UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 57808 / May 9, 2008

Administrative Proceedings
File No. 3-11572

In the Matter of Franklin Advisers, Inc., Respondent.	ORDER APPROVING MODIFIED DISTRIBUTION PLAN

I.

On August 2, 2004, the Commission issued an order instituting and simultaneously settling public administrative and cease-and-desist proceedings against Franklin Advisers, Inc., a registered investment adviser ("the Order"). The Order found that Franklin allowed certain parties to conduct market timing in mutual funds it advised and thereby violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 and Section 34(b) of the Investment Company Act of 1940. Among other relief, the Order required Franklin to pay $30 million in disgorgement and $20 million in civil money penalties. The total amount of $50 million was designated a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002. The Order further required that Franklin retain an Independent Distribution Consultant ("IDC") to develop a distribution plan for the $50 million that would "compensate fairly and proportionately" the shareholders in the mutual funds affected by the market timing. In September 2004, Franklin engaged retired federal judge Charles B. Renfrew as IDC.

On May 14, 2007, the Commission's Division of Enforcement submitted a proposed distribution plan to the Commission (the "Franklin Plan" or the "Plan"). In accordance with the Order, the Franklin Plan provides for the allocation and distribution of the Fair Fund, including any accrued interest, to shareholders in the affected mutual funds.

In accordance with the Commission's Rules on Fair Fund and Disgorgement Plans (the "Fair Fund Rules"), 17 C.F.R. § 201.1100, *et seq.*, the Franklin Plan proposes a Fund Administrator and sets forth, among other things, procedures for the receipt of additional funds; the methodology for allocating distributions under the Plan; categories of persons potentially

eligible to receive proceeds from the Fair Fund; and provisions for the termination of the Fair Fund.

Boston Financial Data Services ("BFDS"), proposed in the Plan as the Fund Administrator, has not posted the bond generally required of third-parties under Fair Fund Rule 1105(c). Rather, the Plan incorporates several layers of protection for the Fair Fund. Among other things, under the Plan: (1) the Fund Administrator will have no custody, and only restricted control, of the Fair Fund; (2) assets of the Fair Fund will be held by the United States Department of the Treasury, Bureau of Public Debt ("Treasury") until no more than five business days before checks or wires are transmitted to eligible investors; (3) upon transfer from Treasury, funds will be held in an escrow account until needed to satisfy a presented check or wire; (4) upon presentment of checks or wire instructions, funds will be subject to a "positive pay file" system before being honored by the escrow bank; and (5) both the escrow bank and the Fund Administrator will maintain throughout this process insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud.

On June 6, 2007, the Commission published the Franklin Plan and issued a Notice of Proposed Distribution Plan and Opportunity for Comment (Securities Exchange Act of 1934 Release No. 55688) pursuant to Rule 1103 of the Fair Fund Rules, 17 C.F.R. § 201.1103. The Notice advised interested parties that they could obtain a copy of the Plan on the Commission's website at http://www.sec.gov/ or by submitting a written request to Cary S. Robnett, Assistant Regional Administrator, United States Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. The Notice also advised that all persons desiring to comment on the Franklin Plan could submit their comments, in writing, no later than July 6, 2007.

In response to the Notice, Merrill Lynch & Co., Inc. ("Merrill Lynch") and the SPARK Institute, Inc. ("SPARK") submitted written comments, which were posted on the Commission's website. These comments recommended changes to the Plan involving alternative distribution methodologies; the treatment of omnibus accounts entitled to receive $1,000 or less; liability limitation for intermediaries that maintain omnibus accounts; confidentiality protections for client data; and providing allocation assistance and cost reimbursement to retirement plan service providers.

After careful consideration, the Commission has concluded that the Franklin Plan should be modified to give the IDC flexibility to approve alternative distribution methodologies that do not materially affect the distribution and to clarify confidentiality protections and the treatment of certain omnibus accounts, and that the Plan should be approved with such modifications. The Commission has further determined that, for good cause shown, the bond required under Fair Fund Rule 1105(c) will be waived.

II.

A. Merrill Lynch's Public Comments on the Franklin Plan

Merrill Lynch's comment letter, dated July 2, 2007, requests that the Plan provide the IDC with the ability to approve alternate distribution methodologies for financial intermediaries that maintain omnibus accounts. Merrill Lynch also suggests modifying the Plan's treatment of omnibus accounts entitled to receive $1,000 or less, and asks that the Plan provide liability limitation and indemnification to financial intermediaries. Finally, the Merrill Lynch letter requests that the Plan provide additional security and confidentiality for private client data.

1. Alternative Methodologies

Merrill Lynch notes that the Franklin Plan provides omnibus account holders with only two options for facilitating distributions from the Fair Fund to affected shareholders, without any flexibility for the IDC to approve alternative methodologies. Modifications to the Plan are appropriate to include flexibility for the IDC to approve use of a combination of both options or other alternative methodologies that do not materially affect the distribution of funds to affected shareholders. Language to this effect has been added to Sections V.B.2. and V.C.2. of the Plan.[1]

2. Modifying the Omnibus Account *De Minimis* Approach

Merrill Lynch proposes changes to the Plan's treatment of omnibus accounts eligible to receive between $10 and $1,000 in the distribution. As published for comment, Section V.C.2. of the Plan provides that for such omnibus accounts, the account holder will be paid and instructed to "use [the payment] in a manner that is consistent with its legal, fiduciary, and contractual duties, as applicable." Merrill Lynch suggests excluding these omnibus accounts from the distribution or specifically requiring that the sub-account holders be identified and paid. Merrill Lynch also asserts that omnibus account holders that receive payments of $1,000 or less cannot use such sums in a way that is both consistent with the Plan and commercially reasonable.

Omnibus account holders should be able to use such payments in a manner that is both consistent with their duties and commercially reasonable given the amount of the payment and the costs of allocating it. To clarify the obligations of the account holders, Sections V.B.2. and V.C.2. of the Plan have been modified to not only instruct account holders to use such payments consistent with their duties, but also in a manner that is "commercially reasonable."[2]

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[1] Though not specifically suggested by Merrill Lynch, the new language applies to both "Other Omnibus Accounts" and "Intermediary-Held Individual Accounts" under the Plan. The new language does not apply to "Retirement Plan Accounts" under the Plan.

[2] As with alternative distribution methodologies, this new language applies to both "Other Omnibus Accounts" and "Intermediary-Held Individual Accounts" under the Plan but not to "Retirement Plan Accounts."

3. Limitation of Liability

Merrill Lynch suggests that the Franklin Plan contain a clause limiting the liability of financial intermediaries in facilitating the distribution. Neither the Commission nor the IDC has authority to expand or contract the liability of financial intermediaries. If a financial intermediary is subject to any liability, that is because of the intermediary's relationship with its client.

4. Confidentiality

Finally, Merrill Lynch is concerned that the transmission of private client information (including name, address, and social security number) will expose financial intermediaries to regulatory and reputational risks if the information is mishandled, disclosed, or distributed in an unauthorized manner. Merrill Lynch suggests that the Franklin Plan contain security and confidentiality obligations and provide indemnification of financial intermediaries for misuse or loss of client data. Modifications are appropriate to more clearly state that BFDS will keep confidential the shareholder identifying information it receives from intermediaries under the Plan and will require its service providers to do the same. Language to this effect has been added to Sections V.B.2. and V.C. of the Plan.

B. SPARK's Public Comments

SPARK submitted a comment letter dated July 6, 2007. The letter describes SPARK as an organization whose members "include the retirement plan service providers that will be responsible for reconstructing accountholder balance information, making certain allocations, receiving distributions, and making distributions to plan participants who are the intended beneficiaries of a substantial portion of the distribution at issue." SPARK requests that the Franklin Plan be modified to provide that retirement plan service providers be reimbursed for their costs of allocating and distributing funds they receive under the Plan. Consistent with previously approved plans, the Franklin Plan does not offer such reimbursement, but does provide service providers with several cost-effective alternative methodologies they may use to allocate and distribute funds. The SPARK letter also asks that BFDS perform the task of allocating distribution proceeds among retirement plans. The Franklin Plan already provides a cost-effective method that service providers may use to perform such an allocation. The Plan has not been modified in response to SPARK's comments.

C. Clarification of Dispute Procedures

As published for comment, Section V.H. of the Plan addressed the manner of handling disputes. The Commission has determined that the Plan should address dispute procedures with more specificity, and language has been added to Section V.H. for this purpose.

D. The Bond Requirement of Fair Fund Rule 1105(c)

Fair Fund Rule 1105(c) provides:

> *Administrator to Post Bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

17 C.F.R. § 201.1105(c). The Commission believes that the risk protection provisions of the Franklin Plan, generally included in Sections V.D., V.G., and V.I. of the Plan, and the high cost of bond coverage, suffice to constitute good cause for waiving the posting of the bond under Rule 1105(c).

Accordingly, IT IS ORDERED that:

A. Pursuant to Rule 1104 of the Fair Fund Rules, 17 C.F.R. § 201.1104, the Franklin Plan is modified as described above, and approved with such modification;

B. Boston Financial Data Services is appointed as the Fund Administrator; and

C. The bond requirement of Rule 1105(c) of the Fair Fund Rules, 17 C.F.R. 201.1105(c), is waived for good cause shown.

By the Commission.

Nancy M. Morris
Secretary