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November 8, 2006

The Honorable William M. Thomas
Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Charles E. Grassley
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Charles B. Rangel
Ranking Member
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Max S. Baucus
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

Re: Tax Technical Corrections Act of 2006 (H.R. 6264 and S. 4026)

Gentlemen:

This letter and the attached memorandum set forth the comments of the U.S. Securities Markets Coalition (the "Coalition") regarding the Tax Technical Corrections Act of 2006 (H.R. 6264 and S. 4026) (the "Bill"). The members of the Coalition include the American Stock Exchange, the Boston Options Exchange, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, Depository Trust & Clearing Corporation, the International Securities Exchange, the NASDAQ Stock Market, the National Stock Exchange, NYSE Arca, the Options Clearing Corporation, and the Philadelphia Stock Exchange. All trading in listed equity options in the United States takes place on exchanges that are members of the Coalition.

The Coalition's comments relate to section 6(c) of the Bill, which contains amendments to the "identified straddle" provisions of Code section 1092. Those provisions were substantially revised by the American Jobs Creation Act of 2004 ("AJCA"). The Coalition generally supports the approach reflected in the proposed amendments and believes that they will eliminate the uncertainty created by AJCA with respect to the treatment of losses on positions in identified straddles when there are no gains on offsetting positions.

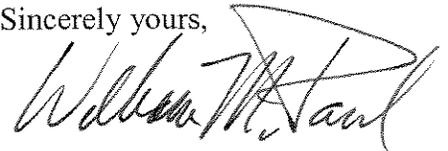
There is, however, one aspect of the proposed changes that we believe warrants further consideration. As explained in the attached memorandum, the Bill would expand the requirements for making a proper identification of an identified straddle to include the requirement that the taxpayer identify which positions in the identified straddle

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are offsetting with respect to one another. Under the Bill, this change would apply retroactively to the effective date of the AJCA provisions. As explained in the attached memorandum, we question whether this additional requirement is necessary or appropriate and recommend that Congress leave to Treasury's regulatory authority the issue of whether and under what circumstances such additional information would be useful. In addition, taxpayers could not have known of this new requirement prior to the introduction of the Bill, and it is highly likely that many taxpayers, including individuals, did not immediately become aware of the expanded requirement upon introduction of the Bill. Accordingly, we suggest that if this amendment is preserved in the final version of the Bill, its effective date should be tied to the date the Bill is enacted.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William M. Paul", written in a cursive style.

William M. Paul

Attachment

cc: Robert Winters, Republican Chief Tax Counsel, House Ways and Means Committee
John Buckley, Democratic Chief Tax Counsel, House Ways and Means Committee
Kolan Davis, Republican Staff Director, Senate Finance Committee
Russell Sullivan, Democratic Staff Director, Senate Finance Committee
Tom Barthold, Acting Chief of Staff, Joint Committee on Taxation

Tax Technical Corrections Act of 2006 (H.R. 6264, S. 4026)

Expanded Identification Requirement for "Identified Straddles" Under Code section 1092(a)(2)

Code Section 1092(a)(2) provides special rules for identified straddles. These rules were substantially revised by the American Jobs Creation Act of 2004 ("AJCA"). In order for these special rules to apply, a taxpayer must identify the straddle as an identified straddle by the close of the day on which the straddle is acquired (or such earlier time as Treasury may specify by regulation). Treasury has authority to specify, by regulations or other guidance, the proper methods for clearly identifying a straddle as an identified straddle and for identifying the positions comprising such straddle.¹

Section 6(c)(2) of the Tax Technical Corrections Act of 2006 (the "Bill") would expand the identification requirement by requiring taxpayers not only to identify the positions making up the identified straddle but also to identify "the positions in the straddle which are offsetting with respect [to] other positions in the straddle." The Joint Committee Staff's description of this provision states as follows:

"Under present law, a straddle is treated as an identified straddle only if, among other requirements, it is clearly identified on the taxpayer's records as an identified straddle before the earlier of (1) the close of the day on which the straddle is acquired, or (2) a time that the Secretary of the Treasury may prescribe by regulations. The provision clarifies that for purposes of this identification requirement, a straddle is clearly identified only if the identification includes an identification of the positions in the straddle that are offsetting with respect to other positions in the straddle. Consequently, taxpayers are required to identify not only the positions that make up an identified straddle but also which

¹ See Code § 1092(a)(2)(C).

positions in that identified straddle are offsetting with respect to one another.”²

This change, as well as the other changes that the Bill would make to Code section 1092(a)(2), would take effect as if included in AJCA.³

The U.S. Securities Markets Coalition (the “Coalition”) questions whether this additional requirement is necessary or appropriate. In the vast majority of straddles, it will be evident which positions in the identified straddle are “long” positions and which positions are “short” positions. This will certainly be true for identified straddles that consist of stock and options with respect to such stock. For example, if a taxpayer identifies 1,000 shares of stock and put options on those shares as an identified straddle, it is perfectly clear that the put options are offsetting positions to the stock. Treating identification of such an identified straddle as invalid for failure to state expressly that the put options offset the stock will needlessly cause a taxpayer who inadvertently omits such a statement to be subject to the general loss deferral rule of section 1092(a)(1).⁴ Accordingly, the Coalition recommends that any rules along these lines be left to Treasury regulations. Such regulations could, for example, describe some subset of identified straddles with respect to which imposing the additional requirement would result in providing the Internal Revenue Service with useful information.

² Joint Committee on Taxation, *Description of the Tax Technical Corrections Act of 2006* (JCX-48-06) at 9-10.

³ See section 6(d) of the Bill.

⁴ Alternatively, there may be uncertainty as to whether section 1092(a)(2) would nevertheless apply to such a straddle. Under section 1092(a)(2), Treasury has authority to specify the rules for applying section 1092 to taxpayers who fail to comply with the identification requirements. Until Treasury exercises that authority, taxpayers who fail to satisfy the proposed new requirement might be in a position to whipsaw the government.

We also note that the requirement that taxpayers identify which positions in the identified straddle are offsetting with respect to one another is a new requirement that taxpayers could not have been aware of or anticipated prior to the introduction of the Bill. While the introduction of the Bill may be viewed as putting taxpayers on notice of the new requirement, as a practical matter many taxpayers, including individuals, who are likely to avail themselves of the identified straddle rules would not immediately become aware of the requirement on September 29, 2006, the day the Bill was introduced. Accordingly, if the new requirement is retained in the final version of the Bill, the Coalition recommends that it not apply with respect to identified straddles entered into before the date the Bill is enacted.

We recognize that technical corrections typically have the same effective date as the provisions they amend. However, that is not always the case. For example, section 7 of the Bill would amend the 2003 legislation relating to “qualified dividend income” eligible for the 15% rate by excluding certain dividends paid by a DISC or former DISC. This change would apply to dividends received on or after September 29, 2006, the date the Bill was introduced. In addition, the change made by section 5(d)(3) of the Bill, relating to certain 2005 amendments to the LUST tax provisions, would apply to fuel sold after the date the Bill is enacted. Similar examples of delayed effective dates for technical corrections can be found in prior technical corrections legislation.⁵ Thus, while there is a presumption that the effective date of a technical correction should relate back to the effective date of the provision being amended, a later effective date may appropriately be adopted where, as here, there is reason to do so.

⁵ See, e.g., Tax Technical Corrections Act of 2005, enacted as part of the Gulf Opportunity Zone Act of 2005, § 402(m)(3).