

- Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance.

- Use of "I speak" cards by intake workers and other contact personnel so that they can identify their primary languages.

- Keeping the language of the LEP person in his/her record if such a record would normally be kept for non-LEP persons so that all staff can identify the language assistance needs of the client.

- Employment of a sufficient number of staff, bilingual in appropriate languages, in client contact positions. These persons must be trained and competent as interpreters.

- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages, in a timely manner.

- Formal arrangements with community groups for competent and timely interpreter services by community volunteers.

- An arrangement with a telephone language interpreter line.

- Translation of application forms, instructional, informational and other key documents into appropriate non-English languages. Provision of oral interpreter assistance with documents, for those persons whose language does not exist in written form.

- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons.

- Notice to and training of all staff, particularly client contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner.

- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff.

- Notice to the public regarding the language assistance policies and procedures, and notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

- Adoption of a procedure for the resolution of complaints regarding the provision of language assistance; and for notifying clients of their right to and how to file a complaint under Title VI with Treasury.

- Appointment of a senior level employee to coordinate the language assistance program, and assurance that there is regular monitoring of the program.

#### G. Compliance and Enforcement

Treasury will enforce recipients' responsibilities to LEP beneficiaries through procedures provided for in Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Treasury will always provide recipients with the opportunity to come into voluntary compliance prior to initiating formal enforcement proceedings.

In determining compliance with Title VI, Treasury's concern will be whether the recipient's policies and procedures allow LEP persons to overcome language barriers and participate meaningfully in programs, services and benefits. A recipient's appropriate use of the methods and options discussed in this guidance will be viewed by Treasury as evidence of a recipient's intent to comply with Title VI.

#### H. Complaint Process

Anyone who believes that he/she has been discriminated against because of race, color or national origin in violation of Title VI may file a complaint with Treasury within 180 days of the date on which the discrimination took place. The following information should be included:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);

- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s);

- The name and location of the organization or institution that committed the alleged discriminatory act(s);

- A description of the alleged discriminatory act(s) in sufficient detail to enable the Office of Equal Opportunity Program (OEOP) to understand what occurred, when it occurred, and the basis for the alleged discrimination.

- The letter or form must be signed and dated by the complainant or by someone authorized to do so on his or her behalf.

A recipient may not retaliate against any person who has made a complaint, testified, assisted or participated in any manner in an investigation or proceeding under the statutes governing federal financial assistance programs.

Civil rights complaints should be filed with: Department of the Treasury, Office of Equal Opportunity Program 1500 Pennsylvania Avenue, NW, Room 6071 Metropolitan Square, Washington, DC 20220.

#### I. Technical Assistance

Treasury and its bureaus will provide technical assistance to recipients, and will continue to be available to provide such assistance to any recipient seeking to ensure that it operates an effective language assistance program. In addition, during its investigative process, Treasury is available to provide technical assistance to enable recipients to come into voluntary compliance.

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### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

[BPG-132413-00]

#### Dealers in Securities Futures Contracts; Request for Comments

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of solicitation of comments.

**SUMMARY:** The IRS and Treasury Department are soliciting comments on the criteria that should be used to determine whether a taxpayer is a dealer in securities futures contracts (or options on such contracts) for purposes of section 1256 of the Internal Revenue Code.

**DATES:** Written and electronic comments are requested on or before May 7, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (BPG-132413-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (BPG-132413-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at [http://www.irs.gov/tax\\_regs/regslst.html](http://www.irs.gov/tax_regs/regslst.html).

**FOR FURTHER INFORMATION CONTACT:** Concerning the notice, Patrick E. White

(202) 622-3920; concerning submission and delivery of comments, Treena Garrett, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commodities Futures Modernization Act of 2000, enacted as part of the Consolidated Appropriations Act, 2001 (Public Law 106-554, 114 Stat. 2763), authorizes the trading of securities futures contracts, a new type of derivative financial product. Another portion of the same enactment—the Community Renewal Tax Relief Act of 2000 (the Act)—prescribes the tax treatment of these financial products. In general, gain or loss is recognized on securities futures contracts upon disposition, and the character of such gain or loss is determined by newly enacted section 1234B.

The timing and character of gains and losses on dealer securities futures contracts, however, is determined by section 1256. Thus, dealer securities futures contracts are subject to mark-to-market treatment, and capital gains or losses are treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. Section 1256(g)(9) defines *dealer securities futures contracts* as securities futures contracts (and options on such contracts) that are traded on a qualified board or exchange and are entered into by a dealer in the normal course of the dealer's business of dealing in such contracts or options. For this purpose, a person is a dealer in securities futures contracts or options on such contracts if the Secretary of the Treasury determines that the person performs functions with respect to such contracts or options similar to the functions performed with respect to stock options by persons registered with a national securities exchange as a market maker or specialist in listed options. The Act requires the Secretary of the Treasury or his delegate to make this determination no later than July 1, 2001.

The legislative history of the Act states the following with respect to the determination process:

The determination of who is a dealer in securities futures contracts is to be made in a manner that is appropriate to carry out the purposes of the provision, which generally is to provide comparable tax treatment between dealers in securities futures contracts, on the one hand, and dealers in equity options, on the other. Although traders in securities futures contracts (and options on such contracts) may not have the same market-making obligations as market makers or specialists in equity options, many traders are expected to perform analogous functions

to such market makers or specialists by providing market liquidity for securities futures contracts (and options) even in the absence of a legal obligation to do so. Accordingly, the absence of market-making obligations is not inconsistent with a determination that a class of traders are dealers in securities futures contracts (and options), if the relevant factors, including providing market liquidity for such contracts (and options), indicate that the market functions of the traders is comparable to that of equity options dealers.

H.R. Conf. Rep. No. 106-1033, 106th Cong., 2d Sess. 1036 (2000).

The IRS and Treasury Department, therefore, seek taxpayers' suggestions concerning both the substance of these determinations and the manner in which they should be made. As described in more detail below, of particular interest are comments that will aid in establishing objective criteria and processes for making the determinations. In addition, comments are solicited in certain specific areas.

First, comments are requested about the activities and obligations of equity options dealers, especially those activities and obligations that contribute to the establishment and maintenance of an orderly market. For purposes of this notice, the term *equity options dealer* means a market maker or specialist described in section 1256(g)(8) with respect to options that are described in section 1256(g)(6) without regard to the requirement that indices be narrow based. Any relevant way in which the activities and obligations of market makers differ from those of specialists should be described; and the significance of this difference for any comment or other response to this notice should be explained when relevant.

Among the questions on which information is sought are the following: What are the activities imposed on, or undertaken by, equity option dealers that are considered making a market? Do equity option dealers engage in activities that extend beyond making a market but that contribute to the establishment and maintenance of orderly markets? For example, equity options dealers trading for their own accounts (and not in response to orders placed by an off-exchange customer) may be a significant source of market volume. Is that the case? If so, to what extent does this added volume contribute to market liquidity? Are there other ways in which these dealers contribute to the markets in which they participate? What differences are there, in scale or kind, between the activities of equity options dealers and similar activities of other market participants?

Although some relevant activities of equity options dealers may be ongoing, other critical activities may commence, or change significantly in nature or scope, during periods of market disequilibrium. Information with respect to equity options dealers' activities at these times will be particularly welcome.

Second, information is requested regarding activities of traders<sup>1</sup> on futures markets. Although traders on futures markets may not have specific market-making obligations, their trading activities may contribute to the establishment and maintenance of orderly markets. Is that typically the case? Descriptions of trading activities on futures markets generally will be helpful, and insights and supporting data on the nature and extent of trading by specific groups of futures traders will be particularly useful. Relevant groups for this purpose may be based on the type of contract traded, the extent of trading for one's own account (as opposed to trading in response to orders from off-exchange customers), and the class of exchange membership.

This discussion should be accompanied, if possible, by an explanation of the extent to which the activities of traders in securities futures contracts are expected to resemble the activities of the specific groups described. In general, expectations of how trading in securities futures contracts may or may not differ from trading in current products will also be helpful.

Third, comments are solicited on administrable and economically meaningful criteria for identifying any traders that should be treated as dealers in securities futures contracts. Criteria for identifying these persons might include, among others, the nature and extent of trading activities (including the extent to which the person's trading is concentrated in certain products), class of exchange membership, capital, and share of net income derived from trading activities. Should it be possible for a person to be a dealer in securities futures contracts with respect to some such contracts but not with respect to others?

If a taxpayer's satisfaction of the suggested criteria may vary over time, comments are also requested respecting rules for determining when a taxpayer becomes, or ceases to be, a dealer in securities futures contracts. For example, should it be possible for the

<sup>1</sup> The references here, and in the following paragraphs, to *traders* are not intended to exclude any taxpayers who are not treated as traders for tax purposes but who may perform functions similar to the functions performed by equity options dealers.

status as a dealer in securities futures contracts to change within a single taxable year or only between taxable years? Does a taxpayer need to know before it enters a transaction whether it is treated as a dealer for purposes of that transaction? Will special rules be required for taxpayers who have not previously traded in the contracts? (Initially, all taxpayers fall into this category.) Comments regarding both substantive criteria and the method of application will be useful.

#### Comments

Written or electronic comments (a signed original and eight (8) copies, if written) should be timely submitted (in the manner described in the **ADDRESSES** portion of this notice) to the IRS. All comments will be available for public inspection and copying.

#### Drafting Information

The principal authors of this notice are Patrick E. White, Office of Associate

Chief Counsel (Financial Institutions and Products), and Matthew J. Eichner, Office of Tax Analysis, United States Department of the Treasury. However, other personnel from the IRS and Treasury Department participated in its development.

#### Lon B. Smith,

*Acting Associate Chief Counsel (Financial Institutions & Products).*

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