

**Internal Revenue Service**

Department of the Treasury

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Date:  
August 16, 2001

Taxpayer =  
Company =  
Accountant =  
State =  
Date =

Dear :

This ruling responds to a letter dated June 12, 2001, submitted on behalf of the Taxpayer by its authorized representative. The Taxpayer requests an extension of time to file an election under section 1092(b) of the Internal Revenue Code of 1986 and section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations for the calendar year ending December 31, 2001.

The Taxpayer is a State limited liability company. The Taxpayer uses an accrual method of accounting and is treated as a partnership for federal income tax purposes. Further, the Taxpayer's sole business activity is a 100 percent interest in Company. As a single member limited liability company, Company is a disregarded entity for federal income tax purposes. As such, Company includes its results in the federal income tax return of the Taxpayer and does not file a separate tax return. The due date for the Taxpayer's initial return is April 15, 2002.

Through Taxpayer's ownership in Company, the Taxpayer acts as an equity securities specialist on the New York Stock Exchange, buys and sells equity securities and option contracts as a specialist on the American Stock Exchange, and is a market maker on the International Securities Exchange, an electronic options exchange. As part of its options business, the Taxpayer purchases equity positions that offset options in order to hedge its exposure to price fluctuations in the options market. These positions constitute straddles within the meaning of section 1092(c). These straddles are typically "mixed straddles" under section 1.1092(b)-5T(e).

During a meeting between the Taxpayer and its Accountant on Date, it was discovered that the Taxpayer did not file necessary mixed straddle account elections at the time of the initial due date of the election, March 1, 2001. Upon discovering this, the Taxpayer's Accountant immediately took action to seek an extension of time to file mixed straddle account elections for the taxable year ending December 31, 2001, by filing this ruling request.

The Taxpayer does not have an internal tax department. The Accountant is Taxpayer's tax advisor and is responsible for preparing elections for the Taxpayer, including the mixed straddle account election on Form 6781. However, on or about the time the election was due, the Accountant was not aware that the Taxpayer was engaged in hedging related to its dealer option activity. Consequently, the Accountant did not prepare or discuss making a mixed straddle election with the Taxpayer's management.

Additionally, on or about the time of the due date for the elections, the Taxpayer's management was negotiating a significant business acquisition which occupied a significant portion of management's attention. Moreover, the Taxpayer's Chief Financial Officer had recently left the company, causing management to undergo significant change. Therefore, in light of these intervening factors, management did not communicate with the Accountant that it was engaged in hedging related to its dealer option activity.

#### LAW AND ANALYSIS

Section 1.1092(b)-4T(a) of the regulations generally permits a taxpayer to elect (in accordance with paragraph (f) of section 1.1092(b)-4T) to establish one or more "mixed straddle accounts." Section 1.1092(b)-4T(b) defines a mixed straddle account to mean an account for determining gains and losses from all positions held as capital assets in a designated class of activities by the taxpayer at the time the taxpayer elects to establish a mixed straddle account.

Section 1.1092(b)-4T(f)(1) of the regulations generally provides that except as otherwise provided, the election to establish one or more mixed straddle accounts for a taxable year must be made by the due date (without regard to any extension) of the taxpayer's income tax return for the immediately preceding taxable year (or part thereof). Section 1.1092(b)-4T(f)(1) further provides that if a taxpayer begins trading or investing in positions in a new class of activities during a taxable year, the taxpayer must make the election with respect to the new class of activities by the later of the due date (without regard to any extension) of the taxpayer's return for the immediately preceding year or 60 days after the first mixed straddle in the new class of activities is entered into. Finally, section 1.1092(b)-4T(f)(1) provides that if an election is made after the times specified above, the election will be permitted only if the Commissioner

concludes that the taxpayer had reasonable cause for failing to make a timely election.

### CONCLUSION

Based on the facts and representations submitted, we conclude that the Taxpayer has shown reasonable cause for failing to make a timely election under section 1.1092(b)-4T(f) of the regulations. Therefore, we grant the Taxpayer's request for an extension of time to make the election under section 1.1092(b)-4T(a) for the taxable year ending December 31, 2001. This extension will expire 30 days from the date of this letter. The election must be made in the manner prescribed in section 1.1092(b)-4T(f)(2) and filed with the Director having audit jurisdiction over the Taxpayer's tax return.

Except as specifically ruled upon above, no opinion is expressed concerning the tax consequences of this transaction under any other provision of the Code or regulations. Specifically, no opinion is expressed concerning whether the positions designated by the Taxpayer as the class of activities is a permissible designation under section 1.1092(b)-4T(b)(2).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,  
Alice M. Bennett  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosure: Copy of this letter  
Copy for Section 6110 purposes