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FRANKLIN
TEMPLETON

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Via Internet: https://www.sec.gov/rules/concept.shtml

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

Subject: Concept Release on Harmonization of Securities Offering Exemptions (File No. S7-08-19; 84 Fed. Reg. 30460; SEC Rel. Nos. 33-10649; 34-86129; IA-5256; IC-33512) (June 18, 2019)

Dear Ms. Countryman:

Franklin Resources, Inc. appreciates the opportunity to comment on the Securities and Exchange Commission's ("Commission") Concept Release on Harmonization of Securities Offering Exemptions. The Concept Release solicits public comments on exemptions from registration under the Securities Act of 1933 to identify ways to simplify, harmonize and improve the exemption framework in order to promote investment opportunities, while maintaining appropriate investor protections.

Franklin Resources, Inc. is a global investment management organization operating as Franklin Templeton ("Franklin"). Headquartered in San Mateo, California, we employ over 9,500 people and have offices in 35 countries. Our common stock is listed on the New York Stock Exchange under the ticker symbol BEN and is included in the Standard & Poor's 500® Index. As of August 31, 2019, Franklin had assets under management of over $690 billion.

Franklin is a global provider of products and services to retirement clients, and manages over $200 billion in assets in the U.S. for individuals saving for retirement through defined contribution plans, defined benefit plans, IRAs and variable annuity products. Through our registered funds, collective investment trusts and other private vehicles, separate accounts, education tools and research information, Franklin is dedicated to the investment needs of the U.S. retirement community during all phases of the retirement savings and distribution cycles. Franklin is committed to partnering with the entire retirement community – plan sponsors, plan consultants and advisers, and financial advisers to plan participants and IRA owners – to ensure that it offers products and services that meet the needs of investors saving for and in retirement. We therefore welcome the Commission's efforts to make private funds more accessible to retirement clients and other long-term investors.

Franklin, both directly and as a member of the Investment Adviser Association ("IAA"), American Bankers Association ("ABA") and the Coalition of Collective Investment Trusts ("CIT Coalition"), supports the Commission's efforts to ensure that retirement investors have access to appropriate products and services to achieve their investment goals. We write today to endorse the comment letters of these groups with respect to the definition of "qualified institutional buyer" ("QIB") in Rule 144A, to discuss the retail demand for private fund investments and to express support for the ability to offer registered closed-end funds of private funds to non-accredited investors.

Franklin has a long history of product innovation for retail investors and retirement savers. For example, the Franklin Preferred Stock Fund was established in 1946, and Franklin Income Fund, one of the first multi-asset income focused funds, launched in 1948. Throughout the 1980's and 1990's, we launched a suite of Tax-Free Income Funds as well as various emerging markets equity and fixed income mutual funds. As more capital and economic growth-driving activities move toward the private markets, we want to continue our tradition of "democratizing" complex investments and making them available to retail investors.

Definition of Qualified Institutional Buyer in Rule 144A

In order for a collective investment trust ("CIT") to be considered a QIB under Rule 144A, it may not include as participants individual retirement accounts or H.R. 10 plans[1] (also known as "Keogh plans"[2]). For the reasons discussed in the comment letters submitted by the IAA, ABA and the CIT Coalition, we believe there is no policy reason for excluding Keogh plan investors in a QIB-qualified CIT. Accordingly, we urge the Commission to amend the definition of QIB in 17 CFR 230.144A(a)(1)(i)(F) to reference any trust fund whose trustee is a bank or trust company and that relies on Section 3(c)(11) of the Investment Company Act, and also to remove the language discussing the look through to underlying investors. In addition, in our view CITs should be able to qualify as QIBs using the "family of investment companies" test that is available to registered investment companies under Rule 144A(a)(1)(iv). We believe banks and trust companies are sophisticated enough to take advantage of this "family" approach, and not permitting this approach puts CITs at a competitive disadvantage and unfairly limits the investment opportunities of the CITs. Therefore, we recommend the Commission amend 17 CFR 230.144A(a)(1)(i)(F) to permit a similar "family" approach for CITs.[3]

[1] 17 CFR 230.144A(a)(1)(i)(F) provides that a qualified institutional buyer includes "any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (a)(1)(i)(D) or (E) of this section, except trust funds that include as participants individual retirement accounts or H.R. 10 plans."

[2] Keogh plans are qualified retirement plans for self-employed individuals for their own benefit and their employees.

[3] As noted in the Concept Release, Rule 144A provides a non-exclusive safe harbor for unregistered resales of certain restricted securities to QIBs. Although not an issue with respect to U.S. retail demand for private fund investments,we note that Rule 144A is written from a U.S. perspective and does not cover many non-U.S. entities that would be considered QIBs if they were organized under

Retail Demand for Private Fund Investments

We believe there is demand among retail investors, including retirement savers and their financial advisers, for investments in private equity funds and other private funds. Further, the inclusion of private fund investments in retirement plans and retail investment portfolios could improve the risk/reward profile of those plans and portfolios and provide greater opportunities for retail investors to diversify their investments. Indeed, some of the outperformance of private defined benefit plans versus private defined contribution plans could be attributable to the fact that defined benefit plans invest in private equity and other alternative investments, while defined contribution plan participants generally have not had the opportunity to do so.[4] In addition, plan participants seeking a diversified portfolio could benefit from having some exposure to exempt offerings, as such securities may have investment returns that are less correlated to the broader markets.

Longer-term, more illiquid investments may be appropriate for investors with a longer time horizon who are focused on accumulating assets to support retirement. To do this responsibly, we believe it is important to provide professional management and to include the allocation to illiquid private fund investments within the context of a broadly diversified portfolio. However, our ability to offer innovative products that would be responsive to this demand has been stymied by existing regulatory restrictions, including the Commission staff position requiring that registered closed-end funds that invest more than 15% of their assets in private funds be sold only to accredited investors.[5]

U.S. law. For example, sovereign wealth funds and non-U.S. pension funds do not technically fall within the QIB definition despite the fact that they may represent billions of dollars in assets. Although Regulation S may be available to such non-U.S investors in certain offerings, not all issuances provide for a Regulation S tranche. In addition, the non-U.S. investor may prefer the QIB tranche over the Regulation S line if it believes the QIB tranche offers more liquidity. As a result, we recommend the Commission consider expanding the language of Rule 144A to cover non-U.S. entities with structures that are substantially equivalent to the U.S. structures currently provided for under the Rule.

[4] *See* Partners Group, *Adding private markets to DC pension plan portfolios – a case study* 3 (Jan. 2017) ("For decades, investments in private markets have been a performance driver for defined benefit (DB) pension plans. However, despite their positive contribution to DB returns, they have not yet been widely adopted as a component of an investment strategy for defined contribution (DC) pension plans.") *available at* https://www.partnersgroup.com/fileadmin/user_upload/Documents/Research_PDF/20170123_Adding_private_markets_to_DC_pension_plan_portfolios.pdf; Committee on Capital Markets Regulation, *Expanding Opportunities for Investors and Retirees: Private Equity* 50 (Nov. 2018) ("One critical difference between private DB plans and private DC plans is that private DB plans invest in private equity, among other alternative investments, whereas private DC plans generally do not . . . private equity funds are likely contributing to the relative outperformance of private DB plans over private DC plans.") *available at* https://www.capmktsreg.org/wp-content/uploads/2018/10/Private-Equity-Report-FINAL-1.pdf

[5] *See, e.g.*, Wildermuth Endowment Strategy Fund, SEC Comment Response Letter (Dec. 17, 2014) *available at* https://www.sec.gov/Archives/edgar/data/1586009/000114420414074464/filename1.htm. In the Concept Release, the SEC states its "understanding" that "all closed-end funds that invest primarily in private funds are offered only to investors who meet certain wealth requirements (*e.g.*, the tests for

In order to allow fund sponsors to offer registered closed-end funds of private funds to non-accredited investors, the Commission should eliminate this staff position. Investment through a registered closed-end fund would make it easier for non-accredited investors to build a diversified portfolio of private fund investments by relying on a professional manager to perform due diligence and portfolio construction with respect to underlying private funds. Further, investment through a registered closed-end fund would give non-accredited investors the protections of the Investment Company Act of 1940 and the Securities Act, including oversight of the fund and its manager by an independent board of directors and robust disclosure of investment risks.

Because registered closed-end funds of private funds already exist (albeit, limited to accredited investors), many of the legal and regulatory issues (e.g., valuation, liquidity, disclosure, etc.) have been considered and addressed under the Investment Company Act. Firms like Franklin have the experience and capabilities to manage these funds and the distribution networks to deliver these products to retail investors.[6]

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Based on our views as well as those of the industry groups that we support, we urge the Commission to consider these comments and take appropriate action for the benefit of retirement savers. Thank you for your consideration.

Sincerely,

Craig S. Tyle
Executive Vice President and General Counsel

accredited investor), and require significant minimum initial investments," but did not identify how closed-end funds came to adopt the described practice or the 15% limitation.

[6] Regulation Best Interest established an enhanced standard of conduct for broker-dealers requiring that they only recommend financial products to their customers that are in their customers best interests, and clearly identify any potential conflicts of interest and financial incentives the broker-dealer may have with those products. This new standard will help ensure that recommendations made to retail investors, including with respect to registered closed-end funds of private funds discussed above, are in the investors' best interests.