

**Internal Revenue Service, Treasury**

**§ 1.1092(c)-1**

(g) *Effective date.* The provisions of this section apply to positions held on or after January 1, 1984.

(Secs. 1092(b)(1), 1092(b)(2) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 98 Stat. 627; 26 U.S.C. 1092(b)(1), 1092(b)(2), 7805))

[T.D. 8008, 50 FR 3329, Jan. 24, 1985; 50 FR 12243, Mar. 28, 1985, as amended by T.D. 8058, 50 FR 42013, Oct. 17, 1985]

**§ 1.1092(b)-5T Definitions (temporary).**

The following definitions apply for purposes of §§ 1.1092(b)-1T through 1.1092(b)-4T.

(a) *Disposing, disposes, or disposed.* The term *disposing, disposes, or disposed* includes the sale, exchange, cancellation, lapse, expiration, or other termination of a right or obligation with respect to personal property (as defined in section 1092(d)(1)).

(b) *Hedging transaction.* The term *hedging transaction* means a hedging transaction as defined in section 1256(e).

(c) *Identified straddle.* The term *identified straddle* means an identified straddle as defined in section 1092(a)(2)(B).

(d) *Loss.* The term *loss* means a loss otherwise allowable under section 165(a) (without regard to the limitation contained in section 165(f)) and includes a write-down in inventory.

(e) *Mixed straddle.* The term *mixed straddle* means a straddle—

(1) All of the positions of which are held as capital assets;

(2) At least one (but not all) of the positions of which is a section 1256 contract;

(3) For which an election under section 1256(d) has not been made; and

(4) Which is not part of a larger straddle.

(f) *Non-section 1256 position.* The term *non-section 1256 position* means a position that is not a section 1256 contract.

(g) *Offsetting position.* The term *offsetting position* means an offsetting position as defined in section 1092(c)(2).

(h) *Position.* The term *position* means a position as defined in section 1092(d)(2).

(i) [Reserved]

(j) *Related person or flowthrough entity.* The term *related person or flowthrough entity* means a related person or flowthrough entity as defined in

sections 1092(d)(4) (B) and (C) respectively.

(k) *Section 1256 contract.* The term *section 1256 contract* means a section 1256 contract as defined in section 1256(b).

(l) [Reserved]

(m) *Straddle.* The term *straddle* means a straddle as defined in section 1092(c)(1).

(n) *Successor position.* The term *successor position* means a position (“P”) that is or was at any time offsetting to a second position if—

(1) The second position was offsetting to any loss position disposed of; and

(2) P is entered into during a period commencing 30 days prior to, and ending 30 days after, the disposition of the loss position referred to in paragraph (n)(1) of this section.

(o) *Unrecognized gain.* The term *unrecognized gain* means unrecognized gain as defined in section 1092(a)(3)(A).

(p) *Substantially identical.* The term *substantially identical* has the same meaning as substantially identical in section 1091(a).

(q) *Securities.* The term *security* means a security as defined in section 1236(c).

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

[T.D. 8007, 50 FR 3321, Jan. 24, 1985, as amended by T.D. 8070, 51 FR 1788, Jan. 15, 1986]

**§ 1.1092(c)-1 Qualified covered calls.**

(a) *In general.* Section 1092(c) defines a straddle as offsetting positions with respect to personal property. Under section 1092(d)(3)(B)(i)(I), stock is personal property if the stock is part of a straddle that involves an option on that stock or substantially identical stock or securities. Under section 1092(c)(4), however, writing a qualified covered call option and owning the optioned stock is not treated as a straddle under section 1092 if certain conditions, described in section 1092(c)(4)(B), are satisfied. Section 1092(c)(4)(H) authorizes the Secretary to modify these conditions to carry out the purposes of section 1092(c)(4) in light of changes in the marketplace.

(b) *Term limitation*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an option is not a qualified covered call unless it is granted

not more than 12 months before the day on which the option expires or satisfies term limitation and qualified benchmark requirements established by the Commissioner in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Special benchmark rule for an option granted not more than 33 months before the day on which the option expires*—(i) *In general.* The 12-month limitation described in paragraph (b)(1) of this section is extended to 33 months provided the lowest qualified benchmark is determined using the adjusted applicable stock price, as defined in § 1.1092(c)-4(e).

(ii) *Examples.* The following examples illustrate the rules set out in paragraph (b)(2)(i) of this section:

*Example 1.* Taxpayer owns stock in Corporation X. Taxpayer writes an equity option with standardized terms on Corporation X stock through a national securities exchange with a term of 21 months. The applicable stock price for Corporation X stock is \$100. The benchmark for a 21-month equity option with standardized terms with an applicable stock price of \$100 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)-4(e), the applicable stock price of \$100 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of \$112. Using the benchmark for an equity option with standardized terms with an adjusted applicable stock price of \$112, the highest available strike price less than the adjusted applicable stock price is \$110, and the second highest strike price less than the adjusted applicable stock price is \$105. Therefore, a 21-month equity call option with standardized terms on Corporation X stock will not be deep in the money if the strike price is not less than \$105.

*Example 2.* Taxpayer owns stock in Corporation Y. Taxpayer writes an equity option with standardized terms on Corporation Y stock through a national securities exchange with a term of 21 months. The applicable stock price for Corporation Y stock is \$13.25. The benchmark for a 21-month equity option with standardized terms with an applicable stock price of \$13.25 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)-4(e), the applicable stock price of \$13.25 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of \$14.84. Using the benchmark for an equity option with standardized terms with an adjusted applicable stock price of \$14.84, the highest available strike price less than the adjusted applicable stock price is \$12.50. However, under

section 1092(c)(4)(D), the lowest qualified benchmark can be no lower than 85% of the applicable stock price, which for Corporation Y stock is \$12.61 (85% of the adjusted applicable stock price of \$14.84). Thus, because the highest available strike price less than the adjusted applicable stock price for an equity option with standardized terms is lower than the lowest qualified benchmark under section 1092(c)(4)(D), the lowest strike price at which a qualified covered call option can be written is the next higher strike price, or \$15.00. Therefore, a 21-month equity call option with standardized terms on Corporation Y stock will not be deep in the money if the strike price is not less than \$15.

(c) *Effective date.* This section applies to qualified covered call options entered into on or after July 29, 2002.

[67 FR 20899, Apr. 29, 2002]

**§ 1.1092(c)-2 Equity options with flexible terms.**

(a) *In general.* Section 1092(c)(4) provides an exception to the general rule that a straddle exists if a taxpayer holds stock and writes a call option on that stock. Under section 1092(c)(4), the ownership of stock and the issuance of a call option meeting certain requirements result in a qualified covered call, which is exempted from the general straddle rules of section 1092. This section addresses the consequences of the availability of equity options with flexible terms under the qualified covered call rules.

(b) *No effect on lowest qualified benchmark for standardized options.* The availability of strike prices for equity options with flexible terms does not affect the determination of the lowest qualified benchmark, as defined in section 1092(c)(4)(D), for an equity option with standardized terms.

(c) *Qualified covered call option status*—(1) *Requirements.* An equity option with flexible terms is a qualified covered call option only if—

(i) The option meets the requirements of section 1092(c)(4)(B) and § 1.1092(c)-1 (taking into account paragraph (c)(2) of this section);

(ii) The only payments permitted with respect to the option are a single fixed premium paid not later than 5 business days after the day on which the option is granted, and a single fixed strike price, as defined in § 1.1092(c)-