

**MEMO# 27558**

September 12, 2013

# **ICI Letters to Treasury and IRS Regarding Money Market Fund Reform Tax Issues**

[27558]

September 12, 2013

TO: ACCOUNTING/TREASURERS MEMBERS No. 26-13  
INVESTMENT COMPANY DIRECTORS No. 17-13  
OPERATIONS MEMBERS No. 18-13  
SEC RULES MEMBERS No. 85-13  
SMALL FUNDS MEMBERS No. 52-13  
TAX MEMBERS No. 29-13  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 31-13  
BROKER/DEALER ADVISORY COMMITTEE No. 43-13  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 20-13  
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 22-13  
TRANSFER AGENT ADVISORY COMMITTEE No. 69-13 RE: ICI LETTERS TO TREASURY AND IRS  
REGARDING MONEY MARKET FUND REFORM TAX ISSUES

The Institute submitted two letters (attached) to the Treasury Department and the Internal Revenue Service ("IRS") regarding tax issues arising from the recent proposals by the Securities and Exchange Commission ("SEC") to reform money market funds.

The first letter addresses tax issues arising from the SEC's proposal to impose liquidity fees upon money market funds under certain circumstances. As discussed in the SEC's proposals, situations could arise in which a money market fund has to distribute excess liquidity fees to avoid breaking \$1.00. If the fund does not have sufficient earnings and profits to support that distribution, it would constitute a return of capital to the shareholders who receive it. The Institute has proposed that the Treasury Department and the IRS issue guidance that would deem the fund to have sufficient earnings and profits to distribute any excess liquidity fees, thereby creating an ordinary distribution and avoiding a return of capital.

The second letter comments on recently proposed IRS guidance providing a de minimis exception to the wash sale rule for money market funds with a floating net asset value ("NAV"). [\[1\]](#) The letter thanks the Treasury Department and the IRS for their efforts to provide limited relief from the wash sale rule in the context of proposed money market

reform, well in advance of the adoption of any proposals by the SEC. The letter argues, however, that the proposed de minimis exception does little to mitigate the substantial compliance burdens created by the SEC's floating NAV proposal. Funds, intermediaries, and certain investors still would be required to build systems to identify wash sale transactions, assess whether they meet the de minimis exception, and adjust cost basis if they do not. The better solution for resolving the wash sale issue would be to exempt money market funds from the rule entirely. As the IRS and Treasury themselves have acknowledged, money market funds are not the type of investment at which the wash sale rule is aimed. The letter thus urges the Treasury Department and the IRS to consider a broader exemption for money market funds if the floating NAV proposal is adopted.

Karen Lau Gibian  
Associate Counsel

[SEC Proposals for Money Market Fund Reform - Liquidity Fee Tax Issues](#)

[Notice 2013-48 - Proposed De Minimis Exception to the Wash Sale Rule](#)

**endnotes**

[1] See Institute [Memorandum](#) (27356) dated July 5, 2013.

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