

ICI Transfer Agent Advisory Committee Pay-to-Play Rule Task Force Project Plan

**Identifying Government Entity Clients of Fund Investment Advisers on
Mutual Fund Transfer Agent Records - for Compliance with the
Recordkeeping Requirements of the SEC's Pay-to-Play Rule**

Updated - December 2011

Table of Contents

| | | |
|------------|-----------------------------------|----------|
| 1 | DESCRIPTION | 3 |
| 2 | MISSION/OBJECTIVES | 3 |
| 3 | SCOPE..... | 3 |
| 3.1 | Project Deliverables | 4 |
| 3.2 | Project Inclusions..... | 4 |
| 3.3 | Project Exclusions..... | 4 |
| 3.4 | Assumptions | 5 |
| 3.5 | Constraints | 5 |

1 Description

The Securities and Exchange Commission adopted Rule 206(4)-5 under the Investment Advisers Act of 1940 addressing the exposure to “pay-to-play” practices by investment advisers. The purpose of this rule is to curtail the corrupting influence of pay-to-play practices. The SEC believes this new rule and its related recordkeeping requirements will help level the playing field, allowing advisers of all sizes to compete for government contracts based on investment skill and quality of service.

The rule applies to all federally-registered investment advisers, including advisers to mutual funds, and those exempt from registration under Rule 203(b) (3) - the "private adviser" exemption. It includes prohibitions intended to capture direct and indirect political contributions by investment advisers as well as other ways that advisers may engage in pay-to-play arrangements. The rule requires advisors to retain records of contributions made by the adviser and its “covered associates” (which is a defined term) to government officials (including candidates) and of payments to political action committees.

The rule also requires advisers to mutual funds to maintain a list of those government entities that have invested in a mutual fund through participant-directed 403(b), 457, or 529 plans and retain the list for a period of five years. The recordkeeping requirement contemplates including government entity shareholders who hold shares through omnibus accounts, however, on September 12, 2011 the SEC staff provided the ICI with no-action relief from this portion of the requirement.¹

The ICI Transfer Agent Advisory Committee (“TAAC”) formed a task force to discuss this recordkeeping requirement and to develop a recommended process for mutual fund transfer agents to consider as they develop procedures to facilitate the efficient search of records to capture those government entities that must be included on the adviser’s list of clients pursuant to the rule.

The compliance date by which advisers to Mutual Funds (“MFs”) must have created a list of those government entities that have invested in a MF through participant-directed 403(b), 457, or 529 plans is September 13, 2011.

2 Mission/Objectives

2.1 Purpose

To provide suggestions for an efficient process to capture the records at the fund transfer agent that are required to be maintained pursuant to the recordkeeping requirements of Rule 204-2(a)(18) relating to 403(b) and 457 Plans held by government entities. Specifically, the focus of the Task Force is the requirement to list those government entities that have invested in a MF through participant-directed 403(b) and 457 plans and to retain the list for a period of five years. The contribution records required to be maintained by investment advisers are out of scope.

2.2 Benefits

Developing a search protocol for obtaining the required information from the MFs records will provide an efficient and uniform approach that MF transfer agents may use to assist fund investment advisers to fulfill the rule’s recordkeeping requirements..

3 Scope

The scope of this project includes developing a suggested process to create a list of accounts of government entities that “can *reasonably*” be identified as being “held in the name of or for the

¹ The SEC no-action letter provides an alternative approach to the recordkeeping provisions under the rule and is available at <http://www.sec.gov/divisions/investment/noaction/2011/ici091211-204.htm>. The Task Force operated under the premise that mutual fund investment advisers and their transfer agents will attempt to follow the alternate recordkeeping approach provided in the SEC no-action letter.

benefit of [a] government entity on the records of the Covered Investment Pool [*i.e.*, the mutual fund] or its transfer agent.² [Emphasis added.]

3.1 Project Deliverables

- Deliverable #1 – The task force has documented possible processes for identifying and maintaining participant directed 403(b) and 457 plan accounts that are held directly by the mutual fund. See “Identification of Government Entity Accounts – Suggested Process Steps.”
- Deliverable #2 – Appendix A is guidance for capturing records required by the SEC’s September 12, 2011 no-action relief and covers topics including treatment of intermediated accounts, treatment of 529 plan trust accounts, revising new account applications to identify government entities, compliance date issues and ongoing compliance.
- Deliverable #3 - Task Force members provided social codes/descriptions for accounts that reside in 403(b) and 457 Plans. (See Appendix B).
- Deliverable #4 - Task Force members provided “Catch-All” Social Codes, which may include applicable government accounts (see Appendix C).
- Deliverable #5 – Task Force members provided Keyword Inclusions/Exclusions to identify government accounts. These Keywords may be used to scan against the accounts marked with the Catch-All social codes (see Appendix D).
- Deliverable #6 – In Appendix E, the Task Force has provided sample language for new account opening documents, for funds that have determined that it would be of value to capture government entity status at the time of account opening.

3.2 Inclusions

The Task Force has developed processes to: (1) identify direct accounts that reside in 403(b) and 457 participant-directed retirement plans that are held by government entities, (2) identify government entity accounts through account opening documents for those funds that elect to capture this information at the time the account is created on the fund’s books and records; and (3) retain and periodically update a list of government entity accounts.

3.3 Exclusions

Excluded from this project are the following requirements applicable to the MF’s investment adviser:

- Identification of an adviser’s “covered associates;”
- Issues relating to: (1) establishing an internal compliance policy, to prohibit the adviser’s covered associates from contributing to certain political candidates or coordinating contributions or political fundraisers; and (2) ensuring that individuals considered by an investment adviser for hire and promotion into restricted positions have not made political contributions during the two-year period prior to the hire or promotion that would trigger the rule’s prohibitions.
- Identification of 529 plans that include funds advised by the investment adviser as options in the plan.³

² The Task Force originally included a plan for intermediary and broker controlled accounts in the project, however, the ICI request for no-action relief which was granted by the SEC staff on September 12, 2011 made that plan unnecessary.

³ From the manner in which 529 plan trust accounts are maintained on a fund’s books and records, these accounts cannot be readily identified by the mutual fund’s transfer agent. As described in Deliverable #2 above, the Institute is working with the Lawyers Committee and Operations Committee of the College Savings Plan Network to address this issue and capture these accounts for investment advisers to mutual funds. In particular, we are working on devising a process for 529 plan program managers to notify advisers

- Identification of those accounts that are identified at or around the time of the initial investment to the adviser or one of its client servicing employees, regulated persons, or covered associates as owned by a government entity; and
- Identification of each government entity that has been solicited to invest in a Covered Investment Pool either (i) by a covered associated or regulated person of the adviser or (ii) by an intermediary or affiliate of the Covered Investment Pool if a covered associate, regulated person, or client servicing employee of the adviser participated in or was involved in such solicitation, regardless of whether such government entity invested in the Covered Investment Pool.

3.4 Assumptions

- Assumption #1: Will identify as many social codes/descriptions that meet the criteria of a 403(b) and 457 participant-directed plan held by a government entity. To meet the requirements of Regulation S-P, reasonable efforts will be made to exclude accounts that are registered in the name of an individual or to exclude individuals' personally identifiable information.
- Assumption #2: Will include on the list those accounts that could be, but are not definitively determined to be, held by a government entity.

3.5 Constraints

- Constraint #1: Inability to identify all government entities due to lack of information in the account registration.
- Constraint #2: Social codes that inappropriately include non-government entities.

**Identification of Government Entity Accounts
Suggested Process Steps
Updated - December 2011**

This document was developed for fund transfer agents that are creating processes to help fund investment advisers meet the recordkeeping requirements of the SEC's Pay-to-Play Rule. The document provides suggested processes for identifying the universe of accounts to be reviewed, for scrubbing the accounts to identify 403(b) and 457 plan accounts held by a government entity, for new account opening, and for report creation and delivery.

| Topic | Suggested Process | Possible Alternative Steps |
|---|---|--|
| | Universe of Accounts to be Reviewed | |
| Include accounts of a government entity that can reasonably be identified as being held in the name of or for the benefit of a government entity on the records of the mutual fund or its transfer agent. | Scrub 403(b) and 457 plan accounts for which the fund has responsibility for reporting to and communications with the mutual fund shareholder (e.g., direct accounts). 529 Plan accounts will be captured at the investment adviser level. See Appendix A for more detail. | |
| Exclude Omnibus Accounts | Fund transfer agents on behalf of investment advisers do not need to look through omnibus accounts, per SEC no-action relief dated September 12, 2011. The SEC no-action letter is available at http://www.sec.gov/divisions/investment/noaction/2011/ici091211-204.htm . | |
| Exclude from the search Network Level 3 Accounts and only those | Consistent with the SEC's no-action relief, including its standard of | Some funds may decide to include in their search only those Level 3 accounts where |

This document is intended to serve as a resource for ICI members and to provide a consistent industry approach for the purposes of complying with the SEC's Pay-to-Play Rule (Rule 206(4)-5) and the related recordkeeping requirements in Rule 204-2. The Task Force operated under the premise that mutual fund investment advisers and their transfer agents will attempt to follow the alternate recordkeeping approach provided in the SEC no-action letter to the ICI dated September 12, 2011. 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 described process and each fund should make its own business decisions regarding its compliance efforts.

Identification of Government Entity Accounts
Suggested Process Steps
Updated - December 2011

| Topic | Suggested Process | Possible Alternative Steps |
|--|--|---|
| Network Level 0 Accounts that are Trust Networked. | reasonableness, mutual funds may decide to exclude from their search for government entities intermediated accounts that are Network Level 3 accounts and Trust Networked Level 0 accounts. This issue is discussed in more detail in the Task Force's Supplemental Guidance (Appendix A). | they have full disclosure, per the distribution agreement with the intermediary. |
| | Scrubbing - Suggested Process I | |
| Identification of those accounts that are registered to individuals for exclusion prior to scanning against key word inclusion and exclusion criteria. The accounts to be excluded are those accounts that contain a social security number (SSN) rather than an employer identification number (EIN). | Identify individual accounts using a SSN code and exclude the accounts from the population of accounts to be scrubbed. Then run the remaining accounts in all social codes against the key word inclusion list, followed by the exclusion word list found in Appendix D, as described below. The accounts that remain would be placed on the list of government entities. | This is one option that mutual funds may use to eliminate the possibility of privacy issues for individual records. |
| | Scrubbing - Suggested Process II | |
| Creation of 403(b), 457 and catch-all social code lists. | Create a general list of 403(b), 457, and catch all social codes that may include | Some mutual funds may decide to include social codes not listed in Appendices B and |

**Identification of Government Entity Accounts
Suggested Process Steps
Updated - December 2011**

| Topic | Suggested Process | Possible Alternative Steps |
|--|--|---|
| | government accounts. See Appendices B and C for the social codes identified by the Task Force. Please note that these lists may not include all social codes used by all funds and system providers. | C. |
| Creation of key word inclusion/exclusion list. | <p>Create a list of those words that would identify the government entity account when scanning the registration (i.e., keyword inclusions). See Appendix D for the inclusion keywords.</p> <p>Create a list of those words that would indicate the account is not held by a government entity (i.e., keyword exclusions). Accounts with these words in their registration would be excluded from the list. See Appendix D for the exclusion keywords.</p> | Some mutual funds may choose to modify the list of inclusion and exclusion keywords they search on, or may choose to use keyword inclusions only. |
| Capturing all government entity accounts within each selected social code. | <p>Scan the identified social codes against the account base to capture all accounts within each social code.</p> <p>Scan the accounts identified by the social code scrub for the inclusion keywords.</p> | Some mutual funds may decide to include all of the accounts in certain social codes on the list of government entities and only perform keyword searches on a subset of the social codes identified. For example, they may only do keyword searches on the catch-all social |

This document is intended to serve as a resource for ICI members and to provide a consistent industry approach for the purposes of complying with the SEC's Pay-to-Play Rule (Rule 206(4)-5) and the related recordkeeping requirements in Rule 204-2. The Task Force operated under the premise that mutual fund investment advisers and their transfer agents will attempt to follow the alternate recordkeeping approach provided in the SEC no-action letter to the ICI dated September 12, 2011. 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 described process and each fund should make its own business decisions regarding its compliance efforts.

**Identification of Government Entity Accounts
Suggested Process Steps
Updated - December 2011**

| Topic | Suggested Process | Possible Alternative Steps |
|---|---|---|
| | Scan the accounts identified in the inclusion keyword search for any of the exclusion keywords. Accounts with exclusion keywords in their registration are removed from the population of accounts for the list of government entities. | codes. Any account that has a social code that was not identified as a 403(b), 457 or catch-all social code will not be reviewed. |
| | New Account Process | |
| New Account Opening Documents | | Some funds may elect to update new account applications for 403(b) and 457 plan accounts to identify government entities. Those funds that so elect will need to establish a process to capture this information from the account opening documents. See Appendix E for sample language for applications. |
| | Report Creation & Delivery | |
| Creation of a flag on the account file. | Once accounts are identified using the above search and/or new account opening procedures, the accounts may be flagged identifying them as government | The optional flag will require programming, but may be used to select information for review and analysis or to create a report for audit or other purposes. |

Identification of Government Entity Accounts
Suggested Process Steps
Updated - December 2011

| Topic | Suggested Process | Possible Alternative Steps |
|--|---|---|
| | <p>entities that are invested in covered investment pools (i.e., 403(b), 457, 529 plans).</p> | |
| <p>Creation of output report that will contain all government entity accounts.</p> | <p>The fields that should be included in the government entity report are:</p> <ul style="list-style-type: none"> • Management Code • Fund Number • Account Number • All Registration Lines • Date Established • Closed Date (if applicable) <p>Funds with a retirement platform that may contain the government entity accounts should consider including the following fields:</p> <ul style="list-style-type: none"> • ICU Tax ID • External Plan • Plan Name • Plan Establishment Date • Plan Termination Date | <p>Depending on their business model, some mutual funds may choose to include the following optional fields to better manage the information:</p> <ul style="list-style-type: none"> • Creation Date of Report • CUSIP • Social Code • Social Code Description • Matrix Level • Total Shares • Account Balance • Total Amount |

This document is intended to serve as a resource for ICI members and to provide a consistent industry approach for the purposes of complying with the SEC's Pay-to-Play Rule (Rule 206(4)-5) and the related recordkeeping requirements in Rule 204-2. The Task Force operated under the premise that mutual fund investment advisers and their transfer agents will attempt to follow the alternate recordkeeping approach provided in the SEC no-action letter to the ICI dated September 12, 2011. 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 described process and each fund should make its own business decisions regarding its compliance efforts.

Identification of Government Entity Accounts
Suggested Process Steps
Updated - December 2011

| Topic | Suggested Process | Possible Alternative Steps |
|-----------------|--|---|
| Report Delivery | Creation and delivery methods for the report from the transfer agent to fund, and from the fund to the advisor may vary but options include: <ul style="list-style-type: none">• Excel• Text File (Delimited or Fixed Width)• Formatted Report• Database File | Report delivery may be on demand or on a set schedule (i.e., quarterly, semi-annually or annually). The report should be delivered through a secure method. |

APPENDIX A
SUPPLEMENTARY GUIDANCE FOR CAPTURING RECORDS REQUIRED BY
THE SEC’S SEPTEMBER 12, 2011 NO-ACTION RELIEF

INTRODUCTION

In September 2011, the Institute was successful in obtaining no-action relief from the staff of the U.S. Securities and Exchange Commission (“SEC” or “Commission”) relating to the duty of advisers to mutual funds to know which mutual fund accounts are held by a 403(b), 457, or 529 participant-directed plan. The no-action letter is attached for your information. Under this relief, advisers to mutual funds are no longer required to pierce omnibus accounts to determine whether any shareholders within these accounts are government entity retirement plans. Fund advisers are required to know whether any 529 plan assets held by a state trust are invested in the funds they advise.

After adoption of the pay-to-play rule and its related recordkeeping requirements in June 2010, and prior to the SEC providing its no-action relief in September 2011, the Transfer Agent Advisory Committee Pay-to-Play Rule Task Force (the “Task Force”) developed protocols that mutual fund transfer agents could use to search their shareholder accounts to discern government entity shareholders. In the view of the Task Force, the conditions set forth in the no-action relief necessitate revisiting these recommended protocols.¹ While the Task Force’s search protocols remain valid, the Task Force believes the protocols should be supplemented with additional recommendations relating to: (1) intermediated accounts for which duplicative account record information is provided to the fund’s transfer agent; (2) 529 plan trust accounts; (3) revising new account applications to identify government entities at the inception of the account; (4) compliance date issues; and (5) ongoing compliance (*i.e.*, the need to update or refresh the required records). The Task Force’s guidance on each of these additional issues is discussed below and, to the extent appropriate, incorporated into the previous search protocols developed by the Task Force.

TREATMENT OF INTERMEDIATED ACCOUNTS

For the reasons discussed below, the Task Force believes that, consistent with the SEC’s no-action relief, including its standard of reasonableness, the accounts that should be searched by mutual fund transfer agents are those that, because they were opened with the fund by the account owner, are held on the fund’s records and consequently, the fund has complete account information.

¹ The Task Force operated under the premise that mutual fund investment advisers and their transfer agents will attempt to follow the alternate recordkeeping approach provided in the SEC no-action letter to the ICI dated September 12, 2011.

As discussed above, the SEC's no-action relief relieves advisers to mutual funds from having to obtain from the funds they advise a list of those persons that hold mutual fund accounts through an intermediated or omnibus account.² According to the Task Force, some broker-dealers holding intermediated accounts with the mutual fund provide the fund transfer agent information on those persons holding accounts with the broker-dealer, typically involving NSCC Network Level 3 accounts³. In such instances, the person with primary responsibility for interacting with the customer and fulfilling legal requirements associated with the account (*e.g.*, issuing statements and confirmations, providing prospectuses, reporting tax information, providing privacy notices, processing purchases/redemptions, responding to customer inquiries, responding to subpoenas, etc.) is the broker-dealer. Indeed, the fund's transfer agent typically has no contact with the shareholders underlying these intermediated accounts. Instead, the broker-dealer has exclusive shareholder responsibility. Accordingly, the shareholders within these accounts are treated by mutual fund transfer agents as customers of the broker-dealer and not customers of the fund. From the fund's perspective, the legal owner of these accounts is the broker-dealer that opened the account and the broker-dealer determines which, if any, information regarding the account's beneficial owner will be provided to the mutual fund. Agreements between the fund and/or its transfer agent and the broker-dealer owning the account preclude the fund or its transfer agent from contacting the shareholders in these accounts or accepting any account instructions from such persons.

Under the SEC's no-action relief, advisers to mutual funds are required to identify any account of a government entity that "can *reasonably*" be identified as being "held in the name of or for the benefit of [a] government entity on the records of the Covered Investment Pool [*i.e.*, the mutual fund] or its transfer agent."⁴ In the view of the Task Force members, accounts of shareholders holding mutual fund shares through an intermediated account that a broker-dealer holds on the fund's books and records are not viewed as accounts of the shareholder on the records of the mutual fund. Instead, because all relevant legal responsibilities for these accounts are vested in the broker-dealer with responsibility for the account, these accounts are viewed as records of the broker-dealer and not of the mutual fund.⁵

² Such accounts are typically held by a broker-dealer, insurance company, bank or financial institution, third-party administrators of retirement plans, and other institutional investors.

³ Trust Networked Level 0 accounts are typically held by banks or trust companies and work the same way as Networking Level 3 accounts. As such, the Task Force recommendation for Trust Networked Level 0 accounts is the same as for Level 3 accounts.

⁴ See SEC No-Action Letter at p. 2. [Emphasis added.]

⁵ Prior to the SEC issuing its no-action relief, some members of the Task Force had included the shareholders in these intermediated accounts in their search of accounts. These members found, however, that due to incomplete information concerning these accounts, it was often impossible to determine whether the shareholder was a government entity without obtaining additional information from the broker-dealer holding the account. When this information was not forthcoming

As noted by the members of the Task Force, treating these underlying shareholder accounts as accounts of the mutual fund may result in mutual fund transfer agents having to obtain additional information on the account's shareholders to determine whether any such person is a government entity. And yet, this exercise would appear contrary to the relief provided by the Commission's no-action relief that relieves funds from having to obtain additional information about an intermediary's accountholder. The Task Force believes that, consistent with the SEC's no-action relief, including its reasonableness standard, the accounts that should be searched by mutual fund transfer agents are those that, because they were opened with the fund by the account owner, are held on the fund's records and, consequently the fund, has complete account information, and would be able to identify any government entities through the Task Force's recommended search protocols. The accounts the Task Force recommends be searched under this standard would not include intermediated accounts for which the broker-dealer has exclusive customer responsibility regardless of the fact that the broker-dealer may have provided the mutual fund's transfer agent information on such customers.

TREATMENT OF 529 PLAN TRUST ACCOUNTS

The Institute staff is working with the College Savings Plan Network to have 529 plan administrators or their program managers provide information to advisers to mutual funds regarding plan assets that are invested in a mutual fund advised by such adviser.

With respect to 529 plan trust accounts, the SEC's no-action relief requires advisers to mutual funds to include on their list of government entities the identity of "each government entity that sponsors or establishes a 529 Plan and has selected a specific Covered Investment Pool [*i.e.*, mutual fund] as an option to be offered by such 529 Plan."⁶ Typically, state 529 plans hire a Federally-registered investment adviser as a program manager to assist the state in administering the plan. Often times the program manager is an adviser to mutual funds and those mutual funds are included among the investment options the 529 plan offers to plan participants. The investment options offered by the plan may include mutual funds (and other investment products) outside of those offered within the fund complex the adviser is affiliated with. In such instances, the plan, or a person on behalf of the plan, would open an account with these other mutual funds and invest 529 plan account proceeds into the account. Because the account at these mutual funds may not be held in the name of the 529 plan trust or a government entity, the transfer agents to those mutual funds may be unaware that 529 plan trust assets are invested in the mutual fund. If the fund's transfer agent searches its records utilizing the search protocols previously recommended by the Task Force, it may not discover these accounts

from the broker-dealer, in an abundance of caution the fund's transfer agent included these accounts on their list of government entities.

⁶ See No-Action Letter at p. 3.

because of the manner in which the account record is held. As such, notwithstanding its best efforts, the fund may be wholly unaware that it holds 529 plan assets and would not, therefore, include the 529 plan on its list of government entity clients.⁷

To assist those advisers to mutual funds in identifying 529 plan assets in these situations, the Institute is working with the Operations Committee and the Lawyers Committee of the College Savings Plan Network to develop a method for reporting this information. In particular, the Institute is working with CSPN to provide a process for administrators of 529 plans to notify advisers to mutual funds when a plan's assets are invested in mutual funds advised by the adviser. Under this approach, the information regarding 529 plan assets would be reported by a government official (*e.g.*, the state employee responsible for overseeing the state's plan) or its representative or designee to the adviser to the mutual fund. This process would eliminate the need for mutual fund transfer agents to collect and report this information.

REVISING NEW ACCOUNT APPLICATIONS TO IDENTIFY GOVERNMENT ENTITIES

Some members of the Task Force have elected not to revise their new account applications because they believe their current search protocols will be more effective in identifying new accounts opened by government entities. For those funds that elect to revise their new account applications, the Task Force is collecting samples of language being used by funds on their applications.

Footnote 5 to the SEC's no-action letter states that the Institute has represented "prospectively, information necessary to capture whether a shareholder is a government entity will be added to new account opening documents." In discussing the issue, Task Force members noted that they either:

- Have already revised the appropriate applications to capture this information;
- Plan to revise the appropriate new account applications to capture this information; or
- Have determined that, information provided to the mutual fund in response to this item on a new account application, would be of limited value to the fund's transfer agent. Consequently, these funds are not planning to revise their account application to solicit this information.

⁷ The same result would not be expected to occur where an adviser to a mutual fund serves as a program manager to a 529 plan trust because the adviser would have an agreement with the trust or a government entity to provide services to the plan so the adviser would have a duty to include a list of the government entity or its plan on its records of government entities irrespective of whether mutual funds advised by the adviser are an investment option in the plan.

Revising New Account Application

To assist mutual funds that are interested in amending their applications to capture which of their shareholders are government entities, the Institute is collecting samples of the language mutual funds have developed for their new account applications. These samples, without attribution, are attached as Appendix E to the suggested process steps document. To the extent a fund amends its application to include this information, the Task Force recommends that the fund's transfer agent have policies and procedures in place to capture such information and include it on the list of government entities provided to the fund's adviser.⁸

COMPLIANCE DATE ISSUES

While advisers work towards fully implementing new recordkeeping requirements imposed by the no-action relief, they should anticipate demonstrating to SEC examiners what intermediate steps they have taken or are taking to comply.

The compliance date for the recordkeeping requirements under the SEC's pay-to-play rule was September 13, 2011. The SEC issued its no-action relief on September 12, 2011. The no-action letter contains no express extension of the compliance date.

The no-action relief imposes two new recordkeeping requirements on advisers. In particular, advisers relying on the relief must identify:

- (1) Each government entity, the account of which was identified as that of a government entity – at or around the time of the initial investment – to the adviser or one of its client servicing employees, regulated persons, or covered associates; and
- (2) Each government entity that has been solicited to invest in a Covered Investment Pool either (i) by a covered associated or regulated person of the adviser or (ii) by an intermediary or affiliate of the Covered Investment Pool if a covered associate, regulated person, or client servicing employee of the adviser participated in or was involved in such solicitation, regardless of whether such government entity invested in the Covered Investment Pool.

Prior to September 12th, advisers to mutual funds were not aware of these requirements and had not developed processes to capture this information. Moreover, because this relief was provided shortly

⁸ Once the revised applications are widely used for opening new accounts, funds revising their applications to capture their information may elect to use such self-reporting as their means to identify government entities opening new accounts and cease utilizing the search protocols previously recommended by the Task Force to identify such accounts.

before advisers were either focused on end-of-year activities or had already developed their systems development schedules for calendar year 2011, members noted that, while they are developing policies and procedures to implement these two new recordkeeping requirements, they likely will not have them fully implemented and necessary systems changes made until March 2012.

The Institute continues to encourage advisers to mutual funds to work towards fully implementing these two new requirements as soon as practicable and, while awaiting necessary systems programming, to develop policies and procedures that will enable them to capture this information. In the event examiners from the SEC's Office of Compliance Inspections and Examinations inspects the adviser for compliance with the no-action relief, advisers should anticipate having to demonstrate to examiners what steps the adviser has taken to comply, even if this remains a work in progress.

ONGOING COMPLIANCE

The SEC's no-action relief is silent on an adviser's need to update or refresh the records required by the relief. In the view of the Task Force, the frequency of updating this information is a business decision each adviser needs to make based on its circumstances and the policies and procedures it is implementing in response to the pay-to-play rule's prohibitions. Some information required by the no-action relief may warrant more frequent updating than other information.

The Commission's no-action letter was also silent as to an adviser's obligation to update or refresh its records in order to remain in compliance with the recordkeeping requirements under the pay to play rule. The Task Force notes that the recordkeeping rules need to be read in tandem with the pay-to-play prohibitions in SEC Rule 206(4)-5 under the Investment Advisers Act of 1940. As such, advisers should ensure that, in complying with the recordkeeping requirements, the adviser updates its records as necessary to ensure compliance with those prohibitions.

Some members of the Task Force noted that, by limiting their covered associates' and regulated persons' political contributions to the rule's *de minimis* amounts, the likelihood of the adviser, its associates, or its regulated persons violating Rule 206(4)-5 is remote. As such, these advisers believe that updating their list of government entities semi-annually or annually would be sufficient. Also, some members noted that they do not solicit government business or retirement accounts, making their violation of the pay-to-play rule remote. Other advisers, including advisers that do not expressly limit their covered associates' or regulated persons' political contributions, may determine that a quarterly review is more appropriate. In other words, in the view of the Task Force, the frequency of updating the list of government entities investing in a mutual fund advised by the adviser is a decision that needs to be made by each adviser based upon its business model and its policies and procedures regarding political contributions.

Appendix B
 Identification of Government Entity Accounts
 Social Codes for 403(b) and 457 Plans

| PRIMARY SOCIAL CODES | | | |
|----------------------|---|-----------|--|
| 403b Plans | Social Code Description | 457 Plans | Social Code Description |
| 15 | 403b INDIVIDUAL | 6 | NON-PROFIT ORGANIZATION |
| 16 | 403b INSTITUTIONAL | 21 | GOVERNMENT |
| 36 | 403(b) EMPLOYER | 50 | 457 PLAN |
| 49 | 403(b) FIDELITY ADVISOR | 50 | NON-FID RET PLAN REPORTABLE |
| 50 | NON-QUALIFIED DEFERRED COMPENSATION PLAN | 50 | PENSION PLANS |
| 76 | TOWNS/CITIES/SCHOOL DISTRICTS/GOVERNMENTAL ENTITIES | 50 | SELF DIR PEN/KEO/TB/DC |
| 76 | DEFERRED COMPENSATION PLANS | 50 | UNCLASSIFIED PROFIT SHARING PLAN/THRIFT |
| 77 | (NO DESCRIPTION PROVIDED) | 51 | THRIFT (SALARY SAVINGS) PLAN |
| 110 | TSA 403 (B) (7) | 51 | THRIFT PLANS (SALARY SAVINGS) |
| 115 | LINK 403B PLAN PARTICIPANT | 52 | UNCLASSIFIED RETIREMENT PLAN |
| 115 | NON-PROTOTYPE/NON-CUSTODIAL 403(b) | 52 | RETIREMENT PLANS - UNCLASSIFIED |
| 119 | \$10M 403B | 67 | 457 PLAN |
| 133 | TRAC 403B | 69 | PENSION PLAN |
| 426 | 403B | 76 | DEFERRED COMPENSATION PLANS |
| 430 | 403B LEAD ACCT>200 | 77 | MUNICIPALITY - ARBITRAGE |
| 431 | 403B SAL REDUCT>200 | 78 | MUNICIPALITY - NON-ARBITRAGE |
| 432 | 403B BASIC>200 | 89 | STATE OF TEXAS DEFERRED COMPENSATION PLAN |
| 433 | 403B LEAD ACCT<200 | 97 | PROFIT SHARING CORPORATE |
| 434 | 403B SAL REDUCT<200 | 98 | PROFIT SHARING PLAN |
| 435 | 403B BASIC<200 | 99 | MONEY PURCHASE PENSION PLAN |
| 515 | NON-PROTOTYPE/NON-CUSTODIAL 403(b) | 117 | INVESTMENT ONLY TRAC 403B WITH LOAN |
| 521 | OPEN PFA 403(B)(7) | 120 | \$10M 457 PLANS |
| 571 | 403(B) PROTOTYPE / CUSTODIAL | 120 | LINK 457 PLAN PARTICIPANT |
| 615 | NON-PROTOTYPE/NON-CUSTODIAL 403(b) | 129 | 457 PLAN |
| 622 | NON-PROTOTYPE 403-B - WTHD | 171 | COLLEGES & UNIVERSITIES BC |
| 633 | 403(B) BENEFICIARY DUE TO DEATH | 201 | PROFIT SHARING |
| 671 | 403(B) PROTOTYPE / CUSTODIAL | 220 | MONEY PURCH PENSION EMPLOYER |
| 733 | 403(B) BENEFICIARY DUE TO DEATH | 278 | 457 PLAN |
| 733 | 403(b)(7) - RDD | 278 | NON-LIBERTY 457 PLAN |
| 733 | 403-B BENEFICIARY BY DEATH | 310 | ADMINISTERED CORP PROFIT SHARING PLAN |
| 733 | DECEASED 403(B) | 377 | 457 PLANS |
| 733 | INHERITED 40B(b) | 377 | ADMINISTERED 457 |
| 740 | 403(b)(7) - NO FEE | 377 | NON-CUSTODIAL - ADMINISTERED 457 PLAN |
| 740 | TRAC-2000 DEFERRED COMP PLAN | 576 | NAV-NON-ACTC DEFERRED COMP/457 PLAN |
| 741 | 403(b)(7) - FEE | 577 | NAV-ACTC ADM STATE OF TX DEF COMP/457 PLAN |
| 742 | TRAC-2000 NT1 403 (B) PLANS | 588 | NAV-ACTC CUST/ADM 457 PLAN W/ SPAC RPTING |
| 750 | TSA 403 (B) (7) | 630 | DEFERRED COMPENSATON 457 PLANS |
| 771 | 403(B) PROTOTYPE / CUSTODIAL | 725 | NON-PROFIT PENSION PLAN (FRK) |
| 771 | 403B | 773 | 457 |
| 771 | 403B INDIVIDUALLY ESTABLISHED | 773 | 457 PLANS |
| 771 | 403-B INDIVIDUALLY ESTBLSHD | 801 | TRAC DEFERRED COMPENSATION PLANS |
| 771 | 403B PLAN | 868 | TRAC 457 PLANSANS |
| 771 | SELF-DIRECTED 403B-7 | 881 | 457 PLAN |
| 772 | 403B GROUP | 959 | PENSION PLAN |
| 772 | 403-B GROUP | 976 | 457 PLANS |
| 772 | LINK 403B PLAN FORFEITURE/HOLDING ACCT | 978 | 457 NON-RPRT |
| 773 | 403(b) | 988 | 457 RETIREMENT PLANS |
| 773 | 403-B SALARY REDUCTION | 994 | DEFFERRED COMP-SPAC MASTER |
| 773 | 403(B) - BENEFICIARY BY DEATH | 995 | DEFFERRED COMP-SPAC PARTIC |
| 773 | SALARY REDUCTION CONTRIBUTION | | |
| 774 | NON-PROTOTYPE 403B | | |
| 775 | TRAC-2000 T1 403 (B) PLANS | | |
| 775 | TRAC-2000 T1 403(B) PLANS | | |
| 784 | 403-B IRM - 403B ACCOUNTS | | |
| 785 | 403-B IRM - 403B ACCOUNTS | | |
| 786 | 403-B IRM - 403B ACCOUNTS | | |
| 787 | 403-B IRM - 403B ACCOUNTS | | |
| 788 | 403-B IRM - 403B ACCOUNTS | | |
| 789 | 403-B IRM - 403B ACCOUNTS | | |
| 803 | TRAC 2000 NT1 403B PLANS | | |
| 805 | 403B TAX SHELTERED ANNUITY - EMPLOYER | | |
| 805 | TRAC 2000 T1 403B PLANS | | |
| 806 | 403B ER - MFS NON PROVIDER | | |
| 813 | TRAC 403(B) | | |
| 814 | TRAC 403(B) DEATH BENEFIT | | |
| 884 | 403B MASTER A/C | | |
| 887 | NON-LIBERTY 403B PLAN | | |
| 892 | 403-B BENE CONDUIT | | |
| 922 | NON-PROTO 403-B SPAC - WTHD | | |
| 953 | 403(B) EMPLOYER SELECT | | |
| 971 | 403B LEAD>200 | | |
| 971 | 403-B PLAN (2) | | |
| 971 | 403-B SCHOOL DISTRICTS | | |
| 971 | 403B-7 FIDUCIARY | | |
| 971 | JHLICO 403B-SPAC MASTER | | |
| 972 | 403B SR<200 | | |
| 972 | JHLICO 403B-SPAC PARTICIPANT | | |
| 972 | SPAC 403-B GROUP | | |
| 973 | SPAC 403-B SAL. REDUCTION | | |
| 974 | NON-PROTOTYPE 403B (SPAC) | | |
| 975 | NON-PROTOTYPE 403(B) | | |

Appendix C
 Identification of Government Entity Accounts
 Catch-All Social Codes

| Catch All Social Codes / Descriptions | | | |
|---------------------------------------|---|------------|---------------------------------------|
| 403b: | Social Code Description | 457 Plans: | Social Code Description |
| | 21 CUSTODIAN OTHER | | 11 GIFTS |
| | 21 OUTSIDE CUSTODIAN | | 48 LABOR UNIONS |
| | 23 MISC ORGANIZATION | | 48 UNIONS |
| | 25 DONOR ADVISED FUNDS | | 51 THRIFT (SALARY SAVINGS) PLAN |
| | 33 SOLO DB | | 65 GOVERNMENT/MUNICIPALITY |
| | 30 NON-PROFITS | | 65 TOWNSHIPS, CITIES & COUNTIES |
| | 40 MEDICAL INSTITUTIONS | | 65 TOWNSHIPS, CITIES AND COUNTIES |
| | 40 CORPORATE ACCOUNT | | 67 OTHER EXEMPT ORGANIZATION/INST |
| | 43 BANKS & TRUST COMPANIES | | 68 NON-EXEMPT ORGANIZATION/INST |
| | 44 INSURANCE COMPANIES | | 850 NON PROTOTYPE PROFIT SHARING PLAN |
| | 45 OTHER FINANCIAL ORG | | |
| | 46 HOSPITALS, MEDICAL INSTITUTIONS, REST HOMES, NURSING HOMES | | |
| | 46 HOSPITALS & MEDICAL INST | | |
| | 46 HOMES/HOSPITALS | | |
| | 46 HOSPITAL | | |
| | 48 UNION | | |
| | 52 UNCLASSIFIED RETIREMENT PLAN | | |
| | 55 EDUCATIONAL INSTITUTIONS | | |
| | 56 401K PLANS | | |
| | 57 CUSTODIAN OTHER-SEP | | |
| | 58 CUST OTHER-KEOGH/HR-10 | | |
| | 60 CHARITABLE | | |
| | 60 CHARITABLE/SOCIAL/WELFARE ORGS | | |
| | 60 CHARITABLE & WELFARE ORG | | |
| | 60 CHARITABLE AND WELFARE ORGANIZATIONS, FOUNDATIONS | | |
| | 61 CHURCHES & RELIGIOUS INST. | | |
| | 61 CHURCHES & RELIGIOUS INSTITUTION | | |
| | 61 RELIGIOUS | | |
| | 62 COLLEGES AND UNIVERSITIES | | |
| | 62 COLLEGES & UNIVERSITIES | | |
| | 62 SCHOOLS & COLLEGES | | |
| | 63 CLUBS & FRATERNAL ORG. | | |
| | 64 INVESTMENT CLUBS | | |
| | 66 EDUCATIONAL INFORMATION | | |
| | 66 LIBRARY | | |
| | 66 SCHOOL DISTRICTS | | |
| | 67 INSTITUTIONS | | |
| | 70 TRUSTS | | |
| | 75 EMPLOYEE BENEFIT PLAN | | |
| | 149 TARGET BENEFIT PLAN | | |
| | 702 SEP/SARSEP | | |
| | 715 SAR-SEP | | |
| | 741 IRA EMPLOYER ESTA NEW MSA | | |

Appendix D
 Identification of Government Entity Accounts
 Inclusion Keywords and Exclusion Keywords

| 403b: | List of Inclusion Keywords | 457 Plans: |
|---|----------------------------|---------------------------------------|
| | PUBLIC EMPLOYEE | GOVT |
| 403 | | 457 |
| 403b | | AUTHORITY |
| BOE (Board of Education) | | BOARD |
| B O E (Board of Education) | | BOROUGH |
| BD OF ED (Board of Education) | | BOROUGHS |
| BOARD | | CHAMBER |
| BOCS (Board of County Supervisors) | | CITY |
| BOCES (Board of Cooperative Education Services) | | COMMISSION |
| B.O.C.E.S. (Board of Cooperative Education Services) | | COMMONWEALTH |
| BOE (Board of Education) | | CNTY (County) |
| BRD (Board) | | COUNTY |
| CENTRAL | | COURT |
| CHURCH | | DEPT (Department) |
| COLLEGE | | DEV (Development) |
| COMM (Community) | | EMERGENCY |
| COMMUNITY | | FIRE |
| C.C.S.D. (Community Consolidated School District) | | GOVERNMENT |
| CCSD (Community Consolidated School District) | | HOUSING |
| CSD (Community Services District) | | MIDSTATE |
| C.S.D. (Community Services District) | | MUNICIPAL |
| CUD (Consolidated Utility District) | | MUNICIPALITY |
| C.U.D. (Consolidated Utility District) | | PENSION |
| CUSD (Community Unit Schools District) | | PROP (Property) |
| DIS (District) | | POLICE |
| DIST (District) | | STATE |
| DISTRICT | | STATE |
| DIVINE | | TOWN |
| ED. (Education) | | TOWNSHIP |
| EDUC (Education) | | TRANSIT |
| EDUCATION | | TREASUR (Treasurer) |
| ELEM (Elementary) | | TREASURER |
| ELEMENTARY | | TRI-COUNTY |
| HIGH SCHOOL | | UNION |
| HIGH SCHOOL | | UTILITY |
| HOSPITAL | | U (University) |
| IU- (Indiana University) | | USO (United Services Organization) |
| ISD (Independent School District) | | U.S.O. (United Services Organization) |
| I S D (Independent School District) | | VILLAGE |
| IUP (Indiana University of Pennsylvania) | | VILLAGES |
| I.U.P. (Indiana University of Pennsylvania) | | |
| INDEPENDENT | | |
| INST (Institute) | | |
| JOINT | | |
| KINDERGARTEN | | |
| LOCAL | | |
| LUSD (Lincoln Unified School District - or other city beginning with L) | | |
| L.U.S.D. (Lincoln Unified School District - or other city beginning with L) | | |
| M.S.A.D. (Maine School Administrative District or Mass. State Assoc. of Deaf) | | |
| MSAD (Maine School Administrative District or Mass. State Assoc. of Deaf) | | |
| N.E.I.S.D. (Northeast Independent School District) | | |
| NEISD (Northeast Independent School District) | | |
| PBLC (Public) | | |
| PUBLIC | | |
| REC. (Recreation) | | |
| REGION | | |
| SAD (School Administrative District) | | |
| S.A.D. (School Administrative District) | | |
| S.A.U. (School Administrative Unit) | | |
| SAU (School Administrative Unit) | | |
| SAVIOUR | | |
| SCH (School) | | |
| SCHL (School) | | |
| SCHOO (School) | | |
| SCHOOL | | |
| SCHOOL DISTRICT | | |
| SCHOOLS | | |
| SOWIC (Southern Will County Cooperative for Special Education) | | |
| T.C.A.P.S. (Traverse City Area Public Schools) | | |
| TCAPS (Traverse City Area Public Schools) | | |
| U F S D (Union Free School District) | | |
| USD (Unified School District) | | |
| U S D (Unified School District) | | |
| U.S.D. (Unified School District) | | |
| UFSD (Union Free School District) | | |
| UNIFIED | | |
| UNIV (University) | | |
| UNIVERSITY | | |
| VOCATION | | |
| VOCATIONAL | | |

Appendix D
 Identification of Government Entity Accounts
 Inclusion Keywords and Exclusion Keywords

| | List of Exclusion Keywords | | |
|-----------------------|--|-------------------|--|
| All Plan Types | | 457 Plans: | |
| | IRA (Individual Retirement Account) | | IRA (Individual Retirement Account) |
| | PROFIT SHARING | | PROFIT SHARING |
| | ROLLOVER | | ROLLOVER |
| | ROTH | | ROTH |
| | SEP (Simplified Employee Pension Plan) | | SEP (Simplified Employee Pension Plan) |
| | 401K | | |
| | ALLSTATE | | |
| | ARCHDIOCES | | |
| | BAPTIST CHURCH | | |
| | BCBS (Blue Cross Blue Shield) | | |
| | BLUE CROSS BLUE SHIELD | | |
| | BOND PROCEEDS | | |
| | CHARTER COMMUNICATIONS | | |
| | CHARTER HOUSE ENTERPRISES | | |
| | CHARTER ONE | | |
| | CHURCH OF | | |
| | CITY NATIONAL BANK | | |
| | COMMUNITY PROPERTY | | |
| | CONSTRUCTION | | |
| | DEBT | | |
| | DEFINED BENEFIT | | |
| | DELAWARE CHARTER | | |
| | DIOCES | | |
| | EASTER SEALS | | |
| | EDUCATIONAL IRA | | |
| | EPISCOPALIAN CHURCH | | |
| | ESCROW | | |
| | GENERAL ACCOUNT | | |
| | GENERAL OBLIGATION | | |
| | GO BONDS (General Obligation Bonds) | | |
| | INDIVIDUAL RETIREMENT ACCOUNT | | |
| | IRA ACCOUNT | | |
| | IRA ROLLOVER | | |
| | IRA-SEP | | |
| | JT WROS (Joint Tenant With Rights of Survivorship) | | |
| | LEASE | | |
| | LOAN | | |
| | METHODIST CHURCH | | |
| | OPERATIONAL | | |
| | PRESBYTERIAN CHURCH | | |
| | RESERVE | | |
| | REVENUE BOND | | |
| | ROTH IRA | | |
| | TENANT IN COMMON | | |
| | TEST ACCOUNT | | |
| | UGMA (Uniform Gift to Minors Act) | | |
| | UNCLAIMED PROPERTY | | |
| | UTMA (Uniform Transfers to Minors Act) | | |

Appendix E
Sample Language for Account Applications to Capture Government Entity Status

Sample 1 - SEC Rule 206(4)-5 Government Account Designation

To assist us in complying with the recordkeeping requirements of the SEC's "Pay to Play" Rule 206(4)-5 under the Investment Advisers Act, please check the box below if the account being opened is for:

A plan or program of a government entity that is a participant-directed investment program or plan sponsored or established by a state or political subdivision or any agency, authority or instrumentality thereof, including, but not limited to, a "qualified tuition plan" authorized by section 529 of the Internal Revenue Code, a retirement plan authorized by section 403(b) or 457 of the Internal Revenue Code, or any similar program or plan.

Sample 2 - SEC RULE 206(4)-5 GOVERNMENT ACCOUNT DESIGNATION

To assist us in complying with the recordkeeping requirements of the SEC's "Pay to Play" Rule 206(4)-5 under the Investment Advisers Act, please check the box and identify the government entity if the account is being opened for:

A plan or program of a government entity. A government entity includes, but is not limited to the government entity itself, state, county and local municipalities, school districts, government-sponsored 403(b) and 457 plans, accounts for public universities, etc.

Name of government entity _____

Sample 3 - Is account owner a government entity?