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Filed Electronically

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Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

**Re: Amendments to Mutual Fund Distribution Fees/Confirmations: File No. S7-15-10**

Dear Ms. Murphy:

Janus Capital Management LLC ("Janus")[1] appreciates the opportunity to express its views on the Securities and Exchange Commission's (the "Commission") proposed rule and rule amendments relating to mutual fund distribution fees and confirmation statements (the "Proposed Amendments"), as set forth in Release Nos. 33-9128; 34-62544; IC-29367 (the "Release"). The Commission has proposed for public comment a new rule and rule amendments that would replace Rule 12b-1 under the Investment Company Act and limit the cumulative sales charges investors pay, as well as require additional prospectus and confirmation statement disclosures to end investors. The Proposed Amendments are "designed to protect individual investors from paying disproportionate amounts of sales charges in certain share classes, promote investor understanding of fees . . . and allow greater competition among funds and intermediaries in setting sales loads and distribution fees generally."[2]

Janus applauds the Commission's continued efforts to foster fee transparency and enhance investor understanding of the costs involved in purchasing investment products. Since its enactment in 1980, Rule 12b-1 has become an integral part of the structure of the mutual fund industry. There has been significant debate about the appropriate role for 12b-1 fees in the marketplace and we agree with the Commission that the current rule warrants refinement.

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[1] Janus serves as registered investment adviser to mutual funds and certain institutional investment products. As of September 30, 2010, Janus Capital Group, Inc., Janus' parent company, had $160.8 billion in assets under management. Apart from its legacy direct-sold mutual fund business, Janus partners with third parties to distribute its mutual funds, with an array of third party networks available, ranging from retail supermarket, registered investment advisor networks, broker-dealer wrap fee and commissionable programs, and retirement platforms.

[2] *Mutual Fund Distribution Fees; Confirmations,* SEC Release Nos. 33-9128; 34-62544; IC-29367 (July 21, 2010), 75 FR 47064 (August 4, 2010) at 2.

Janus is a member of the Investment Company Institute ("ICI") and fully supports the ICI's comment letter. We are writing separately, however, to reinforce our views on several issues in the ICI letter that are of particular interest to us. Our specific comments on the Proposed Amendments are set forth below.

**Marketing and Service Fees**

The proposed Rule 12b-2 would permit funds to deduct a "marketing and service" fee up to the NASD service fee limit from fund assets to pay for distribution activity. Although the fee could be used for any type of distribution cost, the Commission anticipates it primarily would be used to pay for servicing activity.[3]

We believe this proposal provides a significant opportunity to develop increased clarity and consistency in what has become a complex mutual fund pricing environment. Fund shareholders are provided with a broad range of distribution and administrative services that are financed both from fund assets and other resources. This financing results in a variety of fee classifications disclosed to investors, including 12b-1 fees, transfer agency costs, administrative or networking/omnibus fees, investor-paid account-level charges, such as wrap fees or commissions, and revenue sharing paid from asset manager revenues. The resulting complexity of pricing options affords investors broad choices, but requires clear disclosure and transparency to avoid investor confusion. Further, as the Commission recognized in the Release, various non-distribution related uses for 12b-1 fees have emerged, ranging from shareholder servicing costs as contemplated by NASD Conduct Rule 2830 to sub-transfer agency and administrative services charges.[4] While we support the Commission's efforts to enhance fee transparency for investors, we believe it is critical that the Commission clarify the intended scope of proposed Rule 12b-2 to ensure funds use these fees to pay for consistent activities.

We urge the Commission to provide clear guidance regarding what constitutes "distribution" and "service" for purposes of the Proposed Amendments, as well as confirm funds would be permitted to treat service and administrative fees that are properly outside the scope of current Rule 12b-1 as equally outside the scope of Rule 12b-2. In addition, we encourage the Commission to reaffirm existing guidance on "administrative services" by providing a non-exhaustive list of activities that are presumptively not distribution in nature, as advocated in the ICI's comment letter.[5] Without this guidance, asset managers and fund directors will spend inordinate amounts of time grappling with the question of what specific tasks constitute "distribution" versus

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[3] Release at 41.

[4] Release at 26, 41, 129-131. The broad range of uses for 12b-1 fees has become clear over recent years. *See* http://www.sec.gov/spotlight/rule12b-1.htm (which provides links to Rule 12b-1 roundtable materials). *See, e.g.,* Comment Letter of the National Association of Insurance and Financial Advisors (July 13, 2007); Comment Letter of the ICI (July 19, 2007) (emphasizing the importance of 12b-1 fees for investor servicing); Paul G. Haaga, Jr. & Michele Y. Yang, Practicing Law Institute, *Distribution of Mutual Fund Shares: Rule 12b-1,* CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES (June 1998) (indicating that many fund groups subsidize the cost of 401(k) recordkeeping using 12b-1 plans).

[5] *See* Comment Letter of the ICI (November 5, 2010).

"service" with disparate results. We believe this level of clarity is necessary to alleviate inconsistencies between fund firms' characterization of fees that are service in nature, and permitting funds to use fees with similar labels to pay for dissimilar tasks only serves to cloud investor understanding in an already complex environment.

**Platform Fees Associated with Money Market Funds**

In its comment letter, the ICI requests the Commission carefully consider whether the application of marketing and service fees and ongoing sales charges creates an unintended consequence for money market funds, particularly those used in sweep accounts.[6] The basis for this argument lies, at least in part, in the fact that such 12b-1 fees are used like platform fees, which bear more similarities to marketing and service fees than front-end sales charges.[7]

Janus supports the ICI's contentions on this point but urges the Commission to consider the broad contexts in which platform fees are utilized, which include more situations than the implementation of money market funds in sweep accounts. We believe there is a reasonable argument to be made that platform fees, which are paid to intermediaries to offset expenses associated with establishing and servicing customer accounts, are similar to marketing and service fees. If the Commission's goal with this rulemaking is to foster transparency, we believe that is best achieved by treating like fees on a like basis across the industry.

**Section 22(d) Exemption**

In the Release, the Commission anticipates the Section 22(d) exemption "would expand the range of distribution models available to mutual funds, enhance transparency of costs to investors, promote greater price competition, and provide a new alternative means for investors to purchase fund shares at potentially lower costs."[8] Although Janus commends the Commission for seeking ways to achieve these important goals, we believe this proposal could create negative unintended consequences for end investor pricing.

Broker-dealers and asset managers are likely to experience significant operational costs in converting to variable pricing structures under a Section 22(d) exemption. Janus believes this proposal could result in higher costs for the end investor as the potentially far-reaching operational and administrative aspects of implementation are realized. If a Section 22(d) exemption is adopted, the most effective means of achieving transparency of these implementation costs is to require full disclosure of the transfer of fees of any nature between asset managers and distributors.

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[6] *Id.*
[7] The ICI also argues that because money market funds are not sold with a front-end sales charge, the treatment of 12b-1 fees over 25 basis points in this context is inapt. *Id.*
[8] Release at 90.

In addition, asset managers reliant on third-party distributors and lacking the leverage and scale available to very large market participants may be placed at a competitive disadvantage in implementing these changes. We believe less competition will not result in lower end investor costs and therefore will not achieve the Commission's stated policy objectives in connection with the Proposed Amendments.

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We appreciate the opportunity to comment on this proposal and support the Commission's efforts to enhance transparency and facilitate investor understanding of mutual fund fees. If you have any questions about our comments or would like any additional information, please contact me at (303) 336-4444.

Respectfully submitted,

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Janus Capital Management LLC