

**MEMO# 19528**

January 3, 2006

# **MODEL CONTRACTUAL CLAUSES TO ASSIST MEMBERS IN IMPLEMENTING THE AGREEMENT REQUIREMENTS OF THE SEC'S REDEMPTION FEE RULE**

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19528] January 3, 2006 TO: BROKER/DEALER ADVISORY COMMITTEE No. 39-05 CHIEF COMPLIANCE OFFICER COMMITTEE No. 72-05 OPERATIONS COMMITTEE No. 30-05 PENSION COMMITTEE No. 40-05 SEC RULES COMMITTEE No. 70-05 SMALL FUNDS COMMITTEE No. 40-05 TRANSFER AGENT ADVISORY COMMITTEE No. 68-05 RE: MODEL CONTRACTUAL CLAUSES TO ASSIST MEMBERS IN IMPLEMENTING THE AGREEMENT REQUIREMENTS OF THE SEC'S REDEMPTION FEE RULE

Attached are model contractual clauses that are intended to assist members in implementing the written agreement requirements of the new redemption fee rule, Rule 22c-2 under the Investment Company Act of 1940, by its October 16, 2006 compliance date.<sup>1</sup> These model clauses were developed jointly by the Institute and the Securities Industry Association. While we understand that the SEC staff is working on amendments to Rule 22c-2, those amendments should not impact members' use of these model clauses to comply with the rule's agreement requirements. The model clauses may be used as either a stand-alone agreement with an intermediary or as a supplement to an existing agreement. The clauses track the requirement of the rule, except in two instances. In particular, unlike the rule, Section x.1.2 of the model clauses:

- Address instances in which, due to a "chain of intermediaries," the intermediary on the fund's books and records does not have the necessary account information requested by the fund; and
- Specify that any transaction information provided by an intermediary to the fund should be consistent with the NSCC Standardized Data Reporting Format.<sup>2</sup>

<sup>1</sup> Rule 22c-2 requires, in part, all mutual funds to have a written agreement with each of their "financial intermediaries" that requires the intermediary to agree to (1) provide customer transaction information to the fund upon request and (2) execute any instruction from the fund to restrict or prohibit purchases or exchanges of fund shares that violate the fund's market timing policies.

<sup>2</sup> The NSCC Data Reporting Format is a standardized data protocol developed jointly by the securities industry and the NSCC that, through leveraging existing industry technology, would facilitate electronic transmission of data.

The Institute and the SIA encourage use of these model clauses. We recognize, however, that as a result of the variety of business models and relationships in the industry, use of a "one size fits all" agreement may be impractical. Accordingly, funds and their financial intermediaries that elect to use these model clauses may wish to revise them as necessary to address their particular

circumstances. At a minimum, we believe that the model clauses will serve as a useful resource to members in determining the subjects to be addressed in the required agreement. If you have any questions about the attached model clauses or the requirements of the new rule, please contact Tami Salmon or Kathy Joaquin. Tami can be reached by phone at 202- 326-5825 or by email at [tamara@ici.org](mailto:tamara@ici.org); Kathy can be reached by phone at 202-326-5930 or by email at [kjoaquin@ici.org](mailto:kjoaquin@ici.org). Tamara K. Salmon Senior Associate Counsel Attachment Attachment (in .pdf format) pursuant to Rule 22c-2. Information concerning this data protocol is expected to be distributed to members during the first quarter of 2006.

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