



June 21, 2011

Walter L. Harris
Industry Director, Financial Services
Large Business and International Division
Internal Revenue Service
290 Broadway, 12th Floor
New York, NY 10007

Re: IRC § 475: Field Directive related to Mark-to-Market Valuation

Dear Mr. Harris:

On behalf of the Securities Industry and Financial Markets Association (SIFMA)¹, we are writing in regard to your recent comments at the Wall Street Tax Association meeting in Washington, DC about the above-referenced Industry Director Directive (IDD).

Based on your recent comments, it is our understanding that the IRS is planning to issue additional guidance in the form of FAQs regarding the IDD in the near future. We agree that certain issues presented by the IDD would benefit from additional clarification and guidance, and that those FAQs should be adopted and released as quickly as possible.

We appreciated the opportunity to work with you in the past on this important issue, and we look forward to continuing our collaboration. Accordingly, we recommend the following suggested questions and responses for the FAQs:

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

Question 1: In order for a Taxpayer to be eligible for the IDD, it must execute a certification statement under penalty of perjury that states, “I certify, under penalty of perjury, that for the tax year to which this certification statement applies, the taxpayer’s mark-to-market values reported on its qualified financial statements are consistent with the I.R.C. §475 values for the same securities and/or commodities reported on the taxpayer’s federal income tax return for the relevant tax year for all entities included in the consolidated tax return that use the I.R.C. §475 mark-to-market method of accounting.” May the Taxpayer give the certification if the securities are not marked-to-market through the income statement for financial statement purposes?

Answer 1: The Taxpayer may give the certification even if the securities are not marked-to-market through the income statement for financial statement purposes as long as any mark-to-market number that is used for financial statement purposes is the same as that being used for purposes of I.R.C. §475. Thus, the Taxpayer is not precluded from giving the certification merely because (i) the mark-to-market adjustment is reflected in the equity section of the Taxpayer’s financial statements or (ii) the Taxpayer uses accrual accounting or LOCOM (lower of cost or market) for financial statement purposes.

Question 2: The IDD states that, “Taxpayers should retain the underlying financial accounting valuation documentation that would permit the LB&I examiner to reconcile the taxpayer’s financial accounting mark-to-market values with the taxpayer’s tax mark-to-market values.” What documentation is sufficient for these purposes?

Answer 2: For documentation purposes, it is sufficient for a Taxpayer to show the LB&I examiner that there are no Schedule M book/tax differences made regarding I.R.C. §475 mark-to-market values. If such Schedule M book/tax differences do not exist, then mathematically and by definition, the financial statement values will equal the tax values. To require an LB&I examiner to identify financial statement values for securities or commodities and then match those values to the tax return would not advance the goal of reducing the significant administrative burden on both taxpayers and the IRS. Taxpayers would be expected to explain every §475 Schedule M. Those Schedules M resulting from book/tax accounting method differences (e.g., a security is not marked-to-market through P/L for book purposes, but is a mark-to-market security for tax purposes), would not prevent the certification from being accepted.

We appreciate the opportunity to present our recommendations for additional guidance regarding the IDD. If you have any questions, please do not hesitate to contact me at (202) 962-7333 or emccarthy@sifma.org.

Sincerely,

A handwritten signature in black ink, reading "N. Ellen McCarthy". The signature is written in a cursive, flowing style.

N. Ellen McCarthy
Managing Director Government Affairs and Tax Counsel
Securities Industry and Financial Markets Association

cc: Deborah Inganamorte
Ann Schultz
Nicole Cammarota