

hands and that are sold pursuant to an established policy of the taxpayer to dispose of debt instruments below a certain quality; or

(iii) Acquisitions and sales of debt instruments that are qualitatively different from all debt instruments that the taxpayer purchases from customers in the ordinary course of its business.

(5) *Example.* The following example illustrates paragraph (c)(4)(iii) of this section:

*Example.* I, an insurance company, regularly makes policy loans to its customers but does not sell them. I, however, actively trades Treasury securities. No other circumstances are present to suggest that I is a dealer in securities for purposes of section 475(c)(1). Since the Treasuries are qualitatively different from the policy loans that I originates, under paragraph (c)(4)(iii) of this section, I disregards the purchases and sales of Treasuries in applying the negligible sales test in paragraph (c)(2) of this section.

(d) *Issuance of life insurance products.* A life insurance company that is not otherwise a dealer in securities within the meaning of section 475(c)(1) does not become a dealer in securities solely because it regularly issues life insurance products to its customers in the ordinary course of a trade or business. For purposes of the preceding sentence, the term *life insurance product* means a contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract. See sections 72, 817, and 7702.

[T.D. 8700, 61 FR 67723, Dec. 24, 1996]

#### § 1.475(c)-2 Definitions—security.

(a) *Items that are not securities.* The following items are not securities within the meaning of section 475(c)(2) with respect to a taxpayer and, therefore, are not subject to section 475—

(1) A security (determined without regard to this paragraph (a)) if section 1032 prevents the taxpayer from recognizing gain or loss with respect to that security;

(2) A debt instrument issued by the taxpayer (including a synthetic debt instrument, within the meaning of § 1.1275-6(b)(4), that § 1.1275-6(b) treats the taxpayer as having issued); or

(3) A REMIC residual interest, or an interest or arrangement that is determined by the Commissioner to have

substantially the same economic effect, if the residual interest or the interest or arrangement is acquired on or after January 4, 1995.

(b) *Synthetic debt that § 1.1275-6(b) treats the taxpayer as holding.* If § 1.1275-6 treats a taxpayer as the holder of a synthetic debt instrument (within the meaning of § 1.1275-6(b)(4)), the synthetic debt instrument is a security held by the taxpayer within the meaning of section 475(c)(2)(C).

(c) *Negative value REMIC residuals acquired before January 4, 1995.* A REMIC residual interest that is described in paragraph (c)(1) of this section or an interest or arrangement that is determined by the Commissioner to have substantially the same economic effect is not a security within the meaning of section 475(c)(2).

(1) *Description.* A residual interest in a REMIC is described in this paragraph (c)(1) if, on the date the taxpayer acquires the residual interest, the present value of the anticipated tax liabilities associated with holding the interest exceeds the sum of—

(i) The present value of the expected future distributions on the interest; and

(ii) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(2) *Special rules applicable to negative value REMIC residuals acquired before January 4, 1995.* Solely for purposes of this paragraph (c)—

(i) If a transferee taxpayer acquires a residual interest with a basis determined by reference to the transferor's basis, then the transferee is deemed to acquire the interest on the date the transferor acquired it (or is deemed to acquire it under this paragraph (c)(2)(i)).

(ii) Anticipated tax liabilities, expected future distributions, and anticipated tax savings are determined under the rules in § 1.860E-2(a)(3) and without regard to the operation of section 475.

(iii) Present values are determined under the rules in § 1.860E-2(a)(4).

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#### § 1.475(d)-1 Character of gain or loss.

(a) *Securities never held in connection with the taxpayer's activities as a dealer*

## § 1.475(e)-1

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*in securities.* If a security is never held in connection with the taxpayer's activities as a dealer in securities, section 475(d)(3)(A) does not affect the character of gain or loss from the security, even if the taxpayer fails to identify the security under section 475(b)(2).

(b) *Ordinary treatment for notional principal contracts and derivatives held by dealers in notional principal contracts and derivatives.* Section 475(d)(3)(B)(ii) (concerning the character of gain or loss with respect to a security held by a person other than in connection with its activities as a dealer in securities) does not apply to a security if § 1.475(b)-1(c) and the absence of a determination by the Commissioner prevent section 475(b)(1)(A) from applying to the security.

[T.D. 8700, 61 FR 67725, Dec. 24, 1996]

### § 1.475(e)-1 Effective dates.

(a)-(b) [Reserved]

(c) Section 1.475(a)-3 (concerning acquisition by a dealer of a security with a substituted basis) applies to securities acquired, originated, or entered into on or after January 4, 1995.

(d) Except as provided elsewhere in this paragraph (d), § 1.475(b)-1 (concerning the scope of exemptions from the mark-to-market requirement) applies to taxable years ending on or after December 31, 1993.

(1) Section 1.475(b)-1(b) applies as follows:

(i) Section 1.475(b)-1(b)(1)(i) (concerning equity interests issued by a related person) applies beginning June 19, 1996. If, on June 18, 1996, a security is subject to mark-to-market accounting and, on June 19, 1996, § 1.475(b)-1(b)(1) begins to apply to the security solely because of the effective dates in this paragraph (d) (rather than because of a change in facts), then the rules of § 1.475(b)-1(b)(4)(i)(A) (concerning the prohibition against marking) apply, but § 1.475(b)-1(b)(4)(i)(B) (imposing a mark-to-market on the day before the onset of the prohibition) does not apply.

(ii) Section 1.475(b)-1(b)(2) (concerning relevant relationships for purposes of determining whether equity interests in related persons are prohib-

ited from being marked to market) applies beginning June 19, 1996.

(iii) Section 1.475(b)-1(b)(3) (concerning certain actively traded securities) applies beginning June 19, 1996, to securities held on or after that date, except for securities described in § 1.475(b)-1(e)(1)(i) (concerning equity interests issued by controlled entities). If a security is described in § 1.475(b)-1(e)(1)(i), § 1.475(b)-1(b)(3) applies only on or after January 23, 1997 if the security is held on or after that date. If § 1.475(b)-1(b)(1) ceases to apply to a security by virtue of the operation of this paragraph (d)(1)(iii), the rules of § 1.475(b)-1(b)(4)(ii) apply to the cessation.

(iv) Except to the extent provided in paragraph (d)(1) of this section, § 1.475(b)-1(b)(4) (concerning changes in status) applies beginning June 19, 1996.

(2) Section 1.475(b)-1(c) (concerning securities deemed not held for investment by dealers in notional principal contracts and derivatives) applies to securities acquired on or after January 23, 1997.

(3) Section 1.475(b)-1(d) (concerning the special rule for hedges of another member's risk) is effective for securities acquired, originated, or entered into on or after January 23, 1997.

(e) Section 1.475(b)-2 (concerning identification of securities that are exempt from mark-to-market treatment) applies as follows:

(1) Section 1.475(b)-2(a) (concerning the general rules for identification of basis for exemption from mark to market treatment) applies to identifications made on or after July 1, 1997.

(2) Section 1.475(b)-2(b) (concerning time for identifying a security with a substituted basis) applies to securities acquired, originated, or entered into on or after January 4, 1995.

(3) Section 1.475(b)-2(c) (concerning identification in the context of integrated transactions under § 1.1275-6) applies on and after August 13, 1996 (the effective date of § 1.1275-6).

(f) [Reserved]

(g) Section 1.475(b)-4 (concerning transitional issues relating to exemptions) applies to taxable years ending on or after December 31, 1993.

(h) Section 1.475(c)-1 applies as follows: