SUPPORTING STATEMENT
Internal Revenue Service
26 U.S. Code § 475 - Mark to market accounting method for dealers in securities
OMB # 1545-1945

1. CIRCUMSTANCES NECESSITIATING COLLECTION OF INFORMATION

Section 475 was added by section 13223(a) of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat.481, and is effective for all taxable years ending on or after December 31, 1993. Section 475(a) generally provides that the securities held by dealers in securities must be valued as of the last business day of the year at fair market value. Section 475(e) allows dealers in commodities to elect similar treatment for their commodities. Under section 475(f), if a person is engaged in a trade or business as a trader in securities or a trader in commodities, the person may elect for the section 475 mark-to-market regime to apply to their trade or business. Section 475(g) directs the Secretary to prescribe regulations that may be necessary or appropriate to carry out the purposes of section 475. The statutory requirements under 26 U.S.C. 475 are codified under 26 CFR Part 1, sections 1.475 et al.

Section 1.475(a)-4 set forth a safe harbor election that permits dealers in securities and dealers in commodities to elect to use the values of positions reported on certain financial statements as the fair market values of those positions for purposes of section 475. This safe harbor is intended to reduce the compliance burden on taxpayers and to improve the administrability of the valuation requirement of section 475 for the Internal Revenue Service.

Taxpayers that are dealers in securities (as defined in section 475(c)(1)) are required to mark-to-market securities (as defined in section 475(c)(2)) held by them, with certain exceptions. The exceptions are for any security held for investment (section 475(b)(1)(A)), certain debt instruments not held for sale (section 475(b)(1)(B)), and certain hedges (section 475(b)(1)(C)). Section 475(b)(2) states "A security shall not be treated as described in subparagraph (A),(B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which the securities are acquired.

Section 1.475(b)-2(a) requires a taxpayer to identify which of the three subparagraphs of section 475(b)(1) allow the taxpayer to identify a particular security as exempt from the mark-to-market requirements of section 475. This requirement was explicitly stated because the statute itself requires that the subparagraph be stated, but informal telephone contacts between I.R.S. and Treasury employees and taxpayer's representatives strongly suggested that many taxpayers were claiming exemption without meeting that statutory requirement. If we do not make it clear that they must meet the statutory requirement, many taxpayers will continue to make identifications that do not meet the statutory requirement. If that happens, agents could properly disallow those identifications.

Section 1.475(b)-2(b) clarifies that a taxpayer may make a timely identification of a security that qualifies for one of the exceptions described above on the day it acquires that security, even though its basis in that security is determined by reference to the basis of that security in the hands of the person from whom it was acquired or by reference to the basis of other property in the hands of the

taxpayer.

Section 1.475(b)-2(c) specifies the date on which identification may be timely made when a taxpayer legs in to or legs out of certain synthetic debt instruments. This section of the regulation imposes a recordkeeping requirement only in that it states how the statutory identification requirements apply to this type of security.

The dealer definition is based on whether a taxpayer engages in certain types of transactions with "customers." The regulations clarify that a taxpayer's transactions with members of its consolidated group or other taxpayers may be transactions with customers for purposes of section 475. Thus, a taxpayer may be a dealer in securities for purposes of section 475 based solely on transactions with other members of its consolidated group. Section 1.475(c)-1(a)(3)(iii) makes noncustomer status the default and requires taxpayers to make an affirmative election to consider intermember transactions when applying the dealer definition. The election is made by attaching an appropriate statement to the taxpayer's return.

2. USE OF DATA

The information is required by the IRS to avoid any uncertainty about whether a taxpayer has made an election and to verify compliance with section 475. The information will be used to facilitate examination of returns and to determine whether the amount of tax has been calculated correctly. The collection of the information is required to properly determine the amount of income or deduction to be taken into accounts.

The recordkeeping timely identification requirements are designed to aid the IRS in administering the law and to prevent manipulation, such as recharacterization of why a taxpayer held securities in view of later developments. This information will be used to verify that a taxpayer is properly reporting whether its securities are subject to mark-to-market treatment.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The IRS has no plans to offer electronic filing as these are narrative statements and recordkeeping requirements.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not readily available for use or adaptation from another source.

The regulations have been amended to reduce complexity of valuations under section 475 by accepting financial statement reporting values for tax reporting purposes. Taxpayers may use the same values for book and tax purposes if they meet all the requirements of the safe harbor.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The collection of information requirement under section 475 will not have a significant economic impact on a substantial number of small entities under this collection.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

The information required is needed to verify compliance with 26 U.S.C. 475. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with the Internal Revenue Code and hinder the IRS from meeting its mission.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

We received no comments during the comment period in response to the Federal Register notice (90 FR 11461), dated March 6, 2025, regarding TD 8700 and TD 9328 under Section 475 Mark to market accounting method for dealers in securities.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to the respondents.

10. ASSURANCE OF CONFIDENTIALTY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

There is no sensitive personally identifiable information (PII) in this collection.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

A taxpayer must attach to its return for the first year covered by the election a statement that it is making the election and a list or description of the financial statement to be treated as its applicable financial statement. Section 1.475(a)-4(f) requires the taxpayer to attach this information to the tax return. If a taxpayer elects this safe harbor, the taxpayer must comply with recordkeeping and reporting requirements. A taxpayer must also maintain and provide to the Service, if requested, all books and records underlying its financial statement and statements reconciling book and tax reporting. Section 1.475(a)-4(k) sets forth the recordkeeping and production requirements. Estimates of annual reporting and recordkeeping burden vary from 2 to 6 hours per respondent. The estimated number of respondents is 12,308. The estimated total annual hours for the reporting and recordkeeping are 49,232, which is based upon an average of the estimated hours per respondent times the number of respondents.

Additional, recordkeeping requirements are provided in §1.475(b)-2 (a)-(c). We estimate that 2,500 businesses or other for-profit institutions will make the identification requirement under section

1.475(b)-2 of the regulation, with an estimated annual burden per recordkeeper of 1 hour, with an estimated total annual recordkeeping burden of 2,500 hours.

Section 1.475(c)-1(a)(3)(iii) makes noncustomer status the default and requires taxpayers to make an affirmative election to consider intermember transactions when applying the dealer definition. The election is made by attaching an appropriate statement to the taxpayer's return. We estimate that 900 consolidated groups will make this election and that it will take approximately .5 hours to prepare the statement. The burden for this requirement is 450 hours.

26 CFR	# Respondents	# Responses Per Respondent	# Annual Responses	Hours per Response	Total Burden
§ 1.475(a)-4(f) § 1.475(a)-4(k) *(TD 9328)*	12,308	1	12,308	4.0	49,232
§1.475(b)-2(a)-(c) *(TD 8700)*	2,500	1	2,500	1.0	2,500
§1.475(c)-1(a)(3)(iii) *(TD 8700)*	900	1	900	0.5	450
TOTAL	**15,708**		**15,708**		**52,182**

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

This information collection and its cost will be accounted for in the consolidated OMB submission for business returns during the next annual submission.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no start-up, development, or operation and maintenance cost to the government as these are narrative statements and recordkeeping requirements.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

The IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the collections sunset as of the expiration date. Taxpayers are not likely to be aware that the IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.