BRYAN CAVE

June 10, 2008

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice No. 08-23 (the "*Regulatory Notice*"),
Proposed Consolidated FINRA Rules Governing Financial Responsibility

Dear Ms. Asquith:

On behalf of our client, Federated Investors, Inc. ("Federated")[1] we appreciate the opportunity to provide the Financial Industry Regulatory Authority ("FINRA") with comments regarding the proposed consolidated FINRA rules governing financial responsibility.

Federated supports the efforts of FINRA to consolidate the NASD and NYSE rule books and to develop the best possible rules.[2] Federated also supports the proposed consolidated FINRA rules governing financial responsibility, noting that the financial responsibility rules[3] are at the core of the protections for customers of broker-dealers.

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1 Federated is one of the nation's largest investment managers and one of the largest institutional money market managers. As of December 31, 2007, Federated had approximately $301.6 billion in assets under management, including 147 equity, fixed-income and money market mutual funds. Federated has a diversified client base including banks, broker-dealers, insurance companies, corporations, pension funds, and government entities. Federated is listed on the New York Stock Exchange ("NYSE") (Symbol: FII). Federated has an affiliated broker-dealer, Federated Securities Corporation, which is a member of FINRA. For additional information, see http://www.federatedinvestors.com.

2 *E.g.,* remarks of Mary L. Schapiro, Chief Executive Officer, FINRA, at Securities Industry and Financial Markets Association, Annual Meeting, November 9, 2007.

3 Section 3(a)(40) of the Securities Exchange Act of 1934 provides that the "term 'financial responsibility rules' means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices with are designated by the Commission, by rule or regulation, to be financial responsibility rules."

We believe it is very sensible for FINRA to "streamline and reorganize" these provisions into one rule.[4]

Under proposed FINRA Rule 4110(a), which is based on NYSE Rule 325(d), FINRA would have the authority to require carrying, clearing and (k)(2)(i) member firms[5] to increase their net capital or net worth, when deemed necessary for the protection of investors or the public interest.

> The authority to act under the proposed rule would reside with FINRA's executive vice president charged with oversight for financial responsibility (or his or her written officer delegate) (referred to as "FINRA's EVP"). To execute such authority, FINRA would be required to issue a notice pursuant to Proposed FINRA Rule 9557 (referred to as a "Rule 9557 notice"). Proposed FINRA Rule 9557, much like NASD Rule 9557, would afford a member opportunity for an expedited hearing pursuant to Proposed FINRA Rule 9559.
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> Under the proposed rule, FINRA's EVP could require a carrying, clearing or (k)(2)(i) member firm to comply with increased capital requirements in extraordinary circumstances, such as where unanticipated systemic market events (e.g., recent events that have caused stress in the credit markets) threaten the member firm's capital, or where the member firm maintains an undue concentration in illiquid products. In such instances, FINRA's EVP may, for example, find it appropriate, in the public interest, to raise the applicable "haircut" (that is, to increase the percentage of the market value of certain securities or commodities positions by which the member must reduce its net worth) or treat certain assets as non-allowable in computing net capital.[6]

The *Regulatory Notice* further indicates that "all member firms that are subject to the provision would have an opportunity to request an expedited hearing if they receive a Rule 9557 notice, which would be a new procedural right not available under NYSE Rule 325(d)."[7] FINRA anticipates that it only would apply the proposed Rule 4110(a) in limited circumstances.[8]

Federated recognizes that there are times when FINRA may need to respond quickly to changes in the marketplace and may need to take prompt action to protect investors' funds and securities. Increasing the applicable haircut on assets or treating certain assets as non-allowable may be appropriate in

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4 *Regulatory Notice* at 2.

5 FINRA refers to broker-dealers that operate pursuant to the exemptive provisions of Rule 15c3-3(k)(2)(i) as "(k)(2)(i) members." *Id* at 2 and note 5.

6 *Id* at 3.

7 *Id.*

8 *Id.*

unusual circumstances. As noted, with proper procedural safeguards, we support such authority when used sparingly and judiciously.

Nonetheless, Federated wishes to raise a cautionary note. We know that FINRA appreciates the role of the Securities and Exchange Commission (the "Commission" or the "SEC") in adopting the financial responsibility rules. As noted, FINRA would have the authority to increase haircuts or declare assets as non-allowable. In this role, FINRA would function much like the Commission with respect to determining the appropriate haircuts to be applied to a member firm's assets or determining that certain assets are non-allowable.

We respectfully suggest that FINRA should not deviate from the practices of its predecessor and should only employ this authority in limited circumstances. We commend FINRA for stating its intention to use this authority sparingly. We urge FINRA to apply the proposed rule in a manner that would not undermine the processes employed by the SEC in determining haircuts as reflected in Rule 15c3-1.

In particular, we note that Federated has petitioned the Commission to make certain changes to the financial responsibility rules, including reducing the haircut on money market funds from the current 2%.[9] The SEC has proposed for comment changes to its financial responsibility rules, including Rule 15c3-1 and the haircut for money market funds.[10] Federated has submitted comment letters to the SEC regarding the proposed changes[11] and eagerly awaits resolution of the same. We would hope that FINRA would apply proposed Rule 4110(a) in a manner consistent with the changes ultimately adopted by the SEC in connection with the Release, and would only increase the haircut or declare certain assets to be non-allowable in extraordinary circumstances. We believe that it would be inappropriate for FINRA to use the authority it seeks to change on an *ad hoc* basis the policy decisions that the Commission makes with regard to haircuts and allowable assets under the net capital rule.

Federated has the greatest respect for the role of FINRA and for its Staff, and we have no reason to believe that FINRA would use this authority inappropriately; nonetheless, we thought it important to express our views in this regard.

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9 Federated, Amended Petition for Rulemaking, April 4, 2005.

10 *See* Securities Exchange Act Release 55431 (March 9, 2007); 72 FR 12899 (March 19, 2007) (the "Release").

11 *See* Comment letter on behalf of Federated from Stuart J. Kaswell and David J. Harris, Dechert LLP, May 1, 2007, and Comment letter of behalf of Federated from Stuart J. Kaswell, Dechert LLP, January 7, 2008, File No. S7-08-07.

We appreciate the consideration of our comments and would be pleased to discuss them in greater detail. If you have any questions, please contact Corey K. Gay at (202) 508-6009 or the undersigned.

Sincerely yours,

/s/

Stuart J. Kaswell

Copy: Eugene F. Maloney, Executive Vice President, Federated Investors Management Company, Inc., Vice President and Corporate Counsel of Federated Investors, Inc. and member of the Executive Committee.