

**MEMO# 25720**

December 16, 2011

## **SEC Pay-to-Play Rule - Supplemental Implementation Guidance to Reflect No-Action Relief Granted to ICI**

[25720]

December 16, 2011

TO: OPERATIONS COMMITTEE No. 52-11  
TRANSFER AGENT ADVISORY COMMITTEE No. 104-11  
SMALL FUNDS COMMITTEE No. 55-11  
COMPLIANCE MEMBERS No. 46-11 RE: SEC PAY-TO-PLAY RULE - SUPPLEMENTAL  
IMPLEMENTATION GUIDANCE TO REFLECT NO-ACTION RELIEF GRANTED TO ICI

On August 9, 2011 the ICI Transfer Agent Advisory Committee's ("TAAC") Pay-to-Play Rule Task Force issued documents outlining a suggested process for fund transfer agents to use when assisting investment advisers in satisfying certain recordkeeping requirements of the SEC Pay-to-Play Rule (Rule 206(4)-5 under the Investment Advisers Act of 1940) by the effective date of September 13, 2011. [\[\\*\]](#)

In September 2011, the Institute was successful in obtaining no-action relief from the staff of the U.S. Securities and Exchange Commission ("SEC") relating to the duty of advisers to mutual funds to keep a record of those government entities that are invested in a mutual fund account held by a 403(b), 457, or 529 participant-directed plan. Under this relief, advisers to mutual funds are no longer required to pierce omnibus accounts to obtain this information.

In light of the no-action relief granted to the ICI, the TAAC Pay-to-Play Rule Task Force has updated the process it previously suggested for mutual fund transfer agents to obtain this information and has added supplementary guidance specific to the points covered in the no-action relief. The new and updated documents are attached.

These documents are intended to serve as a resource for ICI members and to provide a consistent industry approach to conducting searches of accounts to identify government entity accounts. ICI does not provide legal advice and members may want to consult their own legal counsel regarding the proper interpretation of and compliance with the recordkeeping requirements of the SEC's rules. Members should not feel compelled to utilize the attached process and each fund should make its own business decisions regarding its compliance efforts.

I'm sure you will join me in thanking the TAAC Pay-to-Play Rule Task Force for developing these resources for ICI members. Questions or comments may be directed to me at [butler@ici.org](mailto:butler@ici.org) or 202-326-5850.

Diane M. Butler  
Director - Transfer Agency & International Operations

[Attachment](#)

**endnotes**

[\*] See Institute Memorandum No. [25398](#) dated August 9, 2011.

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