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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—Confirmation and Point of Sale Disclosure Requirements

Dear Mr. Katz:

This 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.[1]

This letter concerns the Commission's proposal to require broker-dealers to provide point of sale and confirmation disclosures regarding the costs and potential conflicts of interest that may arise in connection with the sale of mutual fund shares (the "Proposed Rule" or "Rule").[2] In particular, we urge the Commission to revise the definition of "revenue sharing" in the 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.

Federated did not comment on the Proposed Rule based on our understanding that the Rule was not intended to affect banks, particularly bank

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1 Federated is one of the largest mutual fund complexes in the United States with over $183 billion in assets under management as of June 30, 2004. Federated has customer relationships with over 1500 bank trust departments that utilize the Federated Funds as investments in their fiduciary and custodial capacity for personal trust accounts, managed asset accounts, 401(k) plan and individual retirement accounts, and trust indentures.

2 SEC File No. S7-06-04 (Release Nos. 33-8358, 34-49148 and IC-26341), 69 Fed. Reg. 6438 (February 10, 2004).

trust departments that invest fiduciary assets in mutual funds. Upon reviewing the proposal more closely, however, it appears that the Rule could affect bank trust departments in a way that does not appear to have been addressed by the Commission in proposing the Rule, or by the public comment letters.

Specifically, under Proposed Rule 15c2-3(a), a broker-dealer selling mutual funds is required to disclose at the point of sale whether it *or any affiliate* receives "revenue sharing" from the fund complex, including the fund's adviser. An "affiliate" of a broker-dealer could include a bank affiliate. Thus, if a bank receives "revenue sharing" payments from a mutual fund complex, the bank's broker-dealer affiliate could be required to disclose such payments to its customers who purchase shares of the mutual fund.

The term "revenue sharing" is very 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.[3] Federated has entered into such agreements with numerous bank trust departments. These agreements compensate banks for the provision of services in connection with the investment of fiduciary assets in the Federated Funds and are designed to conform with state trust law and the Employee Retirement Income Security Act of 1974 ("ERISA"). Many of the banks have affiliated broker-dealers and thus could be affected by the Rule.

Federated is concerned that the Proposed Rule could impose an unreasonable compliance burden on bank trust departments, as well as their affiliated broker-dealers. A broker-dealer would not necessarily have access to information about fees received by an affiliated trust department pursuant to an administrative services agreement with a mutual fund. These transactions generally do not involve the broker-dealer and a bank would have no obligation to disclose such fee information to the broker-dealer. A requirement that it do so would represent an unwarranted intrusion into the affairs of bank trust departments, which already 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 that are patterned after those in Exchange Act

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[3] 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…."

Rule 10b-10, and which require disclosure of the source and amount of any compensation received by the bank in connection with such transactions.[4]

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.

Moreover, 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 is in the best interests of the beneficiaries and consistent with the trust instrument.

Based on the foregoing, we urge the Commission to revise its Proposed Rule to avoid imposing an unnecessary and burdensome disclosure obligation on broker-dealers with respect to administrative service fees received by affiliated bank trust departments from mutual fund complexes. In particular, we urge the Commission to revise the definition of "revenue sharing" to exclude fees paid to bank trust departments as compensation for services performed pursuant to an administrative services agreement with a mutual fund or fund adviser. Please feel free to contact me or my colleague Kay Bondehagen (202-974-1046) should you have any questions concerning this letter.

Sincerely,

Melanie L. Fein

cc: Annette Nazareth
Catherine McGuire
Lourdes Gonzales

[4] *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).