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Tax-Free Income Fund and Franklin
California High Yield Municipal Fund*

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:
CITY OF STOCKTON, CALIFORNIA,

Debtor.

BAP No. EC-14-1550
Bankr. No. 12-32118
Chapter 9

FRANKLIN HIGH YIELD TAX-FREE
INCOME FUND AND FRANKLIN
CALIFORNIA HIGH YIELD
MUNICIPAL FUND,

Appellants,

v.

CITY OF STOCKTON, CALIFORNIA,
et al.,

Appellees.

**JOINT MOTION FOR FURTHER
EXTENSION OF TIME TO FILE
PRINCIPAL AND REPLY
BRIEFS; DECLARATION OF
JOSHUA D. MORSE IN SUPPORT
THEREOF**

INTRODUCTION

Appellants Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (collectively, “Franklin”) and appellee City of Stockton, California (the “City”) hereby jointly move for a three-week extension of the briefing deadlines established in this appeal so that (a) Franklin may file its opening brief and excerpts of the record on or before March 23, 2015; (b) the City and other appellees interested in participating in this appeal may file their responsive briefs and supplemental excerpts of the record on or before May 28, 2015; and (c) Franklin may file its reply brief on or before June 25, 2015. This is the second request for an extension; the first request was also jointly made.

BACKGROUND

On December 1, 2014, this Court entered the *Briefing Order*,¹ which required Franklin’s opening brief to be filed by January 15, 2015, and other briefs to be filed thereafter. Due to delay in entry of a confirmation order, on December 17, 2014, Franklin and the City filed the *Joint Motion For Extension Of Time To File Principal And Reply Briefs*² (the “Initial Motion”), seeking an extension of those briefing deadlines.

On January 12, 2015, the Court granted the relief requested in the Initial Motion, entering the *Order Re Motion For Extension Of Time And To Exceed*

¹ [B.A.P. Docket No. 3].

² [B.A.P. Docket No. 9]. Capitalized terms are as defined in the Initial Motion.

Word Limit Requirements (the “Scheduling Order”).³ Pursuant to the Scheduling Order, Franklin’s principal brief and excerpts of the record are now required to be filed on or before March 2, 2015, responsive briefs and supplemental excerpts of the record by any appellees are to be filed on or before May 7, 2015, and Franklin’s reply brief is to be filed on or before June 4, 2015.

At the time of the Initial Motion, the Bankruptcy Court had issued an oral ruling confirming the Plan but had not issued a written opinion or entered a confirmation order. Franklin and the City anticipated that the Bankruptcy Court would enter a confirmation order in sufficient time to enable this appeal to proceed within the briefing deadlines established by the Scheduling Order.

The Bankruptcy Court, however, ultimately did not enter a confirmation order until February 4, 2015, at which time the Court entered the *Order Confirming First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014)*⁴ (the “Confirmation Order”) and the *Opinion Regarding Confirmation And Status Of CalPERS*⁵ (the “Opinion”).

³ [B.A.P. Docket No. 12]. That order also approved the relief requested by Franklin in *Appellants’ Motion For Leave To Exceed Word Limit Requirements* [B.A.P. Docket No. 10].

⁴ [Bankr. Docket No. 1875].

⁵ [Bankr. Docket No. 1873].

Thereafter, on February 11, 2015, the City filed a motion to amend the Opinion pursuant to Bankruptcy Rule 7052.⁶ The City's motion is scheduled to be heard by the Bankruptcy Court on February 25, 2015. By operation of Bankruptcy Rule 8002(b)(1)(A), the time for appeal of the Confirmation Order will not elapse until fourteen days after the Bankruptcy Court rules upon the City's motion.

Accordingly, although the Confirmation Order has now been entered and the Opinion issued, the record below remains open and in flux. Among other things, the time to appeal the Confirmation Order has not yet elapsed and the full appellate record has not been (and cannot be) designated or delivered to the Court.

Moreover, the Bankruptcy Court may choose to amend the Opinion as a result of the City's motion. Because that motion will not be heard until February 25, 2015 (and ultimately may not be acted upon until a later date), the Confirmation Order will not become a final order until *after* the current March 2, 2015, deadline for Franklin to file its principal brief and excerpts of the record.

ARGUMENT

March 2, 2015, is the current deadline for Franklin to file its principal brief and excerpts of the record. Responsive briefs and supplemental excerpts of the record are to be filed on or before May 7, 2015, and Franklin's reply brief is to be

⁶ [Bankr. Docket No. 1889].

filed on or before June 4, 2015. Those deadlines no longer are appropriate due to the state of the proceedings before the Bankruptcy Court.

Because the Confirmation Order has not yet become final and the City's motion to amend the Opinion will not be heard until February 25, 2015, the record below is not complete and has not been (and cannot be) designated or transmitted to the Court. Further, due to the possibility that the Opinion may be modified as a result of the City's pending motion to amend, it is impossible for Franklin to ascertain the exact decision from which its appeal is being taken. Moreover, because the time to appeal the Confirmation Order will not have elapsed by March 2, 2015, it is possible that parties other than Franklin might file an appeal after the date on which Franklin currently is required to file its opening brief.

As a consequence, relief from the current briefing deadlines is warranted under the circumstances. Specifically, three-week extensions of the briefing deadlines should allow adequate time for the Opinion to be amended (should the Bankruptcy Court choose to do so), the Confirmation Order to become a final order, and the appellate record to be designated and transmitted. Accordingly, pursuant to Ninth Circuit BAP Rule 8018(a)-1, Franklin and the City request extension of the briefing deadlines for this appeal as follows: (a) Franklin's opening brief and excerpts of the record may be filed on or before March 23, 2015; (b) the responsive briefs and supplemental excerpts of the record of the City and

any other appellees may be filed on or before May 28, 2015; and (c) Franklin's reply brief may be filed on or before June 25, 2015.

In the event that the Confirmation Order does not become final sufficiently before the proposed extended deadline for Franklin's opening brief, or in the event that another party initiates an appeal of the Confirmation Order, these proposed deadlines may need to be extended further. Franklin and City each reserve the right to seek an additional extension should circumstances warrant.

CONCLUSION

Franklin and the City respectfully request that the Court further extend the briefing deadlines established in this appeal as set forth above, subject to further extension should circumstances warrant.

Dated: February 19, 2015

JONES DAY

By: /s/ James Johnston
James O. Johnston
Joshua D. Morse

*Attorneys for Appellants Franklin
High Yield Tax-Free Income Fund
and Franklin California High Yield
Municipal Fund*

Dated: February 19, 2015

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Appellees.

**DECLARATION OF JOSHUA D.
MORSE IN SUPPORT OF JOINT
MOTION FOR FURTHER
EXTENSION OF TIME TO FILE
PRINCIPAL AND REPLY BRIEFS**

DECLARATION OF JOSHUA D. MORSE

I, Joshua D. Morse, hereby declare:

1. I am an attorney licensed to practice law in California and admitted to practice before, among other courts, the United States Court of Appeals for the Ninth Circuit. I am an attorney with the firm of Jones Day, counsel of record for Appellants Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (collectively, "Franklin"). I make this declaration pursuant to Ninth Circuit BAP Rule 8018(a)-1(b)(1) and Bankruptcy Rule 8013(a)(2)(C) in support of the *Joint Motion For Further Extension Of Time To File Principal And Reply Briefs* (the "Motion").¹

2. I have personal knowledge of the facts set forth herein and if called as a witness I could testify competently to such facts.

3. The relief requested in the Motion, which is the second request for such relief, is being sought jointly by Franklin and the City.

4. On December 1, 2014, this Court entered the *Briefing Order*,² which required Franklin's opening brief to be filed by January 15, 2015, and other briefs to be filed thereafter. Due to delay in entry of a confirmation order, on

¹ Initially capitalized terms not defined herein shall have the meaning set forth in the Motion.

² [B.A.P. Docket No. 3].

December 17, 2014, Franklin and the City filed the Initial Motion³, seeking an extension of those briefing deadlines.

5. On January 12, 2015, the Court granted the relief requested in the Initial Motion, entering the Scheduling Order.⁴ Pursuant to the Scheduling Order, Franklin's principal brief and excerpts of the record are now required to be filed on or before March 2, 2015, responsive briefs and supplemental excerpts of the record by any appellees are to be filed on or before May 7, 2015, and Franklin's reply brief is to be filed on or before June 4, 2015.

6. At the time of the Initial Motion, the Bankruptcy Court had issued an oral ruling confirming the Plan but had not issued a written opinion or entered a confirmation order. Franklin and the City anticipated that the Bankruptcy Court would enter a confirmation order in sufficient time to enable this appeal to proceed within the briefing deadlines established by the Scheduling Order.

7. The Bankruptcy Court, however, ultimately did not enter a confirmation order until February 4, 2015, at which time the Court entered the Confirmation Order⁵ and the Opinion.⁶

³ [B.A.P. Docket No. 9]. Capitalized terms are as defined in the Initial Motion.

⁴ [B.A.P. Docket No. 12]. That order also approved the relief requested by Franklin in *Appellants' Motion For Leave To Exceed Word Limit Requirements* [B.A.P. Docket No. 10].

⁵ [Bankr. Docket No. 1875].

⁶ [Bankr. Docket No. 1873].

8. Thereafter, on February 11, 2015, the City filed a motion to amend the Opinion pursuant to Bankruptcy Rule 7052.⁷ The City's motion is scheduled to be heard by the Bankruptcy Court on February 25, 2015. By operation of Bankruptcy Rule 8002(b)(1)(A), the time for appeal of the Confirmation Order will not elapse until fourteen days after the Bankruptcy Court rules upon the City's motion.

9. Accordingly, although the Confirmation Order has now been entered and the Opinion issued, the record below remains open and in flux. Among other things, the time to appeal the Confirmation Order has not yet elapsed and the full appellate record has not been (and cannot be) designated or delivered to the Court. Moreover, the Bankruptcy Court may choose to amend the Opinion as a result of the City's motion. Because that motion will not be heard until February 25, 2015 (and ultimately may not be acted upon until a later date), the Confirmation Order will not become a final order until *after* the current March 2, 2015, deadline for Franklin to file its principal brief and excerpts of the record.

I hereby declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. This Declaration was signed on February 19, 2015, at San Francisco, California.

By: /s/ Joshua D. Morse
Joshua D. Morse

⁷ [Bankr. Docket No. 1889].

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the appellate CM/ECF system on February 19, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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