

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c.S.5, as amended**

- and -

FRANKLIN TEMPLETON INVESTMENTS CORP.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated February 28, 2005, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act* (the “Act”), it is in the public interest for the Commission to make an order approving the settlement agreement entered into between Staff of the Commission and the respondent, Franklin Templeton Investments Corp. (“Franklin Templeton”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) recommends settlement with Franklin Templeton (also referred to hereafter as the “Respondent”) in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “B” on the basis of the facts set out in Part IV herein.

3. The terms of this settlement agreement, including the attached Schedule “A” and “B” (collectively, the “Settlement Agreement”) will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

4. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the Commission under the Act (subject to paragraph 28) or any civil or other

proceedings which may be brought by any other person or agency. No other person or agency may raise or rely upon the terms of this Settlement Agreement or any agreement to the facts stated herein whether or not this Settlement Agreement is approved by the Commission.

IV. AGREED FACTS

a) The Respondent

5. Franklin Templeton is registered in Ontario as a mutual fund dealer and adviser, and is responsible for the management of approximately 90 mutual funds (“Franklin Templeton Funds”) with mutual fund assets under management of approximately \$18.6 billion (as of October 31, 2004).

b) The Fund Manager’s Duty

6. A mutual fund manager is required by Ontario securities law to exercise the powers and discharge the duties of its office honestly and in good faith and in the best interests of the mutual fund and, in connection therewith, to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Compliance with this duty requires that a mutual fund manager have regard to the potential for harm to a fund from an investor seeking to employ a frequent trading market timing strategy and take reasonable steps to protect a mutual fund from such harm to the extent that a reasonably prudent person would have done in the circumstances.

c) Background

7. In November 2003, the Commission, in co-operation with the Investment Dealers’ Association of Canada and the Mutual Fund Dealers Association of Canada, began an inquiry into potential late trading and market timing in the Canadian mutual fund industry. The inquiry involved 105 Canadian mutual fund companies, and was carried out in three phases. The inquiry was completed in December 2004, and involved a number of mutual fund managers. Franklin Templeton has cooperated fully in the Commission’s inquiry.

8. In its review of Franklin Templeton, Staff found no evidence of late trading occurring in Franklin Templeton Funds. Staff has not found any evidence of market timing by any insiders of Franklin Templeton or any evidence of ongoing market timing activity in Franklin Templeton Funds. The following facts relate exclusively to market timing by certain third party investors in Franklin Templeton Funds.

d) Market Timing: Cause and Effect

9. Market timing involves short-term trading of mutual fund securities to take advantage of short-term discrepancies between the “stale” values of securities within a mutual fund’s portfolio and the current market value of those securities. Stale values can

occur in mutual fund portfolios comprised, in whole or in part, of non-North American foreign equities (e.g. European, Asian and International and Global funds, also referred to herein as “foreign funds”). Stale values of those securities may result in stale values of the units of a mutual fund as a result of the way in which the net asset value (“NAV”) of most mutual funds is calculated for the purpose of determining the price at which an investor may purchase or redeem (buy or sell) a unit of the fund.

10. The price of a mutual fund, in accordance with industry practice and as described in the mutual fund’s Annual Information Form, is calculated at the close of each trading day (4:00 p.m. ET) by adding together the value of the assets of the fund (based on the most recent closing market price of securities in the fund’s portfolio), less any liabilities, and dividing that amount (the NAV) by the number of units held by investors in the fund on that day. Any order to purchase or sell a unit of the fund received by the order receipt office of the fund in good order prior to 4:00 p.m. ET will be executed at the NAV per unit calculated as of 4:00 p.m. that day. Any order to purchase or sell a unit of the fund received by the order receipt office of the fund in good order after 4:00 p.m. ET will be executed at the NAV per unit determined at 4:00 p.m. ET the following day.

11. The securities in a fund’s portfolio are each valued on the basis of their most recent closing market price as of 4:00 p.m. ET (the time at which North American markets close) on the day for which the NAV is being calculated. The closing market price of a foreign equity trading on an Asian market (which closed at 1:30 a.m. ET, for example) will have been determined 14.5 hours prior to the calculation of the foreign fund’s NAV. Similarly, the closing market price of a foreign equity trading on a European market (which closed at 12 noon ET, for example) will have been determined 4 hours prior to the calculation of the foreign fund’s NAV. Due to this lapse of time, the closing market price of the foreign equity used for the purpose of calculating the NAV of the fund may be “stale” and therefore the NAV of the foreign fund (and the unit price of the fund) calculated on the basis of that closing market price may also be “stale.”

12. There is a strong correlation between price movements of equities on North American markets (as reflected in movements in the S&P 500 index, for example) on one day and price movements of equities on foreign markets on the following trading day. Due to the time at which the foreign markets close, the price of foreign equities held in the portfolio of a foreign fund, and therefore the price of the foreign fund, will not reflect this pricing correlation until the following trading day.

13. A market timer will attempt to take advantage of the difference between the “stale” value and an expected price movement of the foreign fund the following day by trading in anticipation of those price movements. Portfolios that are known to have a material component of foreign equities that are traded outside of North American time zones and that trade with a strong correlation with broad trends in price movements of equities on North American markets on the preceding day, afford the most advantageous opportunities to investors using a market timing strategy.

e) The Harm Caused by Market Timing of Mutual Funds

14. When certain investors engage in frequent trading market timing in foreign funds, and when those investors are not required to pay a proportionate fee to the fund, the economic interest of long-term unitholders of these foreign funds is adversely affected. Significant harm may be incurred by a fund in which frequent trading market timing occurs. Any such harm would be borne by all investors in the fund. In addition to dilution¹, market timing in a fund also may result in certain inefficiencies in that fund. Those inefficiencies, which will vary depending upon the particular fund, may involve increased transaction costs and disruption of a fund's portfolio management strategy (including the maintenance of cash or cash equivalents and/or monetization of investments to meet redemption requirements) and may impair a fund's long-term performance.

f) The Disclosure of Franklin Templeton Simplified Prospectus and AIF

15. Specific statements contained in the Prospectuses and AIFs filed by Franklin Templeton for the years 1999 to 2003 (although not identical from year to year) disclosed that Franklin Templeton could take certain steps, including the right to limit switches between Franklin Templeton Funds and to impose a short term trading fee of up to 2% in circumstances where an investor seeks to redeem units of a Franklin Templeton Fund within 90 days of having purchased the units. Beginning in 2002, the Prospectuses and AIFs of certain Franklin Templeton Funds disclosed that Franklin Templeton reserved the right to charge a short-term trading fee of up to 2 percent in the following circumstances: (a) where an investor requests a switch out of any Franklin Templeton Fund within two weeks of an earlier request to switch out of any Franklin Templeton Fund; (b) where an investor switches units out of any Franklin Templeton Fund more than twice within a rolling 90-day period; and (c) where an investor appears to be following a market timing pattern that may adversely affect a Franklin Templeton Fund.

g) Market Timing in Franklin Templeton Funds

16. Three institutional investors holding accounts in Franklin Templeton Funds have been identified as having profited as a result of frequent trading market timing strategies that were pursued in certain of the Franklin Templeton Funds (the "Relevant Funds") in the period from February 1999 to February 2003 (the "Market Timing Traders"). The Market Timing Traders traded in the Franklin Templeton Funds through one or more Canadian investment dealers. Franklin Templeton did not place limits on the frequent trading market timing activity of the Market Timing Traders. There was no public disclosure by Franklin Templeton that the Market Timing Traders were permitted to conduct frequent trading market timing in the Relevant Funds.

¹ Dilution of a fund's value caused by market timing may be calculated by taking the percentage difference between the fund's stale price and current market value multiplied by the amount invested.

17. Other investors that had engaged in market timing strategies in certain Franklin Templeton Funds for short periods of time were prohibited by Franklin Templeton from continuing the frequent trading market timing activity.

18. On November 25, 2002, Franklin Templeton advised the Market Timing Traders that they must cease their frequent trading market timing activity by January 31, 2003. In the period between November 25, 2002 and January 31, 2003, Franklin Templeton placed limits on the capital that the Market Timing Traders could use for short term trading in the Relevant Funds. The Market Timing Traders redeemed their positions in February 2003.

19. In the period February 1999 to February 2003:

- the total profit realized in Franklin Templeton Funds by the Market Timing Traders was approximately \$120.8 million (not all of the profit realized by the Market Timing Traders was from frequent trading market timing transactions, and the profit realized by the Market Timing Traders does not equate to harm to other investors in the Franklin Templeton Funds);
- the Market Timing Traders achieved a return on their overall investment in the Relevant Funds that was significantly higher than the return that long-term investors would have achieved on their investments in the Relevant Funds in the same period;
- in connection with the trading by the Market Timing Traders, Franklin Templeton charged management fees to the Relevant Funds of approximately \$4.6 million (net of trailer fees paid to Canadian investment dealers and other expenses, Franklin Templeton earned approximately \$1.5 million on those management fees); and
- no fees were charged by Franklin Templeton to the Market Timing Traders.

20. Although Franklin Templeton prohibited others from conducting frequent trading market timing activity, in allowing the Market Timing Traders to engage in frequent trading market timing, Franklin Templeton did not implement appropriate measures to protect the Relevant Funds against the harm arising from frequent trading market timing activity.

V. THE RESPONDENT'S POSITION

21. Franklin Templeton's current monitoring of trades in Franklin Templeton Funds indicates that the policies and procedures that have been implemented have served to eliminate any potential adverse impact of frequent trading market timing.

VI. CONDUCT CONTRARY TO THE PUBLIC INTEREST

22. Although Franklin Templeton prohibited others from conducting frequent trading market timing activity, in allowing the Market Timing Traders to engage in frequent trading market timing, Franklin Templeton failed to protect fully the best interests of the Relevant Funds in respect of the frequent trading market timing. The conduct of Franklin Templeton in failing to protect fully the best interests of the Relevant Funds in respect of the frequent trading market timing was contrary to the public interest.

VII. TERMS OF SETTLEMENT

23. Franklin Templeton agrees that, as a term of settlement, it will make a payment in the amount of \$49.1 million to be distributed to Affected Investors (as defined in Schedule “A” to this agreement) through the distribution mechanism referred to in Schedule “A” to this agreement, and in accordance with the terms and conditions specified in Schedule “A” to this agreement.

VIII. STAFF COMMITMENT

24. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Franklin Templeton or its affiliates in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 28 below.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

25. Approval of this Settlement Agreement shall be sought at a hearing of the Commission on a date agreed to by counsel for Staff and Franklin Templeton.

26. Staff and Franklin Templeton may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and Franklin Templeton also agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Franklin Templeton in this matter, and Franklin Templeton agrees to waive its rights to a full hearing, judicial review or appeal of the matter under the Act.

27. Staff and Franklin Templeton agree that if this Settlement Agreement is approved by the Commission, neither Staff nor Franklin Templeton will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict Franklin Templeton from making full answer and defence to any civil proceedings against it.

28. If this Settlement Agreement is approved by the Commission and, at any subsequent time, Franklin Templeton fails to honour any of the Terms of Settlement set out in Part VII herein, Staff reserve the right to bring proceedings under Ontario securities law against Franklin Templeton based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

29. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedule "B" is not made by the Commission, each of Staff and Franklin Templeton will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this Settlement Agreement or the settlement negotiations.

30. Whether or not this Settlement Agreement is approved by the Commission, Franklin Templeton agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the Commission of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

X. DISCLOSURE OF AGREEMENT

31. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of both Franklin Templeton and Staff or as may be required by law.

32. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

XI. EXECUTION OF SETTLEMENT AGREEMENT

33. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
34. A facsimile copy of any signature shall be effective as an original signature.

Dated this 28th day of February, 2005.

“Brad Beuttenmiller”
Witness

”Donald F. Reed”
**FRANKLIN TEMPLETON
INVESTMENTS CORP.**

” Michael Watson”
Staff of the Ontario Securities Commission
Per: “Michael Watson”
Director, Enforcement Branch

SCHEDULE A

PLAN OF DISTRIBUTION

The following terms pertain to the payment made pursuant to paragraph 23 of the Settlement Agreement. Terms defined in the Settlement Agreement and used in this Schedule have the meanings ascribed thereto in the Settlement Agreement:

1. Respondent shall make a payment in the amount of \$49.1 million (the "Funds"), plus interest accruing from the date of approval of the settlement agreement to the date of the final approval referred to in subparagraph (ix), at the rate of 5% per annum, to the unitholders (including former unitholders) of the Relevant Funds that suffered harm from the frequent trading market timing activities described in the Settlement Agreement (the "Affected Investors"), on the following terms:
 - (i) Respondent shall, prior to the commencement of the hearing contemplated in paragraph 1 of the Settlement Agreement, pay the Funds to the Commission, to be held by the Commission pending approval and implementation of the distribution to Affected Investors in accordance with subparagraphs (ix) and (xi) below;
 - (ii) Respondent shall prepare a plan for distributing the Funds (the "Plan of Distribution"), the objectives of which are to accomplish a fair allocation of the Funds among the Affected Investors in a timely manner and in a manner the costs of which are reasonable in the circumstances;
 - (iii) In connection with the preparation of the Plan of Distribution, Respondent shall retain, at its expense and subject to prior Staff approval, an independent consultant (the "Consultant"), to oversee the preparation of the Plan of Distribution;
 - (iv) Respondent shall be responsible for all costs of preparing and implementing the Plan of Distribution and distributing the Funds. The Funds shall not be applied toward any expenses of Respondent in connection with this settlement or its implementation;
 - (v) Respondent shall cooperate fully with the Consultant and shall provide the Consultant with access to its files, books and personnel as requested for purposes of the Plan of Distribution;
 - (vi) the Plan of Distribution shall include provisions which deal reasonably with circumstances in which the registered unitholders are not the beneficial owners of the units in question;

- (vii) the Plan of Distribution shall not result in any payment to unitholders described in paragraph 16 of the Settlement Agreement;
- (viii) Respondent shall, by December 1, 2005, deliver the Plan of Distribution to Staff for approval, together with a report of the Consultant that confirms that the Plan of Distribution was prepared in accordance with the objectives contained in paragraphs (ii) and (vi). Such date may be extended by the prior joint agreement of Staff and Respondent to allow for the obtaining of any rulings or completion of any discussions with Canada Revenue Agency in connection with the tax treatment of the receipt of compensation by Affected Investors considered necessary or advisable;
- (ix) the Plan of Distribution shall be implemented in accordance with paragraph (xi) if approved by separate approval of (i) Staff, and (ii) the Chair and a Vice-Chair of the Commission;
- (x) each of Staff and the Chair and Vice-Chair of the Commission reviewing the Plan of Distribution in accordance with paragraph (ix) shall approve the Plan, if, in their opinion acting reasonably, the Plan of Distribution was prepared in accordance with the objectives contained in paragraph (ii) and (vi);
- (xi) Respondent shall implement the Plan of Distribution within 3 months after the receipt of the last approval contemplated in paragraph (ix);
- (xii) Respondent shall retain, at its expense and subject to Staff's approval, an independent consultant to monitor the implementation of the Plan of Distribution; and
- (xiii) Within 2 months of the completion of the implementation of the Plan of Distribution referred to in subparagraph (xi), the Respondent shall deliver to Staff:
 - (A) A report of the consultant retained under paragraph (xii) in a form acceptable to Staff confirming that the distribution has been completed in accordance with the Plan of Distribution as approved under paragraph (ix); and
 - (B) A certificate of the Chief Executive Officer of the Respondent confirming that the distribution has been completed in accordance with the Plan of Distribution as approved under paragraph (ix).

2. If either of the terms set out in subparagraph (viii) or (xi) is not satisfied by the applicable date, the matter may be brought back before the Commission, for an order revoking or varying its decision pursuant to s. 144(1) of the Act.

SCHEDULE “B”

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

AND

FRANKLIN TEMPLETON INVESTMENTS CORP.

**ORDER
(Section 127)**

WHEREAS on February 28, 2005, the Commission issued a Notice of Hearing (the “Notice of Hearing”) pursuant to section 127 of the *Securities Act* (the “Act”) in respect of Franklin Templeton Investments Corp. (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the Commission (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the Respondent and for Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT the Settlement Agreement dated February 28, 2005, attached hereto, is approved.

DATED at Toronto this _____ day of _____, 2005
