any indemnification obligation is likely to arise. Under the sales agreement, until AE Supply receives authority to guarantee ATF's obligations, 20 percent of the proceeds of the West Book sale will be held in escrow to support ATF's indemnity obligation and will be unavailable to reduce debt at AE Supply.

ii. Dividend Authority

Finally, Applicants seek authority for ATF to dividend out of capital to AE Supply up to the full amount of the cash proceeds of the sale of the CDWR Contract. The CDWR Contract is ATF's only significant asset; and following completion of its sale, ATF will not engage in other business activities. The dividends themselves are necessary to allow AE Supply to reduce debt and fully implement its plans for returning to financial health and compliance with the Commission's capitalization requirements.

Finally, AESDS, which engages in generation facility development, has entered into an agreement to sell a combustion turbine currently held in inventory for a purchase price of $8 million, subject to certain adjustments. This turbine does not constitute ''utility assets,'' as defined in Section 2(a)(18) of the Act. Applicants request authority for AESDS to dividend up to the full amount of the proceeds of this sale to AE Supply, which will use these proceeds for general corporate purposes and to enhance its liquidity. Applicants expect that AESDS will conduct no further business following completion of the sale and the dividending of the proceeds of the asset sale to AE Supply.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24500 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26181; 812–12952]

Franklin Floating Rate Trust, et al.; Notice of Application

September 23, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges. The order would supercede a prior order (''Prior Order'').[1]

APPLICANTS: Franklin Floating Rate Trust (''FR Fund''), Franklin Mutual Recovery Fund (''FMR Fund,'' together with FR Fund, the ''Funds''), Franklin Advisers, Inc. (''Franklin Advisers''), Franklin Mutual Advisers, LLC (''Mutual Advisers,'' together with Franklin Advisers, the ''Advisers''), Franklin/Templeton Distributors, Inc. (the ''Distributor''), Franklin Templeton Services, LLC (the ''Administrator'').

FILING DATES: The application was filed on March 26, 2003, and amended on September 9, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 17, 2003, and should be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0527 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are closed-end management investment companies registered under the Act and organized as Delaware statutory trusts. Franklin Advisers, a California corporation, and Mutual Advisers, a Delaware limited liability company, are registered as investment advisers under the Investment Advisers Act of 1940 and serve as investment manager to the FR Fund and FMR Fund, respectively. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act''), serves as principal underwriter to the Funds. The Administrator is the administrator of the Funds and is responsible for managing the Funds' business affairs. The Advisers, the Distributor and the Administrator are wholly-owned subsidiaries of Franklin Resources, Inc.

2. Applicants request that the order also apply to any other registered closed-end management investment company that may be organized in the future for which either of the Advisers, the Distributor or the Administrator or any entity controlling, controlled by, or under common control with the Adviser, the Distributor or the Administrator acts as investment adviser, principal underwriter or administrator and which operates as an interval fund pursuant to rule 23c–3 under the Act (included in the term ''Funds'').[2]

3. The investment objective of the FR Fund is to provide as high a level of current income and preservation of capital as is consistent with investment primarily in senior secured corporate loans and senior secured debt securities with floating or variable rates. The investment objective of the FMR Fund is capital appreciation. The FMR Fund invests in equity and debt instruments in the categories of bankruptcy and distressed companies, risk arbitrage, and undervalued stocks.

4. The Funds continuously offer their shares to the public at net asset value. The Funds' shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Funds intend to operate as ''interval funds'' pursuant to rule 23c–3 under the Act and to make periodic repurchase offers to their respective shareholders.

[1] Franklin Floating Rate Trust *et al.*, Investment Company Act Release Nos. 23033 (Feb. 20, 1998) (notice) and 23068 (Mar. 17, 1998) (order). The Prior Order permits certain registered closed-end investment companies to impose an early withdrawal charge.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

5. The Funds seek the flexibility to be structured as multiple-class funds. The FMR Fund currently intends to, and the FR Fund may in the future, offer four or more different classes of shares. The FMR Fund will offer Class B shares at net asset value without a front-end sales charge, but subject to an early withdrawal charge (''EWC'') on shares that are repurchased by a Fund within seven years of the date of purchase (''Class B Shares''). The FMR Fund will offer Class A shares at net asset value with a front-end sales charge and also subject to an EWC in certain circumstances (''Class A Shares''). The FMR Fund will also offer Class C shares at net asset value with a front-end sales charge and also subject to an EWC on shares that are repurchased by a Fund within eighteen months of the date of purchase (''Class C Shares''). The FMR Fund will also offer Advisor Class shares at net asset value without a front-end sales charge or EWC (''Advisor Class Shares''). Class A Shares will be subject to an annual distribution fee and/or service fee of up to 0.25% of average daily net assets. Class B and Class C Shares will be subject to an annual distribution fee of up to 0.75% of average daily net assets and an annual service fee of up to 0.25% of average daily net assets. Advisor Class Shares will be subject to an annual distribution fee and/or service fee of up to 0.50% of average daily net assets. Class B Shares will automatically convert to Class A Shares after a set period of time. The Funds may in the future offer additional classes of shares with a front-end sales charge, an EWC and/or asset-based service or distribution fees.

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rule''). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.

7. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a *pro rata* basis by each outstanding share of that class. Each Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, Class C or Advisor Class Shares. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

8. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

9. Each Fund may offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's periodic repurchase periods, exchange their shares for shares of the same class of other registered open-end investment companies or registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, and that are in the Franklin Templeton Investments group of investment companies. Fund shares so exchanged will count as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, each Fund will treat the EWCs as if they were a contingent deferred sales charge (''CDSC'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections (18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes of the Funds is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of their securities and provide investors with a broader choice of shareholders services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of

securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the Funds operate pursuant to rule 23c–3 under the Act, Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permit open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c–10 as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3, under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

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

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule, as amended from time to time.

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

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 03–24453 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48507; File No. SR–CBOE–2003–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

September 22, 2003.

On July 27, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The **Federal Register** published the proposed rule change for comment on August 19, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] and believes that the proposed rules should expand access to the CBOE's electronic book in a manner that is consistent with Section 11(a) of the Act.[7] Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2003–27), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24504 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48520; File No. SR–OCC–2002–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Market-Maker Account Agreements

September 22, 2003.

I. Introduction

On May 21, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 18, 2002, amended proposed rule change SR–OCC–2002–10 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 24, 2003.[2] No comment letters were received. For the reasons discussed below, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 49826 (August 12, 2003), 68 FR 49826.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k(a).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47691, (April 17, 2003), 68 FR 20207 (April 24, 2003) [File No. SR–OCC–2002–10].