

Updated 2019 US Section 1256 qualified board or exchange list

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Background

Generally, a taxpayer must mark to market transactions qualifying as Internal Revenue Code¹ Section 1256 contracts at the end of each tax year as if those transactions were sold for fair market value.² Subject to certain exceptions, any gain or loss on a Section 1256 contract is treated as 60% long-term capital gain or loss and 40% short-term capital gain or loss, regardless of how long the taxpayer actually held the contract.³

Section 1256 contracts include (among other things) regulated futures contracts and non-equity options.⁴ A regulated futures contract is a contract that: (i) is marked to market on a daily basis to determine the amount that the taxpayer must deposit to its margin account to cover losses, or the amount that it may withdraw from that account as a result of favorable price changes during the day; and (ii) is traded on or subject to the rules of a qualified board or exchange.⁵ A non-equity option is an option (other than an "equity" option) that is traded on or subject to the rules of a qualified board or exchange.⁶ A "qualified board or exchange" means: (i) a national securities exchange; (ii) a domestic board of trade; or (iii) any other exchange, board of trade, or other market that the Secretary determines has rules adequate to carry out the purposes of Section 1256.

Qualified board or exchange

Section 1256(g)(7) defines a qualified board or exchange (QBE) as (1) a national securities exchange that is registered with the Securities and Exchange Commission (SEC), (2) a domestic board of trade designated as a contract market by the Commodities Futures Trading Commission, or (3) any other market that the Secretary determines has rules adequate to carry out the purposes of the section. The following is a list of exchanges and boards that qualify as QBEs under Section 1256(g)(7).

A “national securities exchange” is a securities exchange that has registered with the SEC under Section 6 of the *Securities Exchange Act of 1934*. The following are the securities exchanges registered with the SEC under Section 6(a) of the *Exchange Act* as national securities exchanges:

- ▶ BOX Exchange LLC (formerly BOX Options Exchange LLC)
- ▶ Cboe BYX Exchange, Inc. (formerly Bats BYX Exchange, Inc.; BATS Y-Exchange, Inc.)
- ▶ Cboe BZX Exchange, Inc. (formerly Bats BZX Exchange, Inc.; BATS Exchange, Inc.)
- ▶ Cboe C2 Exchange, Inc.
- ▶ Cboe EDGA Exchange, Inc. (formerly Bats EDGA Exchange, Inc.; EDGA Exchange, Inc.)
- ▶ Cboe EDGX Exchange, Inc. (formerly Bats EDGX Exchange, Inc.; EDGX Exchange, Inc.)
- ▶ Cboe Exchange, Inc.
- ▶ Chicago Stock Exchange, Inc.
- ▶ The Investors Exchange LLC
- ▶ Miami International Securities Exchange
- ▶ MIAX PEARL, LLC
- ▶ Nasdaq BX, Inc. (formerly NASDAQ OMX BX, Inc.; Boston Stock Exchange)
- ▶ Nasdaq GEMX, LLC (formerly ISE Gemini)
- ▶ Nasdaq ISE, LLC (formerly International Securities Exchange, LLC)
- ▶ Nasdaq MRX, LLC (formerly ISE Mercury)
- ▶ Nasdaq PHLX LLC (formerly NASDAQ OMX PHLX, LLC; Philadelphia Stock Exchange)
- ▶ The Nasdaq Stock Market
- ▶ New York Stock Exchange LLC
- ▶ NYSE Arca, Inc.

- ▶ NYSE MKT LLC (formerly NYSE AMEX and the American Stock Exchange)
- ▶ NYSE National, Inc. (formerly National Stock Exchange, Inc.)

Certain exchanges are also registered with the SEC through a notice filing under Section 6(g) of the *Exchange Act* for the purpose of trading security futures. These exchanges also qualify as qualified boards or exchanges for purposes of Section 1256:

- ▶ CBOE Futures Exchange, LLC
- ▶ Chicago Board of Trade
- ▶ One Chicago, LLC

The domestic boards of trade designated as contract markets by the Commodity Futures Trading Commission (CFTC) are as follows:

- ▶ Cantor Futures Exchange, L.P.
- ▶ CBOE Futures Exchange, LLC
- ▶ Chicago Board of Trade
- ▶ Chicago Mercantile Exchange, Inc.
- ▶ Commodity Exchange, Inc.
- ▶ ERIS Exchange, LLC
- ▶ ICE Futures U.S., Inc.
- ▶ Minneapolis Grain Exchange, Inc.
- ▶ NASDAQ Futures, Inc.
- ▶ New York Mercantile Exchange
- ▶ Nodal Exchange, LLC
- ▶ North American Derivative Exchange, Inc.
- ▶ OneChicago LLC Futures Exchange
- ▶ trueEX LLC

Under Section 1256(g)(7)(C), Treasury has also determined that the following exchanges have rules adequate to carry out the purposes of Section 1256:

- ▶ International Futures Exchanges (Bermuda) Ltd. (inactive) (Revenue Ruling 85-72)
- ▶ Mercantile Division of the Montreal Exchange (inactive) (Revenue Ruling 86-7)
- ▶ Mutual Offset System - partnership between Chicago Mercantile Exchange and Singapore International Monetary Exchange Limited (Revenue Ruling 87-43)
- ▶ ICE Futures Europe (Revenue Ruling 2007-26)

- ▶ Dubai Mercantile Exchange (Revenue Ruling 2009-4)
- ▶ ICE Futures Canada (Revenue Ruling 2009-24)
- ▶ LIFFE (Revenue Ruling 2010-3)
- ▶ Eurex (Revenue Ruling 2013-5)

Implications

On 16 September 2011, the Internal Revenue Service (IRS) and Treasury Department released proposed regulations addressing the tax treatment of credit default swaps.⁷

The Preamble to the proposed regulations notes that amendments to the *Commodity Exchange Act* (CEA) may affect qualified boards or exchanges that have already been granted Section 1256 status through the revenue ruling process.⁸ Under the proposed regulations, it is possible that

such boards and exchanges will have to resubmit to the CFTC for status as a designated contract market. If boards and exchanges must reapply to the CFTC for designated contract market status, the previously issued revenue rulings could be null and void. Thus, once a board or exchange receives designated contract market status, it could ask the IRS for a reaffirming revenue ruling to be treated as a Section 1256 qualified board or exchange. In the interim, companies are advised to continue marking contracts traded on the revenue ruling exchanges until final rules are promulgated.

This list is subject to change on an ongoing basis as new qualified boards or exchanges are approved or removed. Please note that this list does not immediately reflect changes in the status of such qualified boards or exchanges.

Endnotes

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. Section 1256(a)(1).
3. Section 1256(a)(1), (3).
4. *Id.*
5. Section 1256(g)(1).
6. Section 1256(g)(3).
7. Prop. Reg. §1.1256(b)-1.
8. Notice of Proposed Rulemaking, 76 F.R. 57684 (16 Sept. 2011).

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