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VIA ELECTRONIC DELIVERY

Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549–1090

Re: Mutual Fund Distribution Fees; Confirmations (File Number S7–15–10)

Dear Ms. Murphy:

T. Rowe Price Investment Services, Inc. ("**TRPIS**") and T. Rowe Price Associates, Inc.("**TRPA**") (collectively,"**T. Rowe Price**") appreciate the opportunity to submit comments and to offer our views on the Securities and Exchange Commission's proposed new rule and rule amendments that would replace Rule 12b-1 under the Investment Company Act of 1940 ("**Proposal**")[1].

As background, TRPIS is a registered broker-dealer under the Securities Exchange Act of 1934 and acts as principal underwriter to the T. Rowe Price family of mutual funds ("**Price Funds**"). TRPA and certain affiliates act as investment advisers to the Price Funds. As of September 30, 2010, the Price Funds held assets of approximately $258.7 billion, with more than 11 million individual and institutional accounts. All retail Price Funds may be purchased on a direct basis with no front-end or deferred sales loads or 12b-1 fees. Certain Price Funds have separate shares classes with 12b-1 fees (the Advisor Class and R Class) and are distributed through third party intermediaries. The Advisor Class is offered through various intermediaries including broker-dealers and investment advisers and currently pays a 12b-1 fee of up to 0.25%. The R Class is offered exclusively through intermediaries servicing employer sponsored retirement plans and pays a 12b-1 fee of up to 0.50%. Both classes also pay an administrative fee payment of up to 0.15% for sub-transfer agent type services. TRPIS also provides brokerage services to Price Fund shareholders and other retail customers as an introducing broker through its Brokerage Division. Brokerage customers are able to purchase a variety of unaffiliated load and no-load mutual funds through this service, including funds currently paying 12b-1 fees.

[1] Mutual Fund Distribution Fees; Confirmations, SEC Release Nos. 33-9128;34-62544;IC-29367 (July 21, 2010), 75FR47064 (August 4, 2010) (the "**Release**").

We support the Commission's efforts to revise Rule 12b-1, increase transparency of fees and encourage competition that would benefit mutual fund investors. We believe that Rule 12b-1 needs to be modernized to reflect the current fund distribution framework in which 12b-1 plans operate. Also, the factors under the rule that must be considered annually by a fund board when approving 12b-1 plans are, for the most part, outdated or unnecessary. As discussed in more detail below, we agree with certain aspects of the Proposal; however, we also believe the Proposal is ill-timed and certain changes are necessary to further the Commission's goals and to benefit fund investors.

As we will describe in more detail below, we concur with several of the views expressed by the Investment Company Institute ("**ICI**") in its letter.

A summary of our comments is set forth below:

- **Comprehensive Approach.** We believe the SEC should take a comprehensive approach in adopting rules and providing guidance related to revenue sharing, Rule 12b-1 payments, and point-of-sale disclosure.

- **Retirement Plans.** We encourage the SEC to recognize the difficulties of applying "on going sales charges" in the retirement plan context and to acknowledge that the current use of 12b-1 fees in the retirement plan context is not the functional equivalent of a front-end sales charge. We agree with the ICI's recommendation to make revisions to the Proposal for classes offered exclusively to employer sponsored retirement plans.

- **Account Level Service Fee.** We support the Proposal's novel approach to allow intermediaries to charge their own sales load or account level fee directly to investors thereby giving funds an alternative distribution model and potentially freeing them from the role of compensating broker-dealers for the sale of fund shares.

- **Board Governance.** We believe the SEC should take advantage of this rulemaking opportunity and should proceed with modernizing the fund board's role in relation to Rule 12b-1 plans. We are concerned, however, that the Proposal's guidance goes too far and imposes new and more burdensome review obligations on fund boards than what is currently required under Rule 12b-1.

- **Application of Reference Load and Reinvestment of Dividends and Capital Gains.** We agree with the ICI's recommendations regarding revisions to the Proposal's treatment of reference loads and dividend and capital gains.

Comprehensive Approach to Revenue Sharing, Rule 12b-1 Payments, and Point of Sale. We believe that the SEC should take a comprehensive approach in adopting rules and providing guidance related to revenue sharing, Rule 12b-1 payments, and point of sale disclosure. The SEC specifically recognizes the interrelationship between Rule 12b-1 and revenue sharing payments in the Release. In fact, the SEC requests information regarding the impact that a significant reduction in distribution compensation from 12b-1 payments could have on mutual fund advisers with a specific focus on the increased pressure to pay intermediaries for distribution through revenue sharing arrangements. However, the SEC has

deferred any action to require point of sale disclosure by intermediaries and specifically states in the Release that it will not address revenue sharing practices in connection with the Proposal, but will consider further rule amendments related to such practices.

We do not believe that the SEC should take a piecemeal approach to rule revisions. We believe payment and fee disclosures at the point of sale are more helpful to investors than disclosure of revenue sharing and other payments in confirmation statements since an investor will have already made his or her investment decision. Likewise, although the Proposal's enhanced disclosure requirements may make certain distribution payments more transparent to investors, any excess payments paid outside of Rule 12b-1, such as through revenue sharing arrangements, will not be specifically disclosed to shareholders and therefore, may not achieve the SEC's goals of making compensation arrangements more transparent to investors. Therefore, we believe that the SEC should fully consider the implications of revenue sharing and point of sale disclosure, in conjunction with any efforts to reform distribution payments under Rule 12b-1, and simultaneously propose rules and provide guidance on all three of these related issues.[2]

In addition, to the extent the SEC adopts a cap on the amount of "marketing and service fees" that can be charged under proposed Rule 12b-2, it will be imperative that it also provide guidance on what other "non-distribution" expenses can be paid out of fund assets. We are concerned that the already ambiguous line between distribution and other services will be further blurred as intermediaries seek compensation for personal and other ongoing services formerly paid out of 12b-1 plans. The Release correctly recognizes that "to the extent a fund is paying for legitimate non-distribution services, such payments need not be made under a 12b-1 plan, even if the recipient of the payments is also involved in the distribution of fund shares." We believe fund groups will experience greater pressure to categorize certain services outside the marketing and service fee as "non-distribution" related services in order to accommodate intermediaries who are currently and legitimately being compensated for such services under funds' 12b-1 plans. For this reason, we believe it is imperative for the SEC to provide guidance on what constitutes "legitimate non-distribution" services. For example, it is not clear from the Release whether payments for "personal services" within the meaning of FINRA Rule 2830 can be made outside of proposed Rule 12b-2. In addition, without specific guidance on the types of services that may be considered "non-distribution" related fund boards may have to make findings without clear guidance or sufficient information when approving agreements for payments that fall outside of the "marketing and service" fee umbrella.

Retirement Shares. The Proposal limits the fees that can be paid under Rule 12b-2 ("market and service fees") to 0.25% annually and requires amounts in excess of 0.25% under Rule 6c-10 ("ongoing sales charges") to be converted to a class without an "ongoing sales charge" when the maximum allowed under Rule 6c-10 is met. As the Release properly points out, plan recordkeepers do not currently have the system capabilities necessary to offer classes of funds with "on going sales charges" as contemplated by the Proposal. The Release goes on to say that the tracking capability and conversion requirement for such shares may not be a viable

[2] For example, FINRA recently issued a concept release on point of sale disclosure, which we believe should be finalized and considered before the SEC issues rules relating to 12b-1 and revenue sharing.

option for retirement plans and thus the Proposal would likely make Retirement Shares (or "**R classes**") a less attractive investment option.[3]

Unfortunately, the SEC's assumptions regarding the lack of recordkeeping capabilities necessary to track such shares appears to be true. In order to comply with the Rule 6c-10 limitations and offer classes of shares with "ongoing sales charges," recordkeepers would need to implement systems to track and age every purchase made in the plan (including participant payroll contributions, company contributions, exchanges between funds and dividend and capital gain reinvestments) and convert these shares to another class when the reference load limit is met. Because recordkeepers are not currently required to track share lots under DOL, IRS, or other applicable regulations, the system enhancements necessary to comply with the Proposal would be substantial and, most likely, cost prohibitive.[4] Assuming recordkeepers are willing and able to update their systems, we believe plan sponsors would be reluctant to offer funds with "on going sales charges" to participants in their plans. Having two share classes of the same fund in a single retirement plan (one with higher costs and one with lower) would undoubtedly confuse participants. In order for the plan's broker and recordkeeper to be paid the "on going sales charge," the plan presumably would need to limit participant access to the class without the "ongoing sales charge" (and lower fees) to only those shares that were required to be converted. Educating participants on the differences in share classes and their availability in the plan would likely be very difficult for plan sponsors. Alternatively, plan sponsors may determine it is easier to offer only one class with an "on going sales charge" and move all plan assets prior to *any* shares in the plan meeting the reference load limit to another fund with an "on going sales charge." The SEC poses the question in the Release whether any aspect of the sales charge limit encourages "switching" between fund complexes.[5] We believe this scenario seems likely (although a plan or broker could also switch to another fund with an "ongoing sales charge" in the *same* fund complex).

However, given the operational complexities and potential confusion for participants, we believe it is a real possibility that recordkeepers and retirement plans would not offer classes of funds with "on going sales charges." As a result, retirement plan investment options would be limited to classes of shares that pay a "market and service fee" capped at 0.25% (plus administrative service fees). It is likely these payments will not provide adequate compensation for recordkeepers and brokers who provide services to smaller retirement plans, as these plans typically use share classes with 12b-1 fees higher than 0.25% to offset the proportionally higher plan expenses to which such plans are subject. Under the current 12b-1 regime, as a legal matter, it makes no difference how payments for personal and other plan-related services are classified (i.e., distribution vs. non-distribution) if they are covered by a 12b-1 plan. Without payments for these services, which are used by recordkeepers to offset

[3] See Release at 130-131.

[4] If the rule is adopted as proposed, the Price Funds' R share class would potentially have a 0.25% "market and service fee" and a 0.25% "on going service fee" (with a 6.25% reference load). In order to continue to offer the R Class to retirement plans, recordkeepers would need to implement systems necessary to track, age and convert shares that would not need to be converted to another class for 25 years. Unless appropriate accommodations are made for R shares, recordkeepers will not incur substantial costs to implement systems for an event that will not take place for 25 years.

[5] See Release at 47-48.

their costs for offering funds as investment options on their platforms, we are concerned that recordkeepers will find other means to be compensated. Therefore, if the rule is adopted as proposed it is likely recordkeepers and brokers would need to offer these smaller retirement plans investment options other than mutual funds and such options could include more costly investment vehicles or investment products and vehicles with more complicated or opaque fee structures. Under this scenario, we believe the Proposal will have unintended consequences inconsistent with the SEC's objectives.

As the ICI points out, the use of 12b-1 fees in the retirement plan context is different from the non-retirement context. The on-going services provided by a broker or consultant[6] to a plan differ from services provided by a broker to a retail investor in exchange for a front-end sales charge. Therefore, we believe R classes warrant different treatment under the Proposal and recommend the SEC consider alternatives for R classes. Such alternatives may include, as the ICI recommends, directing FINRA to designate a higher "market and service" fee cap for shares offered to retirement plans that would reflect the unique nature of the ongoing services provided by these brokers. Another alternative would be to provide an exemption to the proposed conversion requirement of the "ongoing sales charges" if the reference load would not be met for a predetermined number of years (for example, 20 years). We believe an appropriate basis exists for such an exemption since it is unlikely for a majority of a company's employees to remain participants in the same plan with the same investment options for more than 20 years.

Account Level Fees. The Proposal offers a novel approach to the distribution of fund shares. Currently, fund shares cannot be offered to investors at other than the stated public offering price and sales charges disclosed in the prospectus. The Proposal would allow funds to "externalize" the distribution of their shares by allowing an intermediary to charge its customers whatever sales commission or account level fee that it wishes for the purchase of fund shares. Assuming brokers would be required to disclose these account level fees to the customer, we believe this practice would encourage transparency and price competition among intermediaries and, ultimately, benefit fund investors. By allowing intermediaries to establish their own account fees and tailor them to different service levels, we believe there would be competition based on the value proposition provided to investors.

Furthermore, we see this alternative distribution method as a complement to the future harmonization of a broker-dealer/investment adviser fiduciary standards and mitigation of conflicts of interest. We are already witnessing rapid growth in those fund distribution channels where "externalized fees" exist, including broker-dealer wrap programs and fee-based advisory service programs. This trend will undoubtedly accelerate if the SEC adopts a uniform fiduciary standard for intermediaries that provide advice. Broker-dealers would then be free to select funds for their distribution platforms based on their customers' best interests without

[6] Consultants and brokers to retirement plans that use the Price Funds' R class as investment options may be compensated for performing the following on going services (1) assisting plan/plan sponsors in conducting searches for investment options; (2) analyzing and recommending investment options to plan sponsors; (3) providing ongoing monitoring and evaluation of investment options; (4) participating in plan conversion activities; (5) providing education about the investment options to plan sponsors and participants; (6) responding to inquiries about the funds from participants and plans sponsors; and (7) assisting with open enrollment for investment in the fund.

consideration for the distribution rates paid by the fund companies. While we acknowledge that there are significant operational impediments to implementing this alternative distribution model, current SEC regulation stands in the way of promoting price competition. We note that since 1975, when the SEC abolished fixed brokerage commission rates, commission costs have decreased significantly for both institutional and retail brokerage customers. We believe this aspect of the Proposal has the potential to have the same effect with respect to fund distribution rates. However, so long as distribution costs are being supported by payments from fund assets little incentive exists for intermediaries to differentiate themselves on the basis of compensation.

Board Governance. The role of fund boards with respect to distribution arrangements would be substantially different under the Proposal from today's current state. We support the Proposal's elimination of the requirements for fund directors to adopt or renew a "distribution plan" or make any special findings. We believe the factors to be considered by fund boards in current Rule 12b-1 are no longer relevant to the various purposes for which payments are made out of fund assets for distribution and other services. We also agree that there is no need for a quarterly review by the board of a fund's 12b-1 payments.

We would support the annual review by a fund's board of the nature and amount of distribution fees, the types of services provided by intermediaries, and the impact on the fund and its shareholders. Instead, the Proposal goes further and charges fund boards with determining that the sales loads and ongoing sales charge are "fair and reasonable in light of the usual and customary charges made by others for services of similar nature and quality." We agree with the ICI's comment letter that this standard has no statutory or regulatory basis. We believe this standard may impose a more burdensome obligation on fund boards than current Rule 12b-1 requirements. Boards should understand why a fund needs to pay for distribution out of fund assets and ensure that the level of payments is consistent with the purposes for the payments and the nature of services provided by intermediaries. Boards should not be rate-setters in this regard. In addition, it may be difficult to provide directors the information necessary to compare whether the services of others are of a "similar nature and quality."

Application of Reference Load and Reinvestment of Dividends and Capital Gains. As previously noted, T. Rowe Price also offers Brokerage services to Price Fund shareholders and other investors. Brokerage customers are able to purchase a variety of unaffiliated load and no-load mutual funds through this service, including funds currently paying 12b-1 fees above 0.25%. To ease the operational impact of the Proposal and to simplify "on going sales charges" for investors, we agree with the ICI's views with respect to:

- **Same reference load for all funds**. Recommending the SEC treat the FINRA sales charge limit of 6.25% as the reference load for purposes of determining the maximum amount of "ongoing sales charge" in all cases, even if a fund has a front-end load class of shares that can serve as a reference load. This approach would afford consistency in application across the industry from an operational perspective but would also simplify investors' understanding of the requirement regardless of where and with whom they hold their accounts.

- **Reinvested dividends and distributions.** Recommending that the final rule permit funds with "on-going sales charges" to convert dividend and distribution reinvestments proportionately based on the total shares held in an account at the next scheduled periodic conversion date (rather than applying the same conversion schedule as the shares on which the dividend or distribution was declared).

We urge the Commission to revise the proposed rules in the Release to address these issues and to consider the alternatives we offer in this letter.

We appreciate the opportunity to submit our comments on the Proposal. Please feel free to contact Darrell Braman at 410-345-2013, Laura Chasney at 410-345-4882, Fran Pollack-Matz at 410-345-6601 or David Oestriecher 410-345-2628 if you have any questions or need additional information.

Sincerely,

David Oestriecher
Chief Legal Counsel

Laura Chasney
Managing Counsel

Darrell Braman
Managing Counsel

Fran Pollack-Matz
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