finally, Applicants also acknowledge that "the imposition of a 20% cap on the exercise of voting rights by any one reporting group with respect to any one public utility or utility holding company is unlikely to have a material adverse effect on Applicants' ability to achieve their clients' investment objectives."⁴⁴

Commission Determination

39. We will deny Applicants' request for unlimited blanket authorization under section 203(a)(2). The Commission will, however, grant Applicants blanket authorization under section 203(a)(2), subject to a 20 percent limit on the ownership of voting securities of any one U.S. Traded Utility by each Reporting Group, and subject to a limit of less than 10 percent on the amount of voting securities of any one U.S. Traded Utility acquired by any Applicant Fund or Investment Account, as discussed below. Applicants have described regulatory limitations that will prevent them from exercising control over any U.S. Traded Utility, including: (1) SEC audits and requirements; (2) maintenance of extensive procedures to comply with the 1934 Act and related SEC rules

⁴² Application at 13 (citing *Capital Research*, 116 FERC ¶ 61,267; *T. Rowe Price Group, Inc.*, 119 FERC ¶ 62,048 (2007) (*T. Rowe Price*); *Ecofin Holdings Limited*, 120 FERC ¶ 61,189 (2007) (*Ecofin*); *Goldman Sachs*, 121 FERC ¶ 61,059; *Morgan Stanley*, 121 FERC ¶ 61,060; *Legg Mason*, 121 FERC ¶ 61,061).

⁴³ Response to Deficiency Letter at 2.

⁴⁴ *Id.* at 4.

and regulations; (3) requiring that a majority of board members or trustees be independent of Franklin and the Investment Management Subsidiaries; (4) restricting acquisitions to securities of Utilities traded on U.S. public exchanges; and (5) all acquisitions and voting of securities will be made in a fiduciary capacity. Moreover, like the applicants in *Capital Research*, Applicants are subject to other requirements under the Investment Advisors Act, the Investment Company Act and the 1934 Act such as: (1) periodic comprehensive books and records examinations by the SEC;⁴⁵ (2) maintenance of functional separation between Reporting Groups so they will continue to be treated as non-affiliates,⁴⁶ and (3) annual independent assessments as to the internal controls relating to the establishment and operation of informational barriers.⁴⁷ We find that these measures would help prevent a change in control of a public utility through the securities acquisitions by affiliated entities in circumstances such as those presented here. The regulatory and enforcement regime administered by the SEC, as described above, will complement our own oversight to help ensure that Applicants cannot exercise control over public utilities.

40. We will deny Applicants' request that we not impose a condition restricting the percentage of voting securities of any one U.S. Traded Utility or holding company that the Applicants may own or hold. As in *Capital Research*, Applicants' blanket authorization will be subject to a 20 percent limit on voting securities held in any one U.S. Traded Utility or holding company, by a Reporting Group, subject to more restrictive conditions in connection with holdings that are the subject of the filing of a Schedule 13D filing, as discussed above.

41. Applicants concede, and we agree, that their primary business segment is more like that of the applicants in *Capital Research* than those in *Goldman Sachs* and *Morgan Stanley*. The Commission imposed percentage investment limits on firms like the applicants in *Capital Research* that are investment advisers or that engage in activities similar to those proposed by Applicants.⁴⁸ Specifically, in *Capital Research*, the Commission conditioned its blanket authorization on each of the applicant funds owning or holding less than 10 percent of the voting securities of any one utility, and on their collectively owning or holding no more than 20 percent of such voting securities.⁴⁹

⁴⁵ *Capital Research*, 116 FERC ¶ 61,267 at P 17.

⁴⁶ *Id.* P 20.

⁴⁷ *Id.* P 30.

⁴⁸ *See, e.g., Legg Mason*, 121 FERC ¶ 61,059 at P 22; *Capital Research*, 116 FERC ¶ 61,267 at P 20; *Horizon*, 125 FERC ¶ 61,209 at P 47.

⁴⁹ *See Capital Research*, 116 FERC ¶ 61,267 at P 6.

Capital Research's portfolio managers bought and sold voting securities on behalf of the applicant funds, which consisted of 20 domestic mutual funds and four non-U.S. mutual funds.⁵⁰ Capital Research, like Applicants, was also subject to restrictions on its activities under the Investment Advisers Act,⁵¹ the Investment Company Act,⁵² and the 1934 Act.⁵³ Similarly, the Commission conditioned the blanket authorization recently granted to Horizon Asset Management (Horizon), restricting the holdings of voting securities of any public utility or public utility holding company to less than 10 percent in an individual Horizon account, and to no more than 19.99 percent for Horizon or any affiliated entity having voting power.⁵⁴ Horizon's primary business was the management and direction of separately managed accounts owned by individuals and entities and "generally in the hands of account custodians."⁵⁵

42. Franklin's primary business segment, like those of Capital Research and Horizon, is providing investment management services to mutual funds and other collective investment vehicles. The majority of Franklin's investment management business is conducted by the Investment Management Subsidiaries on behalf of Investment Funds they manage and on behalf of individual clients. The Applicant Funds have delegated responsibility for supervising and managing the securities portfolio of that fund or account to one of the Investment Management Subsidiaries, and have also delegated to the Investment Management Subsidiaries responsibility for voting the proxies of portfolio securities, subject to board oversight in the case of the Applicant Funds. Additionally, in carrying out its responsibilities, each Investment Management Subsidiary is contractually bound to adhere to the investment objectives and policies of each Applicant Fund.

43. Applicants have failed to demonstrate how their proposal to acquire an unlimited percentage of voting securities of any particular U.S. Traded Utility will not adversely

⁵⁰ *Id.* P 2.

⁵¹ 15 U.S.C. § 80b-2, *et seq.*

⁵² 15 U.S.C. § 80a-1, *et seq.*

⁵³ 15 U.S.C. § 78a, *et seq.*

⁵⁴ *Horizon*, 125 FERC ¶ 61,209 at P 47. Horizon is an investment adviser registered with the SEC. Its primary business is the management and direction of separately managed accounts, which are owned by individuals and entities. Horizon states that it is the general partner and investment adviser of certain hedge funds and it is a sub-adviser to certain mutual funds. *Id.* P 5-6.

⁵⁵ *Id.* P 5.

affect competition. As stated above, Applicants' primary business segment is like that of Capital Research, to which the Commission granted blanket authorization with a 20 percent limit. Therefore, we will grant Applicants' request for blanket authorization, subject to a 20 percent limit on the ownership of voting securities of any one U.S. Traded Utility by each Reporting Group. Applicants concede that a 20 percent cap is unlikely to have a material adverse effect on their ability to achieve their clients' objectives.⁵⁶

44. For these reasons, and to ensure that transactions cannot harm competition, we will grant a blanket authorization under section 203(a)(2) subject to a 20 percent limit, calculated in the aggregate, on the amount of voting securities of any U.S. Traded Utility acquired by Applicants in each walled-off Schedule 13 Reporting Group, and subject to a limit of less than 10 percent on the amount of voting securities of any one U.S. Traded Utility acquired by any Applicant Fund or Investment Account.

2. Effect on Rates

45. Franklin states that the proposed transactions will have no adverse effect on the rates of wholesale or retail electric customers. Applicants state that neither Franklin nor any of its subsidiaries (including the Investment Management Subsidiaries) owns any physical electric utility assets in the United States, is in an energy-related business, or is a "public utility" or an "electric utility company" under the FPA.⁵⁷ Applicants further state that the Investment Management Subsidiaries, the Applicant Funds, and the owners of the Investment Accounts are unable to set the rates of a Utility because they cannot acquire control under the proposed conditions. Applicants also state that since the transactions will be made in public markets, there will be no effect on cost-based rates of issuers.

46. We find that the proposed transactions, as conditioned, will not adversely affect rates, because Applicants do not own any utility assets and because they lack the ability to exert operational control over a public utility and thus cannot affect rates or increase the rate base of a public utility.

3. Effect on Regulation

47. Franklin states that the proposed transaction will not have any effect on the regulation of Utilities either by the Commission or by state regulatory authorities. The

⁵⁶ Response to Deficiency Letter at 4. We note that this statement, which was made in Applicants' response to Staff's deficiency letter, referred to a 20 percent cap for each Reporting Group.

⁵⁷ Application at 2. We interpret this statement to mean that Applicants do not hold any franchised public utilities.

acquisition of Utility voting securities will not result in any change in activities or corporate structure of a Utility that might affect its jurisdictional status under federal or state law.

48. We find that the proposed transactions, as conditioned, will not affect regulation because the corporate structure and activities of public utilities will not change due to the proposed transactions.

4. Cross-subsidization

49. Franklin argues that the acquisition of securities under the requested blanket authorization will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. This is because Franklin and the Investment Management subsidiaries will be non-controlling investors in the utilities with no ability to improperly cause the utilities in which they have interests to cross-subsidize their non-utility associate companies or to pledge or encumber their assets.

50. Franklin further states in Exhibit M that the transactions under the requested blanket authorization will not result in any: (1) transfers of facilities between a traditional public utility associate company that has captive ratepayers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

51. With the attestations and conditions discussed above, we find that Applicants have met their burden of proof regarding cross-subsidization issues and the proposed transaction will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

The Commission orders:

(A) The Commission grants in part and denies in part the request for blanket authorization under section 203(a)(2), for a period of three years from the date of this order, for the Applicants now in existence and hereafter formed, without prejudice to any request to extend the authorization, as discussed in the body of the order.

(B) Transactions under the blanket authorization are subject to the terms and conditions and quarterly reporting requirements and for the purposes set forth in the application, as discussed and modified in the body of this order.

(C) The foregoing authorizations are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of costs or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Franklin is subject to audit to determine whether it is in compliance with the representations, conditions and requirements based upon which the authorizations are granted and with Commission rules, regulations and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(G) Franklin shall file with the Commission, for informational purposes, contemporaneous with filing at the SEC, the Schedule 13D and 13G filings that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13D or 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Franklin shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13D- or 13G-related compliance audits that are related to investments in public utilities. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(H) Franklin shall file with the Commission, for informational purposes, within 45 days of the end of each calendar quarter, a quarterly report of securities of U.S. Public Utilities held in connection with each Reporting Group as of the last day of the calendar quarter stated in terms of the number of shares held as of the end of the quarter and as a percentage of the outstanding shares.

(I) Franklin shall file with the Commission, within 45 days from the date of formation, notice that a new Reporting Group has been formed for the purposes authorized in this order.

(J) Franklin shall inform the Commission of any changes to Franklin's information barrier policy within 45 days of such change.

(K) Franklin shall file with the Commission, within 45 days of the end of the quarter in which a new entity is formed, notice of any new entity that is formed for the purposes authorized in this order.

(L) Franklin shall retain the records of its transactions concerning securities of U.S. Traded Utilities as required under the Investment Advisers Act of 1940.

(M) Franklin must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the request and specifying the terms and conditions under which the blanket authorization is set forth in section 33.1(c)(5) of the Commission's regulations will be available to them.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix 1

List of Investment Management Subsidiaries Provided by Applicants in Attachment 1 to their Application

1. Franklin Advisers, Inc.
2. Franklin Advisory Services, LLC
3. Franklin Investment Advisory Services, LLC
4. Franklin Mutual Advisers, LLC
5. Franklin Templeton Institutional, LLC
6. Franklin Templeton Investment Management Limited
7. Franklin Templeton Investments (Asia) Limited
8. Franklin Templeton Investments Corp.
9. Templeton Asset Management Ltd.
10. Templeton Global Advisors Limited
11. Templeton Investment Counsel, LLC

List of Applicant Funds Provided by Applicants in Attachment 2 to their Application

U.S. Applicant Funds

1. Franklin Capital Growth Fund
2. Franklin Custodian Funds
3. Franklin Investors Securities Trust
4. Franklin Mutual Recovery Fund
5. Franklin Mutual Series Funds
6. Franklin Templeton International Trust
7. Franklin Templeton Variable Insurance Products Trust

Appendix 1

U.S. Applicant Funds, continued

8. Franklin Universal Trust
9. Franklin Value Investors Trust
10. Templeton Developing Markets Trust
11. Templeton Funds
12. Templeton Global Investment Trust
13. Templeton Global Opportunities Trust
14. Templeton Global Smaller Companies Fund
15. Templeton Institutional Funds

Foreign Applicant Funds

1. Franklin Global Real Estate Fund (Canada)
2. Mutual Beacon Fund (Canada)
3. Mutual Discovery Fund (Canada)
4. Templeton Global Smaller Companies Fund (Canada)
5. Franklin Templeton Corporate Class Ltd. (Canada)
6. Templeton Growth Fund, Ltd (Canada)
7. The Templeton MPF Investment Fund (Hong Kong)
8. Franklin Templeton Investment Funds (Luxembourg)
9. Franklin Templeton Funds (UK)

Sub-Advised Funds

1. AXA Premier VIP Trust
 - Multimanager Small Cap Value Portfolio
2. EQ Advisors Trust
 - EQ Franklin Income Portfolio
 - EQ Franklin Small Cap Value Portfolio
 - EQ Mutual Shares Portfolio

Appendix 1

Sub-Advised Funds, continued

3. ING Investors Trust
 - ING Franklin Mutual Shares Portfolio
4. JNL Series Trust
 - JNL/Franklin Templeton Income Fund
 - JNL/Franklin Templeton Mutual Shares Fund
 - JNL/Franklin Templeton Small Cap Value Fund
5. USAllianz Variable Insurance Products Trust
 - AZL Franklin Small Cap Value Fund