

MEMO# 29529

December 7, 2015

Letter to IRS on Money Market Funds and Variable Insurance Products

[29529]

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TO: MONEY MARKET FUNDS ADVISORY COMMITTEE No. 35-15

SEC RULES COMMITTEE No. 38-15

TAX MEMBERS No. 26-15

VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 22-15 RE: LETTER TO IRS ON MONEY MARKET FUNDS AND VARIABLE INSURANCE PRODUCTS

The Institute has submitted the attached letter to the Internal Revenue Service (“IRS”) regarding the effect of the recently adopted Securities and Exchange Commission (“SEC”) money market fund rules on variable insurance products. The Institute recently met with attorneys at the IRS to discuss this issue. As was discussed at the meeting, the letter addresses the industry’s concerns that the evolving market for U.S. government securities, in light of the new SEC money market fund rules, will make it increasingly difficult or impossible for insurance company segregated asset accounts investing in those money market funds to satisfy the diversification requirements under section 817(h). The letter thus asks the IRS to provide a safe harbor diversification test for such products.

Specifically, the Institute asks the IRS to issue a revenue procedure indicating that it will treat a segregated asset account as adequately diversified for purposes of section 817(h) if:

- i. The segregated asset account invests all of its assets in one entity [\[1\]](#) (a “fund”) that qualifies for look-through treatment under Treas. Reg. § 1.817-5(f) and that is registered with the SEC under the ’40 Act (or the segregated asset account is itself a “fund” that is registered with the SEC under the ’40 Act);
- ii. The prospectus or other offering document of that fund (as any such document is in effect on the diversification testing date specified in Treas. Reg. § 1.817-5(c)(1) or within 30 days after such date) states that the fund intends to qualify as a government money market fund under SEC Rule 2a-7;
- iii. The fund is authorized to invest in any and all securities that are government securities under section 2(a)(16) of the ’40 Act and are eligible money market fund securities for purposes of Rule 2a-7; and
- iv. The fund’s investment adviser or manager will determine, in its sole discretion but consistent with the fund’s prospectus or other offering document, those government securities and other positions (such as repurchase agreements) in which the fund will

invest.

This revenue procedure would apply only to those variable insurance product funds that are intended to qualify as government money market funds under the SEC rules and would not alter the diversification test under Treas. Reg. § 1.817-5(b) for other types of funds.

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[Attachment](#)

endnotes

[1] The letter and requested relief focus on scenarios in which a segregated asset account invests directly in one insurance-dedicated fund that intends to qualify as a government money market fund under Rule 2a-7, or in which the segregated asset account itself operates as a government money market fund. We note, however, that insurance-dedicated government money market funds also may be held in insurance-dedicated fund-of-funds structures. The concerns raised in this letter also may apply to those scenarios. We are considering whether relief is necessary with respect to insurance-dedicated government money market funds held in insurance-dedicated fund-of-funds structures and, if so, what type of relief would be most beneficial.

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