

MEMO# 28490

October 28, 2014

State Abandoned Property Audits

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TO: SEC RULES MEMBERS No. 41-14

OPERATIONS MEMBERS No. 17-14

TRANSFER AGENT ADVISORY COMMITTEE No. 70-14 RE: STATE ABANDONED PROPERTY AUDITS

Over the past few years, the Institute has been working with mutual fund recordkeepers to address concerns with the states' becoming increasingly aggressive with seizing so-called abandoned property. As a result of changes to the states' laws over the past several years, it is wholly possible for a shareholder's account to escheat to a state as a result of the shareholder either not cashing a dividend or interest check or not having documented "contact" with a mutual fund's recordkeeper, even though the recordkeeper has a valid address and contact information on the shareholder and even though the shareholder is making regularly scheduled contributions to, or taking regularly scheduled distributions from, the account. Because most states lack the resources to audit for compliance with their states' laws, they retain third-party auditors to conduct such audits. Most states retain such auditors on a contingent-fee basis, paying them over ten percent of the proceeds generated from these audits.

As agents of the states that retain them, the authority of contingent-fee auditors is limited to the states' authority. Notwithstanding this, we understand that such auditors may be seeking account records beyond those that the state could itself require, including lists of all funds that for which the transfer agent acts as a recordkeeper and/or a list of all fund shareholders. As a result, the Institute has been asked by the private bar to communicate the following to our members:

It has come to our attention that certain states have commenced unclaimed property examinations of third parties, including mutual fund transfer agents. The transfer agents' books and records are being examined as a means of identifying those shareholders' accounts that have not been reported to the states as required by the states' unclaimed property reporting requirements. The states have been auditing for compliance through third-party auditors whose requests are broad and include an initial request that the transfer agent produce a list of all of its shareholders accounts. We recommend that you seek legal advice before responding to such requests to ensure that: (1) the auditor has lawful authority to obtain such information; (2) the fund or its transfer agent can

lawfully surrender such information to the auditors without first seeking shareholder approval; and (3) in the event the fund or its transfer agent provides such information to the auditors, the state's abandoned property law will indemnify its actions.

If you have any questions concerning this issue or state abandoned property issues generally, please contact the undersigned by phone (202-326-5825) or email (tamara@ici.org).

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