

MEMO# 25962

March 5, 2012

529 Plans and the SEC's Pay-to-Play Rule

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TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 3-12
INVESTMENT ADVISER MEMBERS No. 2-12
TRANSFER AGENT ADVISORY COMMITTEE No. 16-12 RE: 529 PLANS AND THE SEC'S PAY-TO-PLAY RULE

As you may recall, last September the Institute was successful in obtaining no-action relief from the SEC that facilitated members' compliance with the requirement under the SEC's pay-to-play rule that advisers maintain a list of those government entities that are invested in a mutual fund advised by the adviser. * With respect to 529 plan accounts, the no-action relief requires advisers to maintain a list of each government entity that sponsors or establishes a 529 plan and has selected the mutual fund as an investment option for the plan.

529 plans commonly include as an investment option mutual funds other than those managed by the plan's manager. In such instances, it is not uncommon for the 529 plan's account at these other mutual funds to be held in a name other than that of the state's 529 plan trust (e.g., in the name of the trust's custodian), which makes it virtually impossible for mutual funds holding these accounts to identify them from their shareholder records as a 529 plan or government entity account. To enable advisers to identify these 529 plan accounts consistent with the no-action relief, the Institute sought the assistance of the state sponsors of 529 plans.

We are pleased to report that the College Savings Plan Network (CSPN), which is the association of state sponsors of 529 plans, has sent an email to each state's 529 plan sponsor "asking each state to contact the Chief Compliance Officer of each mutual fund firm that is an investment option in [the state's 529 plan] program to ensure that he or she is aware that you are using that mutual fund firm." Accompanying this CSPN email is a letter, which was jointly drafted by the Institute and the Chair of CSPN's Legal & Regulatory Affairs Committee, that the states' 529 plan administrators can use to formally request that their program manager provide this information to CCOs of those mutual funds that are investment options in the state's 529 plan. A copy of CSPN's email and this letter are attached.

We hope that, as CCOs receive these requests, they provide the necessary information to their colleagues in the industry to facilitate compliance with the requirements of the SEC's no-action relief. If you have any questions concerning this matter, please contact the undersigned.

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[Attachment](#)

endnotes

*See Institute [Memorandum](#) No. 25484, dated September 14, 2011

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