

Money Management Executive

Funds Move On to 22c-2 Data Analysis

By Hannah Glover

The April 16 deadline for fund companies and their intermediaries to ink information-sharing agreements in compliance with Rule 22c-2 has set off a flurry of negotiations and shifted attention to the next component of the rule: data analysis. First adopted in 2005, the redemption fee rule calls for fund boards to consider charging investors a fee of as much as 2% for redeeming shares within a week of purchasing them. It also requires companies to monitor trades made through intermediaries, such as retirement plans, and to have agreements with those intermediaries to access shareholder information—such as Social Security numbers or other unique identifiers—to spot, and hopefully halt, market timing. Those agreements are due this month, with the actual monitoring of trades to start Oct. 16. “With each day that goes by, there’s more of a push,” said **Peter Rigopoulos**, a senior director of global fund services at Boston based **PFPC**. “Everyone understands that the date is inevitable, and it needs to happen.” “The SEC has no intention of extending the deadline, and they are not looking to give exemptive relief,” said **Thomas R. Westle**, a corporate securities attorney and partner with **Blank Rome** in New York.

The April 16 deadline reflects a six-month reprieve from the original target of Oct. 16, 2006. At the time, industry leaders told the **Securities and Exchange Commission** that there was too little guidance. Fund companies wondered what information, exactly, to seek, and how to most effectively analyze it, while intermediaries were unsure of how much information they would need to provide, and how often. “A lot of work has been done in the past five or six months, and there has been a lot of progress,” said **Frank Polefrone**, senior vice president of product development at **Access Data** of Pittsburgh. Fifteen of the firm’s 20 clients are already piloting software to track trades to ensure compliance with the redemption fee rule. Organizations such as the **Investment Company Institute** of Washington and the **National Securities Clearing Corp.** of New York have worked to devise standard language for the contracts and uniform formatting for the data, respectively.

In a survey of its membership earlier this month, Simsbury, Conn.-based **Spark Institute** found that although only 68% of intermediaries had signed agreements with at least 25 of their top 50 trading partners, 90% said they would have signed agreements with all of their top 50 trading partners two weeks from now. Without such an agreement in place, all trading between the intermediary and fund must stop. That could be bad news for certain smaller fund companies, which do not enjoy the economies of scale, staffing, resources or sheer negotiating clout of giants such as **Fidelity** and **Vanguard** and have not successfully executed agreements.

Likewise, some pension providers have rewritten their contracts with administrators to include more products like bank trusts and annuities, and fewer funds, said **Brian Graff**, executive director of the **American Society of Pension Professionals and Actuaries** in Washington. Some fund companies, pressed for time and resources, are using “negative consent” agreements, Westle said. Rather than require intermediaries, many of which are not subject to SEC jurisdiction, to agree to contracts, these documents state

that unless the intermediary notifies the fund company of its objections to the stipulations, the intermediary will be subject to them. But even with the agreements in place, challenges surrounding 22c-2 persist. For one, financial intermediaries are still working with their software providers to ensure they have the means to deliver the information funds request in time for the Oct. 16 deadline. "It's a function of understanding the requirements and establishing best practices," Polefrone said. Most fund companies will take a risk-based approach, looking at a period of activity in an effort to spot abnormalities or signs of market timing, he said. Many fund companies are still looking for the software or other tools to help them most effectively analyze the data they receive, he said.

Forty-seven percent of intermediary respondents to the Spark survey said that not only would they provide information to fund companies, but that they would help monitor suspicious trading within their omnibus accounts as well. Eighty-four percent said they intended to charge a fee or seek reimbursement to cover the costs of complying with a fund's requests. And while 52% said such fees would apply only to extraordinary expenses, 32% said they would seek remuneration of some sort for all such expenses. Fund companies must then decide how to treat their intermediaries. Some may think their intermediaries' policies are adequate, while others will run a few additional tests on intermediaries' analytics, and still others will examine all data from all intermediaries, said **Peter Delano** a senior analyst with **TowerGroup** in Needham, Mass.

"Having different arrangements with different intermediaries will factor into implementation time," he said. In addition, the more detailed monitoring the fund company requests, the more expensive, he noted. Another challenge will be choosing the programs and other technology needed to consistently and efficiently root out market timers, Delano said. Another potentially costly factor many funds must face is how to handle data that is delivered in a format besides the NSCC-established standard. Larger or older intermediaries may already have systems in place to track transaction data, Delano said. Grappling with these issues, and finding the right systems to handle them will likely keep many companies busy until the Oct. 16 deadline, Polefrone said. "The next six months will be very busy," he said.