Internal Revenue Service

Department of the Treasury

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LEGEND

Taxpayer =

Subsidiary =

State =

Parent =

Year 1 =

Year 2 =

Date 1 =

Dear :

This ruling responds to a letter submitted on behalf of the Taxpayer by its authorized representatives. The Taxpayer requests an extension of time to file an election to make a mixed straddle account under § 1092(b) of the Internal Revenue Code and § 1.1092(b)-4T(f) of the Temporary Income Tax Regulations for the calendar year ending December 31, Year 1 with respect to the mixed straddle activities of its Subsidiary.

Both the Taxpayer and its Subsidiary are State limited liability companies. The Subsidiary is wholly owned by the Taxpayer and is disregarded as an entity separate from the Taxpayer for Federal income tax purposes under Treasury Regulation § 301.7701-3(b)(ii). In relevant part, the Subsidiary's activities involve the trading of equity and fixed income securities and offsetting futures contracts and options on futures.

Prior to Date 1, the Taxpayer was wholly owned by its Parent, a corporation that has elected to be taxable as an S corporation. As of Date 1, the Taxpayer converted into a partnership. The Parent made the mixed straddle account election to cover the mixed straddle activities of the Subsidiary for Year 1. The Subsidiary also intended to have a mixed straddle account election made on its behalf to cover its mixed straddle

activities for Year 2. The Parent again submitted the mixed straddle account election on behalf of the Subsidiary for Year 2, however two errors were made in this submission. First of all, the election was mistakenly requested to be effective for Year 1, instead of Year 2. Secondly, the election on behalf of the Subsidiary should have been submitted in the name of the Taxpayer and not the Parent, due to the new status of the Taxpayer as a partnership as of Date 1. The Taxpayer learned about the first error after it submitted its tax return for Year 1. The Taxpayer learned about the second error when it spoke to its new outside advisors about the first.

LAW AND ANALYSIS

Section 1092(b)(1) provides that the Secretary shall prescribe such regulations with respect to gain or loss on positions which are part of a straddle as may be appropriate to carry out the purposes of §§ 1092 and 263(g).

Section 1092(b)(2)(A)(i) provides that the regulations prescribed under § 1092(b)(1) shall provide that the taxpayer may offset gains and losses from positions which are part of a mixed straddle (I) by straddle-by-straddle identification, or (II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis.

Section 1.1092(b)-4T(a) generally permits a taxpayer to elect (in accordance with paragraph (f) of § 1.1092(b)-4T) to establish one or more “mixed straddle accounts.” Section 1.1092(b)-4T(b)(1) 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) 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 year (or part thereof).

Section 1.102(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, § 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 § 1.1092-4T(f). Therefore, we grant the Taxpayer's request for an extension of time to make the election under § 1.1092(b)-4T(a) for the taxable year ending December 31, Year 2. This extension will expire 30 days from the date of this letter. The election must be made in the manner prescribed in § 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 § 1.1092(b)-4T(b)(2).

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

Sincerely yours,
Alice M. Bennett
Branch Chief
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Office of Office of Associate Chief Counsel
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Enclosure: Copy of this letter
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