



Securities Industry Association

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March 28, 2002

The Honorable Mark Weinberger
Assistant Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable B. John Williams
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Dear Messrs. Weinberger and Williams:

On behalf of the Securities Industry Association (SIA), we are writing to urge the Treasury Department and the Internal Revenue Service to include guidance on the “mark-to-market” requirements of section 475 of the Internal Revenue Code on the “Guidance Priority List” for 2002. Guidance on section 475 is the top tax regulatory priority of the securities industry.

Section 475, which requires securities dealers to recognize gain or loss on securities they hold as if they were sold at year-end for fair market value, was enacted in 1993. Taxpayers seeking to value securities – in particular, derivative instruments such as swaps – in accordance with section 475 have been operating for nine years without any guidance. This is despite Congress's direction to Treasury in the 1993 Act to authorize the use of valuation methods that would not create compliance burdens and that would result in a clear reflection of income.

The need for guidance is only increasing. IRS examiners are increasingly challenging taxpayers' section 475 valuation methodologies, even though these rely on methodologies used for key non-tax purposes (e.g., financial reporting). Absent clear guidance, we seem certain to see additional costly litigation along the lines of a case now involving Bank One. In addition to helping avoid disputes, bright-line rules from Treasury and the IRS would free up scarce IRS audit resources and reduce taxpayer administrative burdens, consistent with the direction of Congress.

In an April 25, 2001, letter to Treasury, SIA proposed a specific framework for valuing securities for section 475 purposes. We once again urge you to consider our proposal (copy attached) and to work with us to help avoid wasteful controversies under section 475.

Thank you for your consideration of our views. We look forward to discussing this matter further with you or your staff.

Sincerely,

Saul M. Rosen
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cc: Pam Olson
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