Internal Revenue Service

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Department of the Treasury

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Legend

Tax Year a =

Tax Year b =

Tax Year c =

Tax Year d =

Taxpayer =

This letter is in response to a request filed on behalf of Taxpayer concerning an extension of time to comply with certain requirements imposed by Rev. Rul. 97-39, 1997-39 I.R.B. 4, on taxpayers waiving the exemption provided by § 1.475(c)-1(b) and -1(c) of the Income Tax Regulations from the application of § 475 of the Internal Revenue Code.

Section 475 of the Code imposes a mark-to-market accounting method on "dealers in securities". Section 1.475(c)-1(b) of the regulations excludes from the definition of dealer in securities those taxpayers that are dealers in securities due only to their purchases and sales of "customer paper" as such term is defined in § 1.475(c)-1(b)(2). Similarly, § 1.475(c)-1(c) exempts from the definition of dealer in securities those taxpayers that purchase securities from customers but make no more than negligible sales of the securities. A taxpayer may elect to waive the application of these exemptions under §§ 1.475(c)-1(b)(4) and -1(c)(1)(ii). Generally, a taxpayer that

makes these elections will change its accounting method to reflect the application of § 475.

Rev. Proc. 97-43, 1997-39 I.R.B. 12, provides the method by which a taxpayer secures the automatic consent of the Commissioner to change its method of accounting as a result of making the election provided by § 1.475(c)-1(b)(4) or -1(c)(1)(ii) of the regulations. Rev. Proc. 97-43 required a taxpayer making one or more of these elections for tax years ending on or before December 24, 1996 to, among other things, file an informational Form 3115 (with certain additional information appended) with an amended tax return for the year of change, by October 31, 1997. Rev. Proc. 97-43 at sections 4.02, 4.03, and 4.07. See also Rev. Rul. 97-39 at Holdings 12 & 13. A copy of the Form 3115 was also to be provided to the IRS National Office by October 31, 1997. Rev. Proc. 97-43 at section 4.05. Compliance with the election must be reflected on an original or amended return filed by December 15, 1997 for every other taxable year which is subject to the election and for which the original return is due on or before October 31, 1997. Rev. Rul. 97-39 at Holding 13.

Taxpayer is the parent corporation of an affiliated group that files a consolidated tax return. Taxpayer's taxable year is the calendar year. Taxpayer wished to waive the application of the exemption provided by §§ 1.475(c)-1(b) and -1(c) for certain tax years beginning with Tax Year a. Taxpayer filed an amended tax return with Form 3115 on October 31, 1997 and provided a copy of the Form 3115 to the IRS National Office. However, due to the unanticipated illness of the responsible officer, Taxpayer failed to file amended tax returns for three subsequent tax years, Tax Year b, Tax year c, and Tax Year d, by December 15, 1997, as required by Holding 13 of Revenue Ruling 97-39. Taxpayer discovered its error and filed the amended tax returns for Tax Year b, Tax Year c, and Tax Year d on December 17, 1997. Taxpayer also filed its request for an extension of time to file the amended returns prior to discovery of Taxpayer's error by the Service.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time (but no more than 6 months except in the case of a taxpayer who is abroad) to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election, under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through -3(c) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

No opinion is expressed as to whether Taxpayer's tax liability is not lower in the aggregate for all years to which the regulatory election applies than Taxpayer's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the district director's office will determine Taxpayer's tax liability for the years involved. If the district director's office determines Taxpayer's liability is lower, that office will determine the federal income tax effect.

Based on the facts and information submitted and the representations made, it is held that Taxpayer acted reasonably and in good faith, and the granting of relief will not prejudice the interests of the government. Therefore, an extension of time is granted to file amended tax returns for Tax Year b, Tax Year c, and Tax Year d and such amended tax returns are deemed to have been timely filed for the purposes of Holding 13 of Rev. Rul. 97-39 when filed on December 17, 1997.

No opinion is expressed as to the tax treatment of Taxpayer under the provisions of any other sections of the Code and regulations which may be applicable thereto or the tax treatment of any conditions existing at the time of or effects resulting from the elections which are not specifically set forth by the above ruling. For example, other than as provided in the preceding paragraph, no opinion is expressed as to whether Taxpayer was eligible to make the election provided by § 1.475(c)-1(b)(4) or -1(c)(1)(ii) of the regulations or complied with the provisions of Rev. Proc. 97-43.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant.

This ruling is directed only to the taxpayers requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely yours,

Paul A. Francis

Acting Assistant Chief Counsel
(Financial Institutions & Products)