

IRS Releases U.S. Form 8937 For Issuers Of Securities To Use For Reporting Corporate Actions Affecting Basis Under Section 6045B: Immediate Deadline

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All corporate issuers of stock, other than regulated investment companies, that during 2011 underwent a corporate action, defined below, affecting the basis of their securities must file or post on their websites a completed U.S. Form 8937 (the "Form")^[1] by January 17, 2012. The Form, which the Internal Revenue Service released on January 5, 2012, relates to Internal Revenue Code section 6045B and Treasury Regulations section 1.6045B-1 regarding tax reporting for corporate actions. To satisfy the corporate action reporting requirements, an issuer must complete the Form and either post the completed Form on the issuer's own website or file the completed Form with the IRS, with a copy to each shareholder or nominee.

Under the requirements, issuers of "specified securities" must report any "organizational action" affecting the basis of such specified securities, as well as the arithmetic effects of the adjustments to basis that result from such an action. The definition of *specified securities* currently includes shares of stock in a corporation and certain other stock for which the average basis method is permissible; the definition is scheduled to expand to include other securities in 2013. Although there is no official guidance on the precise definition of an *organizational action*, an issuer must report any action that might affect basis. Exam-

ples of *organizational actions* include mergers or acquisitions, stock splits, stock distributions and other distributions that are not dividends. Previously, IRS Notice 2011-18, released in February 2011, provided that the IRS would not impose penalties against issuers for missing the deadline to file a return reporting an organizational action or make the return publicly available, provided that the issuer files the return with the IRS or makes it publicly available by January 17, 2012. However, the Notice did not apply to an issuer's requirement to furnish the same information to the issuer's shareholders or nominees.

Immediate Deadline — Retroactive to January 1, 2011. If the issuer chooses to post a return on its website to satisfy the filing requirement, the issuer must post the return by the earlier of the 45th day following the action or January 15 of the following calendar year. If the issuer chooses instead to file the Form with the IRS and to send notice to shareholders or their nominees, the issuer must file the Form with the IRS by the earlier of the 45th day following the action or January 15 of the following calendar year and must send copies to shareholders by January 15 of the following calendar year. *For a corporate action taken during 2011, the issuer must post the Form on its website or file it with the IRS by January 17, 2012.*

Effective Date for Regulated Investment Companies. Regulated investment companies are required to report corporate actions taken on or after January 1, 2012. The earliest date by which a regulated investment company will need to complete and either file or post a Form is February 15, 2012, which is the 45th day

following an organizational action taken on January 1, 2012.

Failure-to-File Penalties. Issuers are subject to a penalty of \$100 per Form, up to \$1.5 million. Penalties are higher in the case of an intentional disregard of a filing requirement and potentially lower if the failure to file is cured within 30 days of the required filing date or by August 1 of the calendar year in which the filing date occurs. The IRS has provided no relief to account for the short time period between the release of the final Form and the reporting deadline.

Method of Calculating Adjustments and Accompanying Details. Under the regulations, the issuer may report the adjustment as an adjustment per share or as a percentage of old basis. The issuer must also list the statutory and regulatory authority for the effect of the action on basis, provide supporting data, and make a statement about whether the holder of a security may recognize any loss. The Form provides several lines for the issuer to describe these adjustments, and the instructions to the Form are brief and provide neither specific guidance nor examples. To the extent that the issuer does not have all the information required to make a final filing, the issuer may make reasonable assumptions to complete an initial filing, provided that the issuer makes a corrected filing within 45 days of finding any new information. This may create an ongoing requirement for an issuer to correct filings each time it discovers new information about the effect of a filing on basis, although the existing guidance does not specifically address this point. For organizational actions that are cash payments and may be dividends, the issuer must treat the payment as it would treat a

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payment under the dividend reporting provisions of the Internal Revenue Code.

Exempt Recipients. An issuer does not need to furnish these statements to “exempt recipients,” including corporations, tax-exempt organizations, governments, regulated investment companies and other financial institutions.

**IRS Issues Subsequent Notice
Relaxing Information Reporting
Requirements For 2011 Corporate
Actions**

The IRS also issued IRS Notice 2012-11[2] regarding the near-term deadline

for filing Form 8937 with respect to corporate actions. The subsequent IRS Notice provides that an issuer that posts on its publicly available website either (1) a completed Form 8937, Report of Organizational Actions Affecting Basis of Securities, describing the arithmetical effects on the basis of securities of “organizational actions” or (2) the *required information* in a “readily accessible format” will satisfy the requirement to file and furnish Form 8937 for “organizational actions” occurring in 2011. The Notice also states that the *IRS will not seek information reporting penalties* for

reporting incorrect information regarding these disclosures with respect to issuers that make *good-faith efforts to timely post either the Form or the required information* (or, in the alternative, to file an accurate Form with the IRS and to furnish statements directly to shareholders). The penalty relief applies to a lesser extent to broker information reporting.

¹ The U.S. Form 8937 is available at <http://www.irs.gov/pub/irs-pdf/f8937.pdf>. The IRS Instructions for the Form are also available at <http://www.irs.gov/pub/irs-pdf/i8937.pdf>.

² IRS Notice 2012-11 is available at <http://www.irs.gov/pub/irs-drop/n-12-11.pdf>.