

September 17, 2021

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
U.S. Senate  
Washington, D.C. 20510

The Honorable Michael Crapo  
Ranking Member  
Committee on Finance  
U.S. Senate  
Washington, D.C. 20510

**Re: Modernization of Derivatives Tax Act (MODA 2021)**

Dear Chairman Wyden and Ranking Member Crapo,

The Security Traders Association (“STA”)<sup>1</sup> urges the Senate to consider the negative impact of the Modernization of Derivatives Act (MODA 2021). The legislation would require mark-to-market tax treatment for derivatives contracts and require gains and losses be taxed at ordinary income tax rates, which would have harmful impacts on retail investors and degrade overall available liquidity in our markets. Mark-to-market rules would unduly burden taxpayers who hold appreciated stock and enter a related options transaction by requiring such stock to be treated as sold each year despite the taxpayer continuing to hold the stock and not realizing any gain on their investment or in the case of non-dividend paying stock, other taxable income.

**Investor Harm**

Retail investors have become more engaged in the market than ever before, including a growing number of middle-class investors. Current estimates show that more than 50% of households in the US have ownership in the stock market<sup>2</sup>. Existing rules that have been in place for decades provide certainty for exchange-traded options, which has made it easier to navigate for retail investors. MODA 2021 will make it difficult for investors to continue to engage in the equity market by creating complex and burdensome requirements. In particular, MODA 2021 would require every options investor to perform a complex Delta test on their options position, which the legislation recognizes is complicated and needs further significant guidance to function effectively. As a result, the legislation would have a

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<sup>1</sup> STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association’s founding principle, Dictum Meum Pactum – “My Word is My Bond.” For more information, visit <https://securitytraders.org/>.

<sup>2</sup> <https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx>

detrimental effect on individual investors by creating confusion as to the taxation of listed options and create potentially large tax liabilities on long-term stock holdings.

Individual investors across all income brackets now make up a larger share of options customers than ever before, and they do not have sophisticated tax planning strategies to untangle the complex Delta test MODA 2021 requires. The legislation also imposes unfair taxes by imposing a tax on investors on income that they may not ultimately earn on a stock they may not have sold.

Additionally, we strongly believe that MODA 2021 would discourage and prevent long-term investing by individual investors because it is highly likely that investors with long-term gains in a particular holding will need to sell portions of that holding in order to meet their tax burden under MODA 2021. Thus, it would create an implicit loss in the form of any future potential gains in their holding.

### Market Liquidity

The U.S. equity markets are the largest in the world and continue to be among the deepest, most liquid and most efficient, representing 45.3% of the \$112 trillion global equity market cap, or \$50.8 trillion<sup>3</sup>. The listed options and equity markets are highly interconnected, and factors impacting one of these markets will impact the other. We believe that the value the equities markets receive from the options markets includes significant liquidity resulting from options strategies used by long-term investors. Additionally, the options markets provide a mechanism to hedge equity positions. The effect of increasing the cost of common options strategies would cause investors to severely curtail their use while simultaneously degrading an efficient hedging mechanism. This would result in less available liquidity in the equity markets.

For all of the aforementioned reasons, we urge Senators to consider the burden MODA 2021 will impose on all investors, and the negative impact it would have on market liquidity.

Sincerely,



James Toes  
President & CEO  
STA



Andrew D'Amore  
Chairman of the Board  
STA

cc: The Honorable Debbie Stabenow  
The Honorable Maria Cantwell  
The Honorable Robert Menendez  
The Honorable Thomas Carper  
The Honorable Benjamin Cardin  
The Honorable Sherrod Brown

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<sup>3</sup> <https://www.sifma.org/wp-content/uploads/2021/02/SIFMA-Insights-Who-Owns-Stocks-An-Update-FOR-WEB.pdf>



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The Honorable Michael Bennet  
The Honorable Bob Casey  
The Honorable Mark Warner  
The Honorable Sheldon Whitehouse  
The Honorable Maggie Hassan  
The Honorable Catherine Cortez Masto  
The Honorable Elizabeth Warren  
The Honorable Chuck Grassley  
The Honorable John Cornyn  
The Honorable John Thune  
The Honorable Richard Burr  
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The Honorable Ben Sasse  
The Honorable John Barrasso