

MEMORANDUM OF DIVISION OF CORPORATE REGULATION,  
SECURITIES AND EXCHANGE COMMISSION, REGARDING  
LETTER DATED JANUARY 28, 1972, FROM  
HONORABLE FRANK HORTON

In his letter of January 28, 1972, Congressman Horton enclosed correspondence from Dr. Patrick P. Badamy who complains about the fees for trustee services incurred in connection with a Keogh Plan invested in shares of a registered investment company which makes available a prototype retirement plan satisfactory to the Internal Revenue Service.

We had prior correspondence with Dr. Badamy in September of 1969 in which we informed him that:

"It is a common practice for mutual funds to arrange for bank custody of their shareholder accounts for which a bank receives separate compensation from the shareholder. In order to qualify for tax benefits under the Internal Revenue Code, Keogh accounts must be placed in custody of a qualified trustee or a bank. Since the charge for administering your account is imposed by the bank and stems from the requirements of the federal tax laws, at the present time we regard such charges as not made in connection with the sale of a security. Consequently, we are not presently objecting to these fees.

You may be able to arrange a bank custodianship independent from the fund for a lower fee. But this is a matter for which you should consult counsel experienced in taxation matters."

There have been no changes in law since our prior correspondence which might affect Keogh plan trustee or custodian charges. The Investment Company Act of 1940, as amended (Public Law 91-547, December 14, 1970)

gives the National Association of Securities Dealers and the Commission authority to prohibit "excessive" sales loads charged by a registered investment company, its underwriter and dealers. However, the definition of sales load in that Act excludes a trustee's or custodian's fees, administrative expenses or fees which are not properly chargeable to sales or promotional activities. Therefore, as we presently interpret the federal securities laws we have no jurisdiction over Keogh plan trustee or custodian charges imposed by a bank.