Notice of Proposed Rulemaking and Notice of Public Hearing

Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities

REG–104924–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations for dealers in commodities and traders in securities or commodities regarding the election to use the mark-to-market method of accounting for their businesses. Section 1001(b) of the Taxpayer Relief Act of 1997 amended the applicable tax law for these taxpayers. This document also contains proposed regulations providing guidance on statutory changes to section 475 contained in the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Restructuring Act). This guidance is necessary because section 7003 of the IRS Restructuring Act generally prohibited the application of mark-to-market accounting to nonfinancial customer paper. Among other things, the proposed regulations provide guidance to taxpayers who are

using mark-to-market accounting for nonfinancial customer paper. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 3, 1999, at 10 a.m. must be received by May 13, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–104924–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104924–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations about elections by commodities dealers and securities and commodities traders, Jo Lynn Ricks, 202-622-3920; concerning the regulations about nonfinancial customer paper, Pamela Lew, 202-622-3950; concerning submissions and the hearing, Michael L. Slaughter, Jr., 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget,** Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments concerning the collection of information must be received by March 29, 1999.

The first collection of information in this proposed regulation is described in the Explanation of Provisions section of this document (rather than being included in the text of the proposed regulations). That description indicates that the elections under section 475(e)(1) and (f)(1) and (2) may be required to be made on a form to be developed by the IRS. This burden will be reflected on that new form.

The second collection of information in this proposed regulation is in §§1.475(e)–1 and 1.475(f)–2. The information required to be recorded under §§1.475(e)–1 and 1.475(f)–2 is required by the IRS to determine whether an exemption from mark-to-market accounting is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are businesses or other for-profit institutions.

Estimated total annual recordkeeping burden: 1,000 hours.

The estimated annual burden per recordkeeper varies from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of recordkeepers: 1,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 475 provides that dealers in securities generally must use mark-to-market accounting for all securities. Exceptions from the mark-to-market requirement are generally provided for securities not held for sale to customers and certain securities held as a hedge, provided that the securities are identified as exempt in a proper and timely manner.

For purposes of section 475, a security includes any note, bond, debenture, or other evidence of indebtedness. Revenue Ruling 97–37 (1997–39 I.R.B. 4), clarified that "other evidence of indebtedness" includes customer paper, commonly referred to as trade accounts receivable. The IRS provided procedures for a taxpayer to change its method of accounting for customer paper in Revenue Procedure 97–43 (1997–39 I.R.B. 12).

The IRS Restructuring Act modified the definition of security for purposes of section 475 to exclude nonfinancial customer paper. For this purpose, nonfinancial customer paper is any receivable arising out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services if the receivable is held by that person (or a related person) at all times since its issuance. Section 475(c)(4), added by the IRS Restructuring Act, precludes a taxpayer from using mark-to-market accounting under section 475 for nonfinancial customer paper. In addition, the legislative history of the IRS Restructuring Act indicates that taxpayers may not account for nonfinancial customer paper using a mark-to-market or lower-of-cost-or-market method of accounting under other sections of the Code. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 353–54 (1998). Congress, however, authorized the Secretary to issue regulations describing situations where taxpayers must use mark-to-market accounting for nonfinancial customer paper in order to prevent taxpayers from using the exclusion in section 475(c)(4) to avoid marking to market receivables that are inventory in the hands of the taxpayer or a related person.

Section 475(e) and (f), added by section 1001(b) of the Taxpayer Relief Act of 1997, allows securities traders and commodities traders and dealers to elect mark-to-market accounting similar to that currently required for securities dealers. These provisions are effective for all taxable years ending after August 5, 1997, the date of enactment of the Taxpayer Relief Act. The proposed regulations clarify several issues relating to these elections, including the identification of securities and commodities as exempt from mark-to-market accounting, the character of marked securities and commodities, and the time and manner for making the elections.

Explanation of Provisions

Nonfinancial Customer Paper

Sections 1.446–1(c)(2)(iii), 1.471–12, and 1.475(c)–2(d) of the proposed regulations provide that taxpayers may not use mark-to-market or lower-of-cost-or-market accounting for any nonfinancial customer paper unless a regulation affirmatively provides that the nonfinancial customer paper is to be marked to market as inventory.

The remaining proposed regulations pertaining to section 475(c)(4) are cross references or minor technical changes required by the addition of §1.475(c)–2(d).

Dealers in Commodities

The proposed regulations generally provide that, except as provided in guidance prescribed by the Commissioner, the rules for mark-to-market accounting for securities dealers apply to commodities dealers that make an election under section 475(e)(1) (electing commodities dealers). Comments are requested whether there are circumstances where the specific rules applicable to securities dealers should not be applied to electing commodities dealers.

Under the proposed regulations, unless the Commissioner otherwise provides in a revenue ruling, revenue procedure, or letter ruling, the exemption from mark-to-market accounting for assets held for investment does not apply to a commodity derivative held by an electing dealer in commodities. If the rule described in the preceding sentence applies (and consequently requires a commodity derivative to be marked to market), the gain or loss is ordinary. The IRS and the Treasury Department believe that it would be extremely rare for a commodity derivative held by a commodities derivative dealer to be acquired other than in a dealer capacity. See §1.475(c)–1(a)(2). Moreover, the IRS and the Treasury Department believe that a dealer in physical commodities generally engages in derivatives activities that are virtually indistinguishable from its dealings in physical commodities. This situation invokes many of the practical concerns that led Congress to enact section 475(b)(4). The IRS and the Treasury Department welcome comments on whether, and under what circumstances, it may be appropriate for a dealer in physical commodities to identify commodity derivatives as held for investment.

The proposed regulations also provide that, in all cases, if a dealer in commodities identifies a commodity as exempt from mark-to-market accounting under section 475(b)(2), the identification is ineffective unless it is made before the close of the day on which the commodity was acquired, originated, or entered into. Thus, a rule similar to the 30-day identification rule for certain securities in Holding 8 of Rev. Rul. 97–39 (1997–39 I.R.B. 4), does not apply to commodities dealers.

Traders in Securities or Commodities

The proposed regulations provide that the principles underlying the rules and administrative interpretations applicable to securities dealers also apply to electing traders, unless the proposed regulations or the Commissioner provides otherwise. The IRS and the Treasury Department request comments on whether there are circumstances under which a specific rule applicable to securities dealers should not apply to electing securities traders.

The proposed regulations provide rules for the identification of investment securities as exempt from mark-to-market accounting. The proposed regulations clarify that a trader in securities who elects mark-to-market accounting under section 475(f)(1) for its trading business (an electing trader) must identify, in accordance with section 475(f)(1)(B)(ii), any security held other than in connection with the trading business. If the electing trader is also a dealer in securities, the trader need only identify under section 475(f)(1)(B)(ii) securities that are not held in connection with the trading business and that are also described in section 475(b)(1) (without regard to section 475(b)(2)). That is, the trader need not identify securities that could not properly be identified as being exempt from section 475(a).

The IRS and the Treasury Department believe that in making the section 475 election available to securities traders, Congress did not want taxpayers selectively to mark to market some securities but selectively to identify other securities as exempt from this treatment. Congress addressed this concern by establishing a higher burden of proof for electing securities traders to identify securities as not subject to section 475 than is applicable to securities dealers. The IRS and the Treasury Department share this concern, particularly because it traditionally has been easier to distinguish investment securities from dealer securities than to distinguish investment securities from trading securities. Accordingly, the proposed regulations provide that in no event is the requirement of section 475(f)(1)(B)(i) satisfied unless the electing trader demonstrates by clear and convincing evidence that a security has no connection to its trading activities. The IRS and Treasury Department request comments on whether any trader of securities could meet this burden and under what circumstances.

In addition, the IRS and the Treasury Department seek comments on the manner in which securities are identified as not held in connection with trading activities and, in particular, comments that focus on the administrability of rules in this area.

Because of the fungible nature of certain securities, the proposed regulations provide a special rule for identifying securities held other than in connection with the electing trader's trading business when the electing trader also trades other of the same or substantially similar securities. In this circumstance, the electing trader does not satisfy section 475(f)(1)(B)(i) unless the security is held in a separate, nontrading account maintained with a third party. The IRS and the Treasury Department are considering extending this special identification rule to all securities, rather than solely to those that are fungible, and request comments on the advisability of doing so.

Under the proposed regulations, all identifications under section 475(f)(1)(B)(ii) must be made on the same day the electing trader acquires, originates, or enters into the security. Thus, a rule similar to the 30-day identification rule for certain securities in Holding 8 of Rev. Rul. 97–39 does not apply to electing traders.

Because the principles of the rules and administrative interpretations applicable to securities dealers apply to electing traders, if an electing trader improperly identifies as exempt a security that is actually held in connection with that business, the gain or loss with respect to the security is ordinary, and the consequences described in section 475(d)(2) apply to the security (i.e., the security is marked to market and any losses realized with respect to the security prior to its disposition are recognized only to the extent of gain previously recognized with respect to the security). Similarly, under the proposed regulations, if an electing trader fails to identify a security that is not held in connection with its trading business, the consequences of section 475(d)(2) apply to the security, and the gain or loss with respect to the security is ordinary. Moreover, in the event of this failure, the Commissioner may nevertheless treat the security as if the requirements for exemption from mark-to-market accounting were satisfied.

The proposed regulations further provide that the gain or loss with respect to a security that is marked to market under section 475(f)(1)(A) is ordinary. Under this rule, if an electing trader disposes of a security before the close of the taxable year, proposed §1.475(a)–2 applies, and the gain or loss is ordinary income or loss. See sections 475(f)(1)(D) and 475(d)(3) and the legislative history to section 475(f). H.R. Rep. No. 148, 105th Cong., 1st Sess. 445 (1997).

Under the proposed regulations, the above rules for electing securities traders also apply to electing commodities traders. In addition, the proposed regulations provide a special character rule for traders in section 1256 commodity contracts who elect mark-to-market accounting for their businesses. For these traders, the proposed regulations clarify that the capital character rule of section 1256 does not apply to these contracts and, thus, the gain or loss with respect to such contracts is ordinary.

Making the Elections

The proposed regulations clarify that if a dealer in securities also has a securities or commodities trading business or a commodities dealing business, the dealer may make an election for that business.

The proposed regulations also provide that the mark-to-market elections for dealers in commodities and for traders in securities or commodities must be made in the time and manner prescribed by the Commissioner. The IRS and the Treasury Department anticipate requiring taxpayers to make the election by filing a form, to be developed by the IRS, not later than 2_ months after the beginning of the taxable year for which the election is made. (See the Paperwork Reduction Act section of this preamble, which requests comments on the burden that may be imposed by this requirement.) Interim procedures are being provided in a revenue procedure.

Proposed Effective Dates

The proposed regulations in §1.475(c)–2(d)(1) apply to every taxpayer who is required by section 475(c)(4) to cease using mark-to-market accounting for nonfinancial customer paper. These regulations are applicable for all taxable years ending after July 22, 1998. Proposed §§1.446–1(c)(2)(iii), 1.471–12, and 1.475(c)–2(d)(2) are applicable for all taxable years ending on or after January 28, 1999. The proposed regulations in §§1.475(e)–1 and 1.475(f)–2 generally apply to securities or commodities acquired on or after March 1, 1999. The rules concerning the time and manner for making the mark-to-market elections for commodities dealers and securities and commodities traders are generally applicable for taxable years ending on or after January 28, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory impact analysis is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. As previously noted, in those instances where a small entity elects to apply the rules in these regulations, the burden of the collection of information is not significant. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 13, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Jo Lynn Ricks and Pamela Lew of the Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and the Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§1.475(a)–3 through 1.475(e)–1 and adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.475(a)–3 also issued under 26 U.S.C. 475(g).

Section 1.475(b)–1 also issued under 26 U.S.C. 475(b)(4) and 26 U.S.C. 475(g).

Section 1.475(b)–2 also issued under 26 U.S.C. 475(b)(2) and 26 U.S.C. 475(g).

Section 1.475(b)–4 also issued under 26 U.S.C. 475(b)(2), 26 U.S.C. 475(g), and 26 U.S.C. 6001.

Section 1.475(c)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(c)–2 also issued under 26 U.S.C. 475(g) and 26 U.S.C. 860G(e).

Section 1.475(d)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(e)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(f)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(f)–2 also issued under 26 U.S.C. 475(g).***

Par. 2. In §1.446–1, paragraph (c)(2)(iii) is added to read as follows:

§1.446–1 General rule for methods of accounting.

* * * * *

(c) * * *

(2) * * *

(iii) Section 475 is the exclusive authority on which a taxpayer may rely to use the mark-to-market method of accounting for nonfinancial customer paper, as defined in section 475(c)(4)(B). Thus, except to the extent provided in §1.475(c)–2(d), the mark-to-market method of accounting is not a permissible method of accounting for nonfinancial customer paper. In addition, the lower-of-cost-or-market method of accounting is not a permissible method of accounting for these assets. See §1.471–12. This paragraph (c)(2)(iii) applies to all tax years ending on or after January 28, 1999.

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Par. 3. Section 1.471–12 is added as follows:

§1.471–12 Nonfinancial customer paper.

Nonfinancial customer paper, as defined in section 475(c)(4)(B), may not be treated as inventory except as provided in §1.475(c)–2(d). This section applies to taxable years ending on or after January 28, 1999.

Par. 4. In §1.475(c)–1, paragraphs (b)(3)(i) and (b)(4)(ii) are revised to read as follows:

§1.475(c)–1 Definitions—dealer in securities.

* * * * *

(b) * * *

(3) * * *

(i) For purposes of section 471, the taxpayer accounts for any security (as defined in section 475(c)) as inventory;

* * * * *

(4) * * *

(ii) *Continued applicability of an election*—(A) *In general.* Except as provided in paragraph (b)(4)(ii)(B) of this section, an election under this paragraph (b)(4) continues in effect for subsequent taxable years until revoked. The election may be revoked only with the consent of the Commissioner.

(B) *Taxable years ending after July 22, 1998.* An election under this paragraph (b)(4) is ineffective for taxable years ending after July 22, 1998.

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Par. 5. In §1.475(c)–2, paragraph (d) is added to read as follows:

§1.475(c)–2 Definitions—security.

* * * * *

(d) *Inventory*—(1) *Nonfinancial customer paper is generally not marked to market under section 475.* Except as provided in paragraph (d)(3) of this section, nonfinancial customer paper (as defined in section 475(c)(4)(B)) is not a security even if it is inventory.

(2) *Treatment of nonfinancial customer paper under other sections of the Internal Revenue Code.* For nonfinancial customer paper that is not a security, the mark-to-market method of accounting and the lower-of-cost-or-market method of accounting are not permissible methods of accounting. See §§1.446–1(c)(2)(iii) and 1.471-12.

(3) *Nonfinancial customer paper treated as inventory.* [Reserved].

§1.475(e)–1 [Redesignated as §1.475(g)–1]

Par. 6. Section 1.475(e)–1 is redesignated as §1.475(g)–1.

Par. 7. New §1.475(e)–1 and §§1.475(f)–1 and 1.475(f)–2 are added to read as follows:

§1.475(e)–1 Election of mark-to-market accounting for dealers in commodities.

(a) *Time and manner of making election.* An election under section 475(e)(1) must be made in the time and manner prescribed by the Commissioner.

(b) *Application of securities dealer rules to electing commodities dealers.* Except as otherwise provided in this section or in other guidance prescribed by the Commissioner, the rules and administrative interpretations under section 475 for dealers in securities apply to dealers in commodities that make an election under section 475(e)(1).

(c) *Commodity derivatives deemed not held for investment*—(1) *In general.* Except as otherwise determined by the Commissioner in a revenue ruling, revenue procedure, or letter ruling, if a dealer in commodities that made an election under section 475(e)(1) holds a commodity described in section 475(e)(2)(B) or (C) (describing certain notional principal contracts and commodity derivatives), section 475(b)(1)(A) (exempting from mark-to-market accounting certain positions that are held for investment) does not apply to that commodity.

(2) *Character of commodity derivatives required to be marked to market.* If a commodity is required to be marked to market because of the application of paragraph (c)(1) of this section, the gain or loss with respect to that commodity is ordinary.

(d) *Same day identification.* An identification of a commodity as exempt from mark-to-market accounting under section 475(b)(2) is not effective unless it is made before the close of the day on which the commodity was acquired, originated, or entered into.

§1.475(f)–1 Procedures for electing mark-to-market accounting for traders.

(a) *Time and manner of making election.* An election under section 475(f)(1) or (2) must be made in the time and manner prescribed by the Commissioner.

(b) *Coordination with section 475(a).* If a dealer in securities also has a securities or commodities trading business or a commodities dealing business, the dealer may make an election under section 475(e)(1), (f)(1), or (f)(2) for that business.

§1.475(f)–2 Election of mark-to-market accounting for traders in securities or commodities.

(a) *Securities not held in connection with trading activities*—(1) *Taxpayer identification of investment securities.* If a trader in securities makes an election under section 475(f)(1)(A) (electing trader) and holds a security other than in connection with that trading business, the electing trader must identify that security in accordance with section 475(f)(1)(B)-(ii). If the electing trader is also a dealer in securities, however, the preceding sentence applies only to securities described in section 475(b)(1) (without regard to section 475(b)(2)).

(2) *Satisfaction of Commissioner.* In no event is the requirement of section 475(f)(1)(B)(i) satisfied unless the electing trader demonstrates by clear and convincing evidence that a security has no connection to its trading activities.

(3) *Substantially similar securities held for trading and investment.* An electing trader that holds a security other than in connection with its trading business and also trades the same or substantially similar securities in no event satisfies the requirement of section 475(f)(1)(B)(i) unless the security is held in a separate, nontrading account maintained with a third party.

(4) *Consequences of failure to identify investment securities.* If an electing trader holds a security that is not held in connection with its trading business and fails to identify the security in a manner that satisfies the requirements of section 475(f)(1)(B)(ii)—

(i) The consequences described in section 475(d)(2) apply to the security; and

(ii) The character of the gain or loss with respect to the security is ordinary.

(5) *Commissioner identification of investment securities.* Notwithstanding paragraph (a)(4) of this section, the Commissioner may treat a security described in that paragraph as meeting the requirements of section 475(f)(1)(B)(i) and (ii).

(b) *Character of securities marked to market.* The gain or loss with respect to a security that is marked to market under section 475(f)(1)(A) is ordinary.

(c) *Application of securities dealer rules to electing traders.* Except as otherwise provided in this section or in other guidance prescribed by the Commissioner, the principles of the rules and administrative interpretations under section 475 for dealers in securities apply to traders in securities that make an election under section 475(f)(1).

(d) *Same day identification.* An identification of a security as exempt from mark-to-market accounting under section 475(f)(1)(B) is not effective unless it is made before the close of the day on which the security was acquired, originated, or entered into.

(e) *Application to traders in commodities*—(1) *General rule.* If a trader in commodities makes an election under section 475(f)(2), paragraphs (a), (b), (c), and (d) of this section apply to the trader in the same manner that they apply to a trader in securities who makes an election under section 475(f)(1).

(2) *Coordination with section 1256.* If a trader in commodities makes an election under section 475(f)(2) and trades section 1256 contracts that are commodities as defined in section 475(e)(2), then the rules of section 475(f) and paragraph (e)(1) of this section apply to those contracts, and not the capital character rules of section 1256.

Par. 8. Newly designated §1.475(g)–1 is amended by revising paragraphs (h)(2) and (i) and adding paragraphs (k), (l), and (m) to read as follows:

§1.475(g)–1 Effective dates.

* * * * *

(h) * * *

(2) Section 1.475(c)–1(b) (concerning sellers of nonfinancial goods and services) applies as follows:

(i) Except as otherwise provided in this paragraph (h)(2), §1.475(c)–1(b) applies to taxable years ending on or after December 31, 1993.

(ii) Section 1.475(c)–1(b)(4)(ii)(B) applies to taxable years ending after July 22, 1998.

* * * * *

(i) Section 1.475(c)–2 (concerning the definition of security) applies as follows:

(1) Section 1.475(c)–2(a), (b), and (c) (concerning the definition of security) applies to taxable years ending on or after December 31, 1993. By its terms, however, §1.475(c)–2(a)(3) applies only to residual interests or to interests or arrangements acquired on or after January 4, 1995; and the integrated transactions that are referred to in §1.475(c)–2(a)(2) and (b) exist only after August 13, 1996 (the effective date of §1.1275–6).

(2) Section 1.475(c)–2(d) applies as follows:

(i) Section 1.475(c)–2(d)(1) applies to taxable years ending after July 22, 1998.

(ii) Section 1.475(c)–2(d)(2) applies to taxable years ending on or after January 28, 1999.

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(k) Section 1.475(e)–1(a) (concerning the time and manner for making the mark-to-market election for dealers in commodities) applies to taxable years ending on or after January 28, 1999. Section 1.475(e)–1(b), (c) and (d) applies to commodities acquired on or after March 1, 1999.

(l) Section 1.475(f)–1 (procedures for electing mark-to-market accounting for traders in securities or commodities) applies to taxable years ending on or after January 28, 1999.

(m) Section 1.475(f)–2 (concerning the mark-to-market rules for traders in securities or commodities) applies to securities or commodities acquired on or after March 1, 1999.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 27, 1999, 8:45 a.m., and published in the issue of the Federal Register for January 28, 1999, 64 F.R. 4374)