

§ 1.1092(d)-1

26 CFR Ch. I (4-1-12 Edition)

offering, distribution, reorganization, recapitalization, or reclassification with respect to the underlying security, or a merger, consolidation, dissolution, or liquidation of the issuer of the underlying security.

(e) *Adjusted applicable stock price* means the applicable stock price, as defined in section 1092(c)(4)(G), adjusted for time. To determine the adjusted applicable stock price, the applicable stock price, which is determined in accordance with the rules in section 1092(c)(4)(G), is multiplied by an adjustment factor. The adjustment factor table is as follows:

Option term (in months)		Adjustment factor
Greater than	Not more than	
12	15	1.08
15	18	1.10
18	21	1.12
21	24	1.14
24	27	1.16
27	30	1.18
30	33	1.20

(f) *Securities Exchange Act Release* means a release issued by the Securities and Exchange Commission. To determine identifying information for releases referenced in paragraph (d)(1) of this section, including release titles, identification numbers, and issue dates, contact the Office of the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. To obtain a copy of a Securities Exchange Act Release, submit a written request, including the specific release identification number, title, and issue date, to Securities and Exchange Commission, Attention Public Reference, 450 5th Street, NW., Washington, DC 20549.

(g) *Effective dates.* (1) Except for paragraph (a)(2) of this section, paragraph (a) of this section applies to equity options with flexible terms entered into on or after January 25, 2000. Paragraph (a)(2) of this section applies to equity options with flexible terms entered into on or after July 29, 2002.

(2) Paragraphs (b), (c), (d), and (e) of this section apply to equity options entered into on or after July 29, 2002.

(3) Paragraph (f) of this section applies to equity options entered into on or after January 25, 2000.

[67 FR 20900, 20901, Apr. 29, 2002]

§ 1.1092(d)-1 Definitions and special rules.

(a) *Actively traded.* Actively traded personal property includes any personal property for which there is an established financial market.

(b) *Established financial market*—(1) *In general.* For purposes of this section, an established financial market includes—

(i) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934;

(iii) A domestic board of trade designated as a contract market by the Commodities Futures Trading Commission;

(iv) A foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized (such as the London International Financial Futures Exchange, the Marche a Terme International de France, the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Frankfurt Stock Exchange, and the Tokyo Stock Exchange);

(v) An interbank market;

(vi) An interdealer market (as defined in paragraph (b)(2)(i) of this section); and

(vii) Solely with respect to a debt instrument, a debt market (as defined in paragraph (b)(2)(ii) of this section).

(2) *Definitions*—(i) *Interdealer market.* An interdealer market is characterized by a system of general circulation (including a computer listing disseminated to subscribing brokers, dealers, or traders) that provides a reasonable basis to determine fair market value by disseminating either recent price quotations (including rates, yields, or other pricing information) of one or more identified brokers, dealers, or traders or actual prices (including rates, yields, or other pricing information) of recent transactions. An interdealer market does not include a directory or listing of brokers, dealers, or traders for specific contracts (such as yellow sheets) that provides neither

price quotations nor actual prices of recent transactions.

(ii) *Debt market.* A debt market exists with respect to a debt instrument if price quotations for the instrument are readily available from brokers, dealers, or traders. A debt market does not exist with respect to a debt instrument if—

(A) No other outstanding debt instrument of the issuer (or of any person who guarantees the debt instrument) is traded on an established financial market described in paragraph (b)(1)(i), (ii), (iii), (iv), (v), or (vi) of this section (other traded debt);

(B) The original stated principal amount of the issue that includes the debt instrument does not exceed \$25 million;

(C) The conditions and covenants relating to the issuer's performance with respect to the debt instrument are materially less restrictive than the conditions and covenants included in all of the issuer's other traded debt (e.g., the debt instrument is subject to an economically significant subordination provision whereas the issuer's other traded debt is senior); or

(D) The maturity date of the debt instrument is more than 3 years after the latest maturity date of the issuer's other traded debt.

(c) *Notional principal contracts.* For purposes of section 1092(d)—

(1) A notional principal contract (as defined in §1.446-3(c)(1)) constitutes personal property of a type that is actively traded if contracts based on the same or substantially similar specified indices are purchased, sold, or entered into on an established financial market within the meaning of paragraph (b) of this section; and

(2) The rights and obligations of a party to a notional principal contract are rights and obligations with respect to personal property and constitute an interest in personal property.

(d) *Effective dates.* Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

[T.D. 8491, 58 FR 53135, Oct. 14, 1993]

§ 1.1092(d)-2 Personal property.

(a) *Special rules for stock.* Under section 1092(d)(3)(B), personal property includes any stock that is part of a straddle, at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock). For purposes of this rule, the term *substantially similar or related property* is defined in §1.246-5 (other than §1.246-5(b)(3)). The rule in §1.246-5(c)(6) does not narrow the related party rule in section 1092(d)(4).

(b) *Effective date—(1) In general.* This section applies to positions established on or after March 17, 1995.

(2) *Special rule for certain straddles.* This section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(ii) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

[T.D. 8590, 60 FR 14641, Mar. 20, 1995]

CAPITAL GAINS AND LOSSES

Treatment of Capital Gains

§ 1.1201-1 Alternative tax.

(a) *Corporations—(1) In general.* (i) If for any taxable year a corporation has net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977) (as defined in section 1222(11)) section 1201(a) imposes an alternative tax in lieu of the tax imposed by sections 11 and 511, but only if such alternative tax is less than the tax imposed by sections 11 and 511. The alternative tax is not in lieu of the personal