

## Part III - Administrative, Procedural, and Miscellaneous

### Insurance-Dedicated Money Market Funds -- Temporary Guarantee Program for Money Market Funds -- Government Not the "Issuer" for Purposes of Testing Diversification

Notice 2008-92

#### SECTION 1. PURPOSE

This Notice relates to the Temporary Guarantee Program for Money Market Funds (the "Program"), which is provided by the Treasury Department in response to the credit market instability to make available certain funds from its Exchange Stabilization Fund, upon prescribed terms and conditions, to money market funds that are regulated under the Security and Exchange Commission's Rule 2a-7, 17 C.F.R. 270.2a-7, under the Investment Company Act of 1940 ("Rule 2a-7"). Some practitioners have expressed concern that participation in the Program may raise certain potential tax issues for money market funds whose beneficial interests are held exclusively by one or more segregated asset accounts of one or more insurance companies (or other investors permitted under § 1.817-5(f)(3) of the Income Tax Regulations) ("Insurance-Dedicated Money Market Funds"). This Notice provides certainty with respect to those issues, as described below.

#### SECTION 2. BACKGROUND

.01 The Program. In general, under the Program, the Treasury

Department is making available its Exchange Stabilization Fund on a temporary basis to assist participating money market funds in repaying shareholders upon liquidation of their shares. The Program is limited to assets in money market funds as of the close of business on September 19, 2008, and to investors of record as of that date. The Program is available to both Insurance-Dedicated Money Market Funds and money market funds that are available to the general public. Participating money market funds are required to make premium payments to participate in the Program. Payments to a money market fund under the Program are tied to the per share net asset value of the money market fund itself. Payments to a money market fund under the Program are not tied to the terms or performance of any particular assets held by the money market fund. The general description of certain aspects of the Program herein is subject fully to the specific terms, conditions, maximum size limitations, and other limitations set forth in the operative legal documents for the Program.

.02 Diversification requirement for variable contracts. Section 817(h) of the Internal Revenue Code provides that a variable life insurance or annuity contract that is based on a segregated asset account is not treated as a life insurance or annuity contract for any period (and any subsequent period) for which the investments of the account are not adequately diversified. For purposes of determining whether a segregated asset account is adequately diversified, each United States government agency or instrumentality is treated as a separate issuer. In addition, to the extent that a segregated asset account with respect to a variable life insurance contract invests in securities issued by

the United States Treasury, the investments made by the account are treated as adequately diversified. The rule in the previous sentence does not apply with respect to a variable annuity contract. Section 1.817-5(h)(1) defines "government security" to mean any security that is issued, guaranteed or insured by the United States or any instrumentality.

.03 Investor control. The holder of a variable contract may be treated as an owner of the assets of a segregated asset account funding that contract if (1) the holder exercises sufficient control over the assets to be deemed the owner; or (2) the assets are not available exclusively through the purchase of a life insurance or annuity contract. See Rev. Rul. 2003-92, 2003-2 C.B. 350; Rev. Rul. 2003-91, 2003-2 C.B. 347; Rev. Rul. 81-225, 1981-2 C.B. 13; Rev. Rul. 80-274, 1980-2 C.B. 27; Rev. Rul. 77-85, 1977-1 C.B. 12.

### SECTION 3. SCOPE AND APPLICATION

.01 No Violation of Diversification Requirements; No Assertion of Investor Control. The Treasury Department and the Internal Revenue Service ("IRS") will not assert that participation in the Program by an Insurance-Dedicated Money Market Fund causes a violation of the diversification requirements of § 817(h) in the case of a segregated asset account that invests in the Insurance-Dedicated Money Market Fund. In addition, the Treasury Department and the IRS will not assert that such a fund's participation in the Program causes the holder of a variable contract supported by a segregated asset account that invests in the fund to be treated as an owner of the fund.

.02 No Inferences on Law. This Notice provides administrative relief in

furtherance of public policy to promote stability in the market for money market funds. Except with respect to the administrative relief expressly provided in this Notice, no inference should be drawn from this Notice regarding any other Federal tax issues affecting variable contracts, money market funds, or any other security. In addition, this Notice is not intended to address any other Federal tax issue implicated in the described transactions under the Program.

#### DRAFTING INFORMATION

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