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February 22, 2011

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**RE: Registration of Municipal Advisors  
File No. S7-45-10**

Dear Ms. Murphy:

This letter is filed on behalf of my client, Federated Investors, Inc. Federated and its subsidiaries manage mutual funds, including approximately 90 money market funds, with over \$330 billion in assets under management. This letter responds to the Commission's request for comment on a proposed rule that would establish a permanent registration regime for "municipal advisors" pursuant to Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>1</sup>

Our comments are limited to the definition of "municipal advisor" as it would affect corporate trustees acting pursuant to municipal bond indentures that use money market funds as investments for cash collected in connection with such indentures. Federated was instrumental in obtaining legislation among the states to permit money market funds to be used for this purpose. For many years, Federated's money market funds have been widely used as cash investments by corporate trustees for municipal bond indentures.

Money market funds are highly liquid, efficient investment vehicles. They seek to generate income and preserve investor funds by investing in short-term, high quality debt while maintaining a stable net asset value of \$1.00 per share. They account for investments in almost 40 percent of outstanding commercial paper, approximately two-thirds of short-term state and local government debt,

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<sup>1</sup> 76 Fed. Reg. 824 (Jan. 6, 2011); 17 C.F.R. § 240.15Ba *et seq.* (the "Proposed Rule").

and a substantial amount of outstanding short-term Treasury and federal agency securities. Money market funds are highly regulated under the Investment Company Act of 1940 and Rule 2a-7 thereunder which impose stringent portfolio liquidity, credit quality, maturity, and diversification requirements. As of August 2010, there were approximately 668 money market funds,<sup>2</sup> including approximately 90 managed by Federated.

We are concerned that the proposed rule may be interpreted to unreasonably impede the use of money market funds by corporate trustees by requiring such trustees to register as “municipal advisors” if they use money market funds as investments in connection with municipal bond indentures. Specifically, the Federal Register notice accompanying the proposal suggests that registration as a “municipal advisor” might be required if a corporate trustee merely provides a list of money market funds available as cash investment options to a municipality for whose securities it is acting as an indenture trustee.<sup>3</sup>

We believe the Commission should be mindful of the limited activities performed by a corporate trustee in connection with a municipal bond indenture. In particular, we do not believe a corporate trustee be required to register as a “municipal advisor” when it merely:

Collects proceeds from bondholders;

Invests and disperses the proceeds at the direction of the municipal entity;

Provides the municipal entity with a list of money market funds or other short-term investments that are available

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<sup>2</sup> Investment Company Institute, Trends in Mutual Fund Investing, Sept. 29, 2010, available at [http://www.ici.org/research/stats/trends/trends\\_08\\_10](http://www.ici.org/research/stats/trends/trends_08_10).

<sup>3</sup> The *Federal Register* notice requested comment on whether registration as a municipal advisor would be required in the case of:

A broker-dealer that provides a list of securities meeting specified criteria that are readily available in the marketplace, but without making a recommendation as to the merits of any investment particularized to the municipal entity’s specific circumstances or investment objectives;

An entity that provides to clients investment advice, such as research information and generic trade ideas or commentary that does not purport to meet the needs or objectives of specific clients, and is provided to a municipal entity as part of its ongoing ordinary communications;

A bank that provides to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiates the terms of an investment with the municipal entity.

through the trustee in which the municipal entity may elect to temporarily invest bond proceeds;

Makes a determination that the list of short-term investments is suitable or otherwise meets the requirements of the trust indenture (for example, by satisfying applicable rating requirements and state law limits on the type of investments eligible for investment by a municipal entity);

Exercises no discretionary investment authority with respect to such proceeds; and

Does not provide advice to or on behalf of a municipal entity with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.

We believe a corporate trustee performing such limited activities is not a “municipal advisor” within the meaning of that term in the Dodd-Frank Act. We request the Commission to clarify that such is the case.

The Dodd-Frank Act defines a “municipal advisor” as any person that:

Provides advice to or on behalf of a municipal entity . . . with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or undertakes a solicitation of a municipal entity.<sup>4</sup>

The Federal Register notice accompanying the Proposed Rule suggests that a corporate trustee might be captured by the definition of “municipal advisor” if it merely provides a list of investments to a municipal entity. Yet, merely providing a list of available investments without making any recommendation or exercising discretion over the investment of assets does not constitute the giving of advice—the key element in the definition of “municipal advisor.”

The Commission has not identified any concerns integral to the Dodd-Frank Act that would justify such a broad interpretation. Nor has the Commission

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<sup>4</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act § 975.

identified any purpose that would be served by imposing municipal advisor registration requirements on such corporate trustees. A corporate trustee that merely provides a list of short-term investment options pursuant to a bond indenture is not engaged in activities of the type that raises concerns that Congress sought to address by requiring registration of municipal advisors.

Corporate trustees typically include banks and trust companies. These entities are highly regulated under federal and state law and operate subject to state trust law. The scope of their activities in connection with a municipal bond issuance generally is set forth in the trust indenture for the issuance and typically is limited to an escrow function. Corporate trustees are fiduciaries subject to duties of care and loyalty under state fiduciary law.

Moreover, as noted, mutual funds are highly regulated and subject to extensive disclosure and investor protection requirements under the Investment Company Act of 1940. The Act and rules thereunder provide substantial protections for investors, including municipal entities, that invest in mutual funds. It is difficult to see what additional protections would result by requiring corporate trustees to register as municipal advisors merely because they provide a list of available mutual funds to a municipal entity.

The regulation of corporate trustees as “municipal advisors” would impose an unnecessary and excessive regulatory burden on them and result in increased compliance costs. These costs ultimately would be born by municipal entities and local taxpayers.

It would seem a misallocation of SEC resources to commence regulating corporate trustees that do not provide investment advice when the SEC is struggling to supervise registered investment advisers. The Commission recently issued a staff report concluding that it will face significant challenges in meeting its supervisory responsibilities for registered investment advisers in the coming years. The report stated: “The Staff believes that the Commission likely will not have sufficient capacity in the near or long term to conduct effective examinations of registered investment advisers with adequate frequency.”<sup>5</sup> The Commission should not dilute its resources by targeting corporate trustees that do not even provide investment advice to municipal entities and already are highly regulated under other law.

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<sup>5</sup> SEC Staff Study on Enhancing Investment Adviser Examinations as Required by Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011) at 3-4.

Accordingly, we respectfully urge the Commission to refrain from imposing unnecessary registration requirements on corporate trustees. We urge the Commission to clarify that a corporate trustee that would not otherwise be required to register as a municipal advisor will not be required to register merely because it provides a list of available money market funds to a municipal entity for which it acts as corporate trustee.

Sincerely,

*Melanie L. Fein*

Melanie L. Fein

cc: Eugene F. Maloney  
Executive Vice President  
Federated Investors, Inc.