

**MEMO# 20496**

October 19, 2006

## **Revised Model Contractual Clauses to Assist Members in Implementing the Agreement Requirements of Rule 22c-2**

©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. [20496] October 19, 2006 TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 30-06 BROKER/DEALER ADVISORY COMMITTEE No. 43-06 CHIEF COMPLIANCE OFFICER COMMITTEE No. 15-06 OPERATIONS COMMITTEE No. 28-06 PENSION COMMITTEE No. 34-06 SEC RULES COMMITTEE No. 45-06 SMALL FUNDS COMMITTEE No. 27-06 TRANSFER AGENT ADVISORY COMMITTEE No. 71-06 RE: REVISED MODEL CONTRACTUAL CLAUSES TO ASSIST MEMBERS IN IMPLEMENTING THE AGREEMENT REQUIREMENTS OF RULE 22c-2 As we previously informed you, the SEC has approved revisions to the redemption fee rule, Rule 22c-2, and provided additional clarification regarding the rule's application.<sup>1</sup> In light of the amendments adopted to the rule, the model contractual clauses previously distributed to the industry<sup>2</sup> have been revised to reflect the requirements of the revised rule. The attached model clauses were developed jointly by the Institute and the Securities Industry Association and are intended to assist members in implementing the written shareholder information agreement requirements of Rule 22c-2 by its compliance date, which was extended until April 16, 2007. 1 See Institute Memorandum to Bank, Trust and Recordkeeper Advisory Committee No. 28-06, Broker/Dealer Advisory Committee No. 38-06, Chief Compliance Officer Committee No. 14-06, Compliance Members No. 39-06, Operations Members No. 19-06, Pension Members No. 59-06, SEC Rules Members No. 84-06, Small Funds Members No. 68-06, Technology Advisory Committee No. 17-06, Transfer Agent Advisory Committee No. 64-06 [No. 20421], dated September 28, 2006. 2 See Institute Memorandum to Bank, Trust and Recordkeeper Advisory Committee No. 21-06, 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 [Nos. 19541 and 19528] dated January 3, 2006. In addition, see Institute Memorandum to Bank, Trust and Recordkeeper Advisory Committee No. 10-06, Broker/Dealer Advisory Committee No. 11-06, Operations Committee, 10-06, SEC Rules Committee No. 15-06, Small Funds Committee No. 10-06, Technology Advisory Committee No. 5-06 and Transfer Agent Advisory Committee No. 19-06 on Rule 22c-2 Sample Mutual Fund Agreement Package for Intermediaries [No. 19829], dated March 13, 2006. 2 The revisions to the model contractual clauses include: (1) an optional additional provision at the top of the agreement that may be used to (a) govern when the parties deem the agreement to be effective, and, if effectiveness is delayed for the 12 months permitted by the 22c-2 release, (b) an optional provision to govern

information sharing during the interim period; (2) references to “Individual/International Taxpayer Identification Number (ITIN), or other government issued identifier (GII), if known;” (3) changes to paragraph x.1.2 “Form and Timing of Response” that track the amended language in the rule; and (4) additional definitions for the terms “Intermediary” (x.3.5), “purchase” (x.3.6) and “promptly” (x.3.7). The model clauses may be used as either a stand-alone agreement with an intermediary or as a supplement to an existing agreement. 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, funds and 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 these clauses are a useful resource to members in determining the issues to be addressed in the required agreement. If you have any questions about the attached model contractual clauses, please contact the undersigned, Kathy Joaquin (at [kjoaquin@ici.org](mailto:kjoaquin@ici.org) or 202-326-5930) or Tami Salmon (at [tamara@ici.org](mailto:tamara@ici.org) or 202-326-5825). Kathleen C. Joaquin  
Director - Operations & Distribution Attachment (in .pdf format)

---

Copyright © by the 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.