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Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

RE: File No. S7-06-04—Reopening of Comment Period and Supplemental Request for Comment; Proposed Rule Regarding Confirmation and Point of Sale Disclosure Requirements

Dear Mr. Katz:

This comment letter is filed on behalf of Federated Investors, Inc., and its subsidiaries ("Federated"), which perform investment advisory and other services for the Federated family of open-end investment companies registered under the Investment Company Act of 1940.

Federated is a leading mutual fund complex in the United States. It has client relationships with over 1,500 bank trust departments which utilize the Federated Funds as investments for their personal trust accounts, managed asset accounts, 401(k) plan and individual retirement accounts, trust indentures, and other fiduciary and custodial accounts.

We previously filed a letter dated November 23, 2004, on behalf of Federated urging the Commission to revise the definition of "revenue sharing" in the Proposed Rule to exclude fees paid to bank trust departments as compensation for services performed pursuant to a written administrative services agreement with a mutual fund or fund adviser.

As noted in our earlier letter, Federated is concerned regarding the provision in Proposed Rule 15c2-3(a)(2)(i) that requires a broker-dealer selling mutual funds to disclose at the point of sale whether it or *any affiliate* receives "revenue sharing" payments from the fund complex to the extent that an "affiliate" could include a bank affiliate, and particularly a bank's trust

department. In addition, Federated is concerned regarding Proposed Rule 15c2-2(c)(5)(C) requiring disclosure of such payments received by any "associated person" of a broker-dealer in confirmation statements if the covered security is not a proprietary covered security. Under section 3(a)(18) of the Exchange Act, a bank affiliated with a broker-dealer through common control would be an "associated person" of the broker-dealer. Therefore, the Proposed Rule would require a broker-dealer selling mutual funds to provide a confirmation statement disclosing whether the trust department of a bank affiliate received "revenue sharing" payments from the fund complex.

Federated noted in its previous comment letter that the term "revenue sharing" is broadly defined in the Proposed Rule and could cover fees or other compensation paid by a mutual fund adviser to a bank trust department pursuant to an administrative services agreement in connection with the investment of fiduciary assets in mutual fund shares.[1] Such agreements compensate banks for the provision of services related to the investment of fiduciary assets in mutual funds and are designed to conform with state trust law and the Employee Retirement Income Security Act of 1974 ("ERISA"). Many bank trust departments that have such service arrangements with mutual funds are affiliated with broker-dealers and thus would be affected by the Rule. Under the Proposed Rule, if a bank trust department receives such "revenue sharing" payments from a mutual fund complex, the bank's broker-dealer affiliate would be required to disclose such payments to its customers who purchase shares of the mutual fund, even though the payments have nothing to do with the broker-dealer or its customers.

Administrative service fees received by a bank trust department generally do not involve a broker-dealer and do not increase the compensation a broker-dealer might receive in connection with mutual fund sales to its retail customers. In addition, mutual fund sales by a bank-affiliated broker-dealer to retail customers do not increase the service fees received by bank trust departments. Thus, the goal of the Proposed Rule to inform investors regarding the compensation a broker-dealer or its affiliate may receive as a result of the investor's transaction in particular funds would not be furthered.

Moreover, a broker-dealer might not have access to information regarding mutual fund service payments received by an affiliated bank trust department and thus could not readily comply with the requirement. A bank currently has no obligation to disclose such fee information to the broker-dealer.

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[1] Proposed Rule 15c2-2(f)(16) defines revenue sharing to include an "arrangement or understanding by which a person within a fund complex, other than the issuer . . . makes payments to a broker, dealer or municipal securities dealer, or any associated person. . . ."

We note that bank trust departments are subject to disclosure requirements and fiduciary standards regarding fees received from mutual funds complexes. Bank trust departments effecting transactions in mutual fund shares are required to comply with confirmation disclosure requirements under regulations of the federal banking agencies which require banks to disclose the source and amount of any compensation received by the bank in connection with such transactions.[2] Banks also are subject to restrictions and disclosure requirements under state trust law and ERISA when they receive service fees in connection with the investment of fiduciary and employee benefit plan assets in mutual funds.

In addition, the fiduciary duty of loyalty that applies to banks acting in a trustee or fiduciary capacity may not permit a bank fiduciary to accept fees in the nature of "revenue sharing" payments in consideration for the sale or promotion of mutual funds to fiduciary accounts. State statutes authorizing banks to receive fund service fees generally do not authorize the receipt of promotional or "distribution" fees. The fiduciary duty of prudence also requires a bank fiduciary to be able to show that an investment of fiduciary assets in mutual funds from which the bank receives administrative fees is in the best interests of the beneficiaries and consistent with the trust instrument.

In reopening the comment period, the Commission requested comments on whether the proposal should exclude payments that would not pose conflicts of interest. The Commission also requested comments on whether other ways exist to avoid covering payments to affiliates that would not pose conflicts for the broker-dealer and would pose fewer compliance challenges. One alternative would be to exclude from the definition of "revenue sharing" any payments received by an affiliated bank trust department from a mutual fund complex for services performed in connection with investments of fiduciary assets in a mutual fund pursuant to an administrative services agreement with the fund or fund adviser.

Thank you for this opportunity to comment on the Proposed Rule. Please feel free to contact me or Kay Bondehagen if you have any questions concerning this letter.

Sincerely,

Melanie L. Fein

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[2] *See* 12 C.F.R. § 12.4(a)(6) and (b) (national banks), 12 C.F.R. §§ 208.34(d) and (e) (state member banks), 12 C.F.R. Part 344.5(a)(2) and (b) (state nonmember banks).

cc: Annette Nazareth
Catherine McGuire
Paula Jenson

Eugene F. Maloney
Federated Investors, Inc.