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GOVERNOR

B. EDMOND WATERS
COMMISSIONER



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ARKANSAS SECURITIES DEPARTMENT

October 29, 2015

Mr. David Roos
Moye White LLP
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80202

Re: Franklin Square Holdings, L.P. E-Signature Program
No Action 15-NA-0003

Dear Mr. Roos:

The Arkansas Securities Department ("Department") has received your letter dated October 21, 2015, ("Request") regarding Franklin Square Holdings, L.P. ("Franklin Square"). The Request seeks confirmation that the Staff of the Department ("Staff") will not recommend that the Arkansas Securities Commissioner take enforcement action against Franklin Square for violations of the Arkansas Securities Act ("Act"), with respect to the proposed electronic signature program described in the Request. I have attached a copy of the Request to avoid reciting or summarizing the facts that you have presented. Based upon the opinions and representations set forth in the Request, the Staff will not recommend enforcement action under the Act should the transactions proposed take place as set forth in the Request.

Please note that the Staff's position is based solely upon the representations in the Request and applies only to the transactions and facts as represented. Different facts or circumstances might, and often would, require a different response. The Staff only expresses its position as to the recommendation of formal enforcement action and does not purport to be a legal opinion or formal conclusion. The Issuer must be able to show compliance with the NASAA guidelines and the requirements of the Act and Rules through the merit review process. The Issuer must also show proof of informed consent for the investors, and the subscription process should be fair, just, and equitable for Arkansas investors.

If you should have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kaycee Wolf".

Kaycee Wolf
Staff Attorney

Enclosure

RECEIVED
15 OCT 22 AM 10:10
ARKANSAS SECURITIES DEPT.

October 21, 2015

Edmond Waters
Commissioner
Securities Department
Heritage West Building
201 East Markham, Room 300
Little Rock, AR 72201-1692

VIA FEDERAL EXPRESS

Re: Request for No-Action Letter Regarding Electronic Signature Program

Dear Mr. Waters:

This letter serves as a request for a no-action letter from the Arkansas Securities Department (the “Department”) that the proposed launch of an electronic signature and electronic document delivery program for use with certain investment products (the “E-Signature Program”) may be implemented in Arkansas on the terms described below. This letter is being submitted on behalf of our client, Franklin Square Holdings, L.P. (“Franklin Square”).

Franklin Square is preparing to launch the E-Signature Program in public offerings of non-traded investment products, such as business development companies (“BDCs”). The E-Signature Program will allow for the use of electronic signatures on subscription agreements as well as the electronic delivery of prospectuses and other documents. We believe the E-Signature Program will create significant efficiencies and cost-savings that will benefit the investors in these offerings.

I. REGULATORY BACKGROUND

The Electronic Signatures in Global and National Commerce Act (“ESIGN”)¹ and the Uniform Electronic Transactions Act (“UETA”)² are the primary laws governing the use of electronic signatures and records in commercial transactions. ESIGN is a federal law that gives broad legal recognition to electronic signatures and governs interstate and international electronic transactions, including that a contract or signature “may not be denied legal effect, validity, or enforceability solely because it is in electronic form.”³

¹ Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. § 7001 *et seq.*)

² Uniform Electronic Transactions Act (1999).

³ 15 U.S.C. § 7001(a)(1).

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Similarly, UETA is a model state law that was proposed by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”). UETA broadly recognizes the validity of electronic signatures. Arkansas and 46 other states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, have adopted UETA. A state that enacts anything other than the official version of UETA is preempted to the extent that the law conflicts with ESIGN. Thus, the legal landscape governing electronic signatures is now consistent within and across states and at the federal level.

Since the passage of ESIGN, the Securities and Exchange Commission (“SEC”) has recognized that ESIGN generally superseded pre-existing regulatory requirements that records created in a business, consumer, or commercial transaction must be kept in paper form. Both the SEC and the Financial Industry Regulatory Authority (“FINRA”) have provided guidance on what they consider to be necessary safeguards for an electronic signature program, and both have approved the use of electronic signatures in a retail context.⁴

Similarly, the SEC, through a series of interpretive releases, has provided guidance regarding the electronic delivery of required information, including prospectuses, annual reports and proxy solicitation materials.⁵ Federal securities laws do not prescribe the medium for providing prospectuses to prospective purchasers. The SEC has instructed that electronic delivery is permissible if informed consent is given and the issuer demonstrates that the proposed electronic delivery provides (1) timely and adequate notice that the information is available, (2) access to the electronic documents is comparable to that provided by postal mail and (3) evidence of delivery. Through these releases, the SEC has indicated that an investor may consent to electronic delivery of materials so long as the consent is informed.

Based on our review of the NASAA Omnibus Guidelines (the “Omnibus Guidelines”),⁶ we believe that no prohibition on the use of e-signatures or e-prospectuses exists thereunder. The Omnibus Guidelines require that a prospectus comply with applicable sections of the Securities Act of 1933 (the “1933 Act”), and generally define “prospectus” as “any document by whatever name known, utilized for the purpose of

⁴ See Securities and Exchange Commission Release No. 34-51983 (Sept. 12, 2005), Amendments to the Penny Stock Rules; see also FINRA Interpretive Letter to Jeffrey W. Kilduff, Esq. (July 5, 2001), Permissibility of Electronic Signatures under NASD Rules 3010(d) and 3110(c)(1)(C).

⁵ See Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233 (Oct. 6, 1995) (“1995 Release”); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Securities Act Release No. 7288 (May 9, 1996) (“1996 Release”); and Use of Electronic Media, Securities Act Release No. 7856 (Apr. 28, 2000) (“2000 Release”).

⁶ The Omnibus Guidelines were adopted by NASAA membership on March 29, 1992, and were amended on May 7, 2007. The Omnibus Guidelines are applied by certain states in their review of securities registrations filed by BDCs.

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offering and selling securities to the public.”⁷ While the context of the Omnibus Guidelines clearly anticipates written prospectuses, the Omnibus Guidelines are silent on the format or medium of the writing, and they do not specify as between paper or electronic documents. Similarly, Omnibus Guideline III.D.1 provides that “The ADMINISTRATOR may require that each PARTICIPANT complete and sign a written subscription agreement.” However, no distinction is made between paper and electronic subscription agreements. In our opinion, so long as the Omnibus Guideline III.E.1 “completion of sale” provision is satisfied, the Omnibus Guidelines permit the use of electronic prospectuses and electronic subscription agreements.

II. CRITICAL TERMS OF E-SIGNATURE PROGRAM

Franklin Square’s E-Signature Program will consist of two primary components, (1) electronic delivery of documents such as the prospectus, and (2) electronic execution of subscription agreements. The delivery of electronic documents may be completed through any commonly used means, but specifically including (1) emailing to the investor⁸ a link to a Franklin Square webpage containing the electronic document, or (2) delivering a USB drive or other storage device to the investor which contains a link to a Franklin Square webpage containing the electronic document. The electronic signing of documents generally will require the investor to (1) be properly “authenticated” by his or her broker-dealer or registered investment adviser, (2) sign into a password protected website, (3) scroll through each page of the subscription agreement and affix his or her signature or initials to each item requiring completion, and (4) upon completing the electronic form, affirmatively submit the document. At any time prior to submission of the completed electronic subscription agreement, the investor may instead opt to manually sign a paper subscription agreement.

The E-Signature Program will be designed to comply with E-SIGN, UETA, applicable provisions of the Omnibus Guidelines, and guidance provided by the SEC with respect to the electronic delivery of offering documents. In particular, the E-Signature Program will satisfy the following requirements:

- Investors will be advised that participation in the E-Signature Program is optional and that agreeing to participate in the E-Signature Program is not a condition for participation in any investment.
- Investors must expressly opt into the E-Signature Program to participate. Any investor who opts not to participate or who fails to make an election

⁷ Omnibus Guidelines I.B.23 and VII.B.1.

⁸ As used herein, we define “investor” to also include a prospective investor.

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will continue to execute paper subscription agreements and receive all documents in paper form.

- There will be no difference in cost to the investor regardless of whether he or she participates in the E-Signature Program.
- The same investment opportunities will be available to investors, regardless of whether they participate in the E-Signature Program.
- Investors may change their election or terminate their participation in the E-Signature Program at any time.
- Each investor that elects to participate in the E-Signature Program must be “authenticated.” Generally, authentication refers to the process by which an investor’s broker-dealer or registered investment adviser (collectively, “BD/RIAs”) confirms the identity and contact information of the investor and establishes unique log-in credentials for the investor to use to access electronic documents and/or subscription agreements. Through this process, which will be managed by the BD/RIAs that participate in an offering, each investor will provide information to his or her BD/RIA that will be used to confirm the investor’s identity and authority to sign. Generally, this information will be consistent with FINRA’s Know-Your-Customer obligations and will comply with the Customer Identification Program requirements of the USA Patriot Act.
- The prospectus will be delivered to investors who elect to receive documents electronically in a manner that is consistent with applicable provisions of state and federal securities laws. In particular, prospectuses will satisfy the legibility requirements applicable to printed documents, including page size, type size, font, bold-face type, italics and type color.
- Following authentication, the prospectus and subscription agreement will be provided electronically to investors who elect to participate in the E-Signature Program for review, and with respect to the electronic subscription agreement, completion, e-signing and initialing of all appropriate representations in a manner that is comparable to the handling of subscription agreements in paper form.
- After e-signing, an investor’s electronic subscription will be routed to the books and records system of his or her BD/RIA for review, approval, routing and storage in compliance with Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934. A copy of the investor’s electronically-signed

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documents will also be made available by the BD/RIA to the investor in the investor's preferred form, electronic or hard-copy.

- Franklin Square does not utilize multi-offering subscription agreements currently, and will not use multi-offering subscription agreements as part of the E-Signature Program.

III. NASAA COMPLIANCE

The prospectus covering any offering in which e-signatures are to be used will comply with Omnibus Guideline VII.B relating to the form and contents of the prospectus, and will contain disclosure about the E-Signature Program. The e-signature disclosure will explain that the subscription agreement (a specimen of which will be attached as an appendix to the prospectus) may be completed by a prospective investor in either paper or electronic form.

A specimen of the subscription agreement will be filed as part of the Registration Statement that relates to a particular offering. The subscription agreement will therefore be subject to review and approval by the SEC, FINRA and each state, thereby ensuring compliance with applicable federal and state securities laws. In particular, the subscription agreements for BDCs will comply with Omnibus Guideline III.D relating to the form and contents of subscription agreements.

Electronic versions of the prospectus, subscription agreement, and other documents will replicate their hard-copy counterparts to the greatest extent possible. While the content of both electronic and paper versions will be identical, small differences with respect to formatting, for example, may be necessary due to the difference in medium.

Whether an investor uses the electronic or hard-copy process, similar compliance and supervisory protocols will apply in order to achieve the same review and oversight results. These protocols will ensure that, among other things, (1) a sale is not completed until at least five business days after the date the prospective investor receives the final prospectus in accordance with Omnibus Guideline III.E.1, (2) an investor shall receive confirmation of his or her purchase in accordance with Omnibus Guideline III.E.2 and (3) records of suitability determinations are maintained in accordance with Omnibus Guideline III.C.4.

IV. SAFEGUARDS OF E-SIGNATURE PROGRAM

The SEC and FINRA have each stated that electronic recordkeeping programs must provide for the same level of security, accuracy and accessibility as are provided with respect to paper records. We expect that in many situations the security of information and

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the ability to accurately and efficiently maintain, sort and retrieve information will be enhanced through the use of the Electronic-Signature Program.

Safeguards that are designed to comply with privacy, security and recordkeeping requirements include:

- Documents requiring an investor's electronic signature as part of the E-Signature Program may be accessed by investors only through a password-protected website.
- Each investor that elects to participate in the E-Signature Program must be authenticated by his or her BD/RIA.
- The selected dealer, registered investment adviser, or comparable agreement between Franklin Square's affiliated dealer manager and a BD/RIA that participates in the Electronic-Signature Program will require the BD/RIA to confirm their compliance with all applicable recordkeeping obligations under the securities laws and FINRA regulations.
- The selected dealer, registered investment adviser, or comparable agreement between Franklin Square's affiliated dealer manager and a BD/RIA that participates in the Electronic-Signature Program will require the BD/RIA to confirm their compliance with all applicable suitability obligations under the securities laws and FINRA regulations.
- The selected dealer, registered investment adviser, or comparable agreement between Franklin Square's affiliated dealer manager and a BD/RIA that participates in the Electronic-Signature Program will require the BD/RIA to maintain written policies and procedures covering their use of e-signatures and the electronic delivery of documents.
- Technology used in the Electronic-Signature Program will require that the investor separately sign or initial each item requiring completion in the subscription agreement in accordance with Omnibus Guideline III.D.3. Investors will be required to scroll to the bottom of each page of the subscription agreement before being able to advance to the next page.

V. REQUEST FOR NO-ACTION LETTER

Based on the foregoing, Franklin Square requests no-action letter confirming that the E-Signature Program may be implemented in Arkansas. Please contact the undersigned

Moye|White

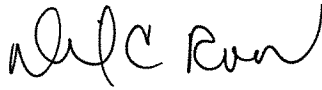
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at david.roos@moyewhite.com or (303) 292-7959 should you have questions or require additional information.

We appreciate your consideration of this matter.

Yours truly,

Moye White LLP

A handwritten signature in black ink, appearing to read "David C. Roos". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

David C. Roos

cc: Franklin Square Holdings, L.P.

DCR:atl