SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2668; 803-184]

Franklin Portfolio Associates, LLC; The Hirtle Callaghan Trust; Notice of Application

October 3, 2007

Agency: Securities and Exchange Commission ("SEC" or "Commission").

Action: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicants: Franklin Portfolio Associates, LLC ("Franklin"); The Hirtle Callaghan Trust ("Trust"); together ("Applicants").

Relevant Advisers Act Sections: Exemption requested under section 206A of the Advisers Act from section 205 of the Advisers Act and Advisers Act rule 205-1.

Summary of Application: Applicants request an order permitting Franklin to charge a performance fee based on the performance of that portion of a Trust portfolio managed by Franklin ("Franklin Account"). Applicants further request that the order permit them to compute the performance-related portion of the fee using changes in the Franklin Account's gross asset value rather than net asset value.

Filing Dates: The application was filed on July 7, 2005, and amended and restated on August 3, 2006 and October 1, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission's orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 29, 2007, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for

lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, Franklin Portfolio Associates, LLC, c/o David Dirks, One Boston Place, 29th Floor, Boston, Massachusetts 02108; The Hirtle Callaghan Trust, c/o Rhonda Fell, Five Tower Bridge, 300 Barr Harbor Drive, Suite 500, West Conshohocken, PA 19428.

For Further Information Contact: David W. Blass, Assistant Director, or Vivien Liu, Senior Counsel, at (202) 551-6787 (Office of Investment Adviser Regulation, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicant's Representations:

1. Franklin is an investment adviser registered under the Advisers Act. The Trust is an open-end management investment company registered under the Investment Company Act of 1940. The Trust was organized in 1994 by Hirtle, Callaghan & Co. ("Hirtle Callaghan"), an investment adviser registered under the Advisers Act. The Trust is a series company that currently consists of several separate investment portfolios. Shares of the Trust are available only to clients of Hirtle Callaghan or clients of financial intermediaries, such as investment advisers that are acting in a fiduciary capacity with investment discretion and that have established relationships with Hirtle Callaghan.

2. Hirtle Callaghan serves as a "manager of managers" for the Trust. Hirtle Callaghan is responsible for monitoring the overall investment performance of the Trust's portfolios and the performance of the portfolio managers that manage the Trust's portfolios. Hirtle Callaghan may also from time to time recommend that the Trust's Board of Trustees (the "Board") retain additional portfolio managers or terminate existing portfolio managers. Authority to select new portfolio managers and reallocate assets among the portfolio managers, however, resides with the Trust's Board.

3. Franklin is one of five investment advisers that provide portfolio management services to the Small Capitalization Equity Portfolio ("Portfolio") of the Trust. Each of these advisers is responsible for the management of a discrete portion of the Portfolio's assets on a day-to-day basis. In doing so each acts as though it were advising a separate investment company. Percentage limitations on investments are applied to each portion of the Portfolio without regard to the investments in the other advisers' portions of the Portfolio. When each adviser receives information about portfolio positions from the Trust or its custodian, the adviser generally receives only information about the portion of the Portfolio assigned to it, and not information about the positions held by the Portfolio as a whole. Each adviser generally is responsible for preparing reports to the Trust and the Board only with respect to its discrete portion of the Portfolio.

4. Franklin is not affiliated with Hirtle Callaghan, the Trust or any other investment advisory organization that provides portfolio management and services to the Trust. Services provided to the Trust by Franklin are limited to investment selection for the Franklin Account, placement of transactions for execution, and certain compliance functions directly related to such services. Franklin and its affiliates do not act as a distributor or sponsor for the Trust or Portfolio. No member of the Trust's Board is affiliated with Franklin.

5. Franklin currently receives a fee at the annual rate of 0.40 percent of the average daily net asset value of the Franklin Account, payable monthly. On August 26, 2004 the Trust's Board approved an amendment to the portfolio management agreement between Franklin and the Trust under which the existing fee structure would be replaced with a fee structure that includes a performance component ("Proposed Amendment"). On October 25, 2004 the shareholders of the Portfolio approved the Proposed Amendment. The Proposed Amendment would become effective on the first day of the month following receipt of an order from the Commission approving the application. Franklin's fee would be adjusted to reflect the performance of the Franklin Account only after the Proposed Amendment has been in effect for 12 months (the "Initial Period").

6. Under the Performance Fee Amendment, Franklin's fee for each of the first three quarters of the Initial Period, would consist of a fee ("Base Fee") computed by multiplying the average daily net assets of the Franklin Account for that quarter by the Designated Applicable Fee Rate, dividing the product by 365 and multiplying the resulting amount by the number of days in the quarter. The Designated Applicable Rate is: 0.40 percent for quarters when the average assets of the account are less than $100 million, or 0.35 percent for quarters when the average assets of the account are equal to or greater than $100 million. [1]

For the fourth quarter of the Initial Period, Franklin would receive a fee equal to the Designated Applicable Rate applied to the average daily net assets of the Franklin Account for the fourth quarter, divided by 365 and then multiplied by the number of days in that quarter plus or minus a Performance Component multiplied by the average daily net assets of the Account for the

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[1] Expressed mathematically, the Base Fee is calculated as follows: {[("Designated Applicable Rate")(average daily net assets)] / X} x N, where "X" = the number of days in the preceding 12 month period and "N" = the number of days in the quarter. The average daily net assets are calculated over the preceding quarter during the first three quarters of the initial period and over the preceding 12 month period thereafter.

Initial Period. The Performance Component for the Initial Period would be calculated by (a) computing the difference between (i) the total return of the Franklin Account without regard to expenses incurred in the operation of the Franklin Account ("Gross Total Return") during the Initial Period, and (ii) the return of the Russell 2000 Index during the Initial Period plus 0.40 percent; and (b) multiplying the resulting factor by 10 percent.

7. For each quarterly period subsequent to the Initial Period, Franklin would be entitled to receive quarterly payments of the Base Fee (approximately 0.10 percent or 0.0875 percent (10 or 8.75 basis points), respectively, depending upon the level of assets of the Franklin Account, as detailed above) of the average daily net assets of the Franklin account plus or minus 25 percent of the Performance Component multiplied by the average daily net assets of the Franklin Account for the immediately preceding 12 month period, on a "rolling basis."[2] The Performance Component for such subsequent periods would be calculated by (a) computing the difference between (i) the Gross Total Return of the Franklin Account during the immediately preceding 12 month period and (ii) the return of the Russell 2000 Index during such period plus the Designated Applicable Rate; and (b) multiplying the resulting factor by 10 percent.

8. None of the expenses of the Portfolio, including the advisory fee paid to Franklin, would be deducted from the performance of the Franklin Account for purposes of calculating the Gross Total Return. However, the Gross Total Return would reflect the effect (i.e., reducing performance) of all applicable brokerage and transaction costs.

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[2] "Rolling Basis" means that, at each quarterly fee calculation, the Gross Total Return of the Franklin Account, the Index Return and the average daily net assets of the Franklin Account for the most recent quarter will be substituted for the corresponding values of the earliest quarter included in the prior fee calculation. Both the Base Fee and the Performance Component are calculated based on the same rolling period as described in this footnote and the accompanying text.

9. The maximum annual fee payable under the Performance Fee Amendment would not exceed 0.70 percent (70 basis points) with respect to any 12-month period when assets of the Franklin Account are less than $100 million (or 0.60 percent (60 basis points) with respect to any 12-month period when quarterly assets of the Franklin Account in each quarter are equal to or in excess of $100 million) and cannot exceed 0.175 percent (17.5 basis points), for any calendar quarter when assets of the Franklin account are less than $100 million (or 0.15 percent (15 basis points), for any calendar quarter when assets of the Franklin account are equal to or more than $100 million). Franklin is guaranteed a minimum annual fee of 0.10 percent (10 basis points).

10. Because no performance adjustment will be paid until the end of the Initial Period, it is possible that payments of the Base Fee made to Franklin during the first 9 months may exceed the appropriate performance adjusted fee if the Performance Component has been negative. In the event of such an occurrence, the Proposed Amendment provides a "recoupment feature" pursuant to which advisory fees payable to Franklin will be reduced until the difference between the aggregate quarterly fees received by Franklin with respect to the Initial Period and the performance adjusted fee is fully recouped by the Trust. However, if the portfolio management agreement with Franklin is terminated before any recoupment has been fully accounted for, the Trust would not be able to recoup any outstanding excess that had been paid in previous quarters.

Applicants' Legal Analysis:

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company and certain other persons a fee that

is based on asset value of the company or fund under management averaged over a specified period and increases and decreases "proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation or order may specify."

3. Rule 205-1 under the Advisers Act requires that the investment performance of an investment company be computed based on the change in the net (of all expenses and fees) asset value per share of the investment company.

4. Applicants request exemptive relief from section 205 of the Advisers Act and rule 205-1 thereunder to permit them to (i) apply the proposed fee only to the Franklin Account and not to the Portfolio as a whole, and (ii) compute the Performance Component measured by the change in the Franklin Account's gross asset value, rather than the change in its net asset value.

5. Applicants state that Congress, in adopting and amending section 205 of the Advisers Act, and the Commission, in adopting rule 205-1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the Commission required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that, unlike traditional performance fee arrangements, Franklin would not receive the Performance Component of its fee unless its management of the Franklin Account has resulted in performance in excess of the Index performance plus a "performance hurdle" equal to the Designated Applicable Rate. Applicants assert that increasing the performance

of the Index by the above stated hurdle would have an effect similar to deducting Franklin's fees. In the event the base fee changes, the performance hurdle also would be changed to match the Base Fee. Applicants state that since the fee structure contains a performance hurdle, the Portfolio's shareholders will have protections similar to those contemplated by the net asset value requirement of rule 205-1.

8. Applicants suggest that Congress' concern, in enacting the safeguards of section 205, came about because the vast majority of investment advisers exercised a high level of control over the structuring of the advisory relationship. Applicants state that the proposed fee, however, was negotiated actively at arm's-length between the Trust and Franklin. Applicants state that Franklin has little, if any, influence over the overall management of the Trust or the Portfolio beyond stock selection, and does not control the Portfolio or the Trust. Management functions of the Trust and the Portfolio reside in the Trust's Board. The Trust is directly and fully responsible for supervising the Trust's service providers and monitoring expenses of each of the Trust's portfolios. The Trust's Board is responsible for allocating the assets of the several portfolios among the portfolio managers. Neither Franklin nor any of its affiliates sponsored or organized the Trust, or serves as a distributor or principal underwriter of the Trust. Franklin and its affiliates do not own any shares issued by the Trust. No officer, director or employee of Franklin, nor any of its affiliates, serves as an executive officer or director of the Trust. Neither Franklin nor any of its affiliates is an affiliated person of Hirtle Callaghan or any other person who provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation may exist by reason of Franklin or any of its affiliates serving as investment adviser to the Trust). No member of the Trust's Board is affiliated with Franklin.

9. Applicants state that the proposed fee arrangement satisfies the purpose of rule 205-1 because it was negotiated at arms-length and the Trust, for the reasons stated in the previous paragraphs, does not need the protections afforded by calculating a performance fee based on net assets. Applicants argue that the proposed fee arrangement is therefore consistent with the underlying policies of section 205 and rule 205-1 under the Advisers Act and that the exemption would be consistent with the protection of investors.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. If the Base Fee changes, the performance hurdle will be changed to match the Base Fee and to ensure that the investment advisory fee continue to have the potential to increase and decrease proportionately.

2. To the extent Franklin relies on the requested order with respect to advisory arrangements with other investment companies that it advises, those arrangements will meet the following requirements: (i) the investment advisory fee will be negotiated on an arm's-length basis between Franklin and the investment company or its primary investment adviser; (ii) the fee structure will contain a performance hurdle that is, at all times, no lower than the base fee; and should the base fee change, the hurdle also will be changed to match the base fee and to ensure that the investment advisory fee continues to have the potential to increase and decrease proportionally; (iii) neither Franklin nor any of its affiliates will serve as distributor or sponsor of the investment company; (iv) no member of the board of the investment company will be affiliated with Franklin or its affiliates; (v) neither Franklin nor any of its affiliates will organize the investment company; (vi) neither Franklin nor any of its affiliates will be an affiliated person of any primary adviser to

the investment company or of any other person who provides advice with respect to the investment company's advisory relationships (except to the extent that Franklin and/or its affiliates may be affiliated with another portfolio manager by virtue of the fact that Franklin or the affiliate serves as a portfolio manager to the investment company or to another investment company); and (vii) other than described in this application, the Applicants will comply with section 205 and rules 205-1 and 205-2 under the Advisers Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris
Secretary