

**MEMO# 25398**

August 9, 2011

# **SEC Pay-to-Play Rule - Suggested Process for Compiling List of Government Entities and Template for Information Requests to Intermediaries**

[25398]

August 9, 2011

TO: OPERATIONS COMMITTEE No. 28-11

OPERATIONS MEMBERS No. 18-11

TRANSFER AGENT ADVISORY COMMITTEE No. 65-11

SMALL FUNDS COMMITTEE No. 30-11

SMALL FUNDS MEMBERS No. 56-11

COMPLIANCE MEMBERS No. 36-11 RE: SEC PAY-TO-PLAY RULE - SUGGESTED PROCESS FOR COMPILING LIST OF GOVERNMENT ENTITIES AND TEMPLATE FOR INFORMATION REQUESTS TO INTERMEDIARIES

As you may know, in July 2010, the SEC adopted a pay-to-play rule under the Investment Advisers Act of 1940 and related recordkeeping requirements. These requirements, in part, require all advisers to mutual funds to maintain a list of all government entities that hold fund shares through a 403(b), 457, or 529 plan. To assist mutual funds in compiling this information for their advisers, the ICI Transfer Agent Advisory Committee ("TAAC") formed a Pay-to-Play Rule Task Force. The Task Force's mission was to develop a process to assist members in satisfying this recordkeeping requirement by the rule's effective date of September 13, 2011. Pursuant to its charge, the Task Force recently produced the attached documents.

The first document is a project plan that discusses the objectives and scope of the project undertaken by the TAAC Pay-to-Play Rule Task Force.

The second document, "Identification of Fully Disclosed Government Accounts - Suggested Process Steps" describes processes suggested by the Task Force that members may use to determine which of its transparent (i.e., directly-held and fully-disclosed) shareholders' accounts may need to be included on a list of government entity accounts. This process involves scrubbing shareholders' accounts using social codes and key word inclusions and

exclusions, which are provided in Appendices A, B and C of the document.

The final document, “Pay to Play Government Account Detail within the Intermediary Position – Request for Information,” is a template funds may use to request information from their intermediaries and omnibus account holders on such person’s government entity clients consistent with the rule’s requirements. The template, which was developed in Excel format, requests a list of covered government entity accounts, including certain data elements for each such account. While the template includes instructions for the intermediary, the Task Force believes that the template will initially be sent as an attachment to a cover letter that more fully explains the requirements of the SEC’s Pay-to-Play Rule (Rule 206(4)-5 and the related recordkeeping requirements in Rule 204-2) and requests that the intermediary assist the investment adviser in meeting the Rule’s requirements [1].

These documents are intended to serve as a resource for ICI members and to provide a consistent industry approach to scrubbing their records and collecting relevant data from intermediaries and omnibus account holders. 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 or template 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 on the template 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**

[1] See ICI Memo 24767, dated December 8, 2010 – Form Letter Members May Use to Obtain List of Government Clients from Intermediaries under the SEC’s Pay-to-Play Rule.