

117TH CONGRESS
1ST SESSION

H. R. 2951

To direct the Secretary of the Treasury to modify Treasury Regulations relating to insurance-dedicated exchange-traded funds.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2021

Mr. WENSTRUP (for himself and Mr. SUOZZI) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To direct the Secretary of the Treasury to modify Treasury Regulations relating to insurance-dedicated exchange-traded funds.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INSURANCE-DEDICATED EXCHANGE-TRADED**
4 **FUNDS.**

5 (a) IN GENERAL.—Not later than the date which is
6 5 years after the date of the enactment of this Act, the
7 Secretary of the Treasury (or the Secretary’s delegate)
8 shall amend the regulation issued by the Department of
9 the Treasury relating to “Income Tax; Diversification Re-
10 quirements for Variable Annuity, Endowment, and Life

1 Insurance Contracts”, 54 Fed. Reg. 8728 (March 2,
 2 1989), and make any necessary corresponding amend-
 3 ments to other regulations, in order to facilitate the use
 4 of exchange-traded funds as investment options under
 5 variable contracts within the meaning of section 817(d)
 6 of the Internal Revenue Code of 1986, in accordance with
 7 subsections (b) and (c) of this section.

8 (b) DESIGNATE CERTAIN AUTHORIZED PARTICI-
 9 PANTS AND MARKET MAKERS AS ELIGIBLE INVESTORS.—
 10 The Secretary of the Treasury (or the Secretary’s dele-
 11 gate) shall amend Treas. Reg. section 1.817–5(f)(3) to
 12 provide that satisfaction of the requirements in Treas.
 13 Reg. section 1.817–5(f)(2)(i) with respect to an exchange-
 14 traded fund shall not be prevented by reason of beneficial
 15 interests in such a fund being held by 1 or more author-
 16 ized participants or market makers.

17 (c) DEFINE RELEVANT TERMS.—In amending Treas.
 18 Reg. section 1.817–5(f)(3) in accordance with subsections
 19 (b) of this section, the Secretary of the Treasury (or the
 20 Secretary’s delegate) shall provide definitions consistent
 21 with the following:

22 (1) EXCHANGE-TRADED FUND.—The term “ex-
 23 change-traded fund” means a regulated investment
 24 company, partnership, or trust—

1 (A) that is registered with the Securities
2 and Exchange Commission as an open-end in-
3 vestment company or a unit investment trust;

4 (B) the shares of which can be purchased
5 or redeemed directly from the fund only by an
6 authorized participant; and

7 (C) the shares of which are traded
8 throughout the day on a national stock ex-
9 change at market prices that may or may not
10 be the same as the net asset value of the
11 shares.

12 (2) AUTHORIZED PARTICIPANT.—The term
13 “authorized participant” means a financial institu-
14 tion that is a member or participant of a clearing
15 agency registered under section 17A(b) of the Secu-
16 rities Exchange Act of 1934 that enters into a con-
17 tractual relationship with an exchange-traded fund
18 pursuant to which the financial institution is per-
19 mitted to purchase and redeem shares directly from
20 the fund and to sell such shares to third parties, but
21 only if the contractual arrangement or applicable law
22 precludes the financial institution from—

23 (A) purchasing the shares for its own in-
24 vestment purposes rather than for the exclusive

1 purpose of creating and redeeming such shares
2 on behalf of third parties; and

3 (B) selling the shares to third parties who
4 are not market makers or otherwise described
5 in Treas. Reg. section 1.817-5(f) (1) and (3).

6 (3) MARKET MAKER.—The term “market
7 maker” means a financial institution that is a reg-
8 istered broker or dealer under section 15(b) of the
9 Securities Exchange Act of 1934 that maintains li-
10 quidity for an exchange-traded fund on a national
11 stock exchange by being always ready to buy and sell
12 shares of such fund on the market, but only if the
13 financial institution is contractually or legally pre-
14 cluded from selling or buying such shares to or from
15 persons who are not authorized participants or oth-
16 erwise described in Treas. Reg. section 1.817-5(f)
17 (2) and (3).

18 (d) EFFECTIVE DATE.—Subsections (b) and (c) shall
19 apply to segregated asset account investments made on
20 or after the date that is 5 years after the date of the enact-
21 ment of this Act.

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