

January 13, 2012

New U.S. Tax Reporting Due by January 17, 2012 for Corporations that Engaged in Certain Transactions in 2011

The IRS recently released Form 8937, implementing Section 6045B of the U.S. Internal Revenue Code. Section 6045B requires that any issuer of securities report any "organizational action" that affects the basis of "specified securities" in the hands of all of the holders of such securities, as well as additional information about the effect on basis. Specified securities include stocks, notes, bonds, or other indebtedness, commodities and related derivatives, and any other financial instrument designated by the IRS.

Form 8937 implements Section 6045B only with respect to equity; reporting requirements will be expanded to cover other types of specified securities for transactions beginning in 2012. The return must be filed on the earlier of 45 days after the date of the organizational action or January 15 of the following calendar year (deferred to January 17, 2012 for all corporate actions during 2011). A corporation required to make such a return is also required to furnish copies of the return to record holders and to nominees with respect to the security. Importantly, issuers may provide public reporting of the relevant information (for example, on their website) in lieu of filing a return and delivering the forms to the holders. Ten-year retention and certain prominence requirements must be met for website reporting to satisfy the requirements of Section 6045B.

The full scope of the term "organizational action" is not entirely clear. IRS guidance and other commentary indicate only that examples of an "organizational action" include stock splits, mergers, and acquisitions that affect the basis of equity, "spin-offs," and distributions in excess of "earnings and profits." A plan of arrangement involving a stock for stock acquisition likely would qualify as an organizational action unless it is a fully taxable transaction. Acquisitions of stock for cash would not, nor would dividend reinvestment plans. (However, dividend reinvestment plans will be covered for transactions that occur in 2012 and after.)

We believe that the major accounting firms will have developed positions as to what transactions are covered and methods for completing Form 8937. We believe that potentially affected issuers should consult their U.S. tax accountants regarding their obligations in connection with this form.

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IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that is contained in this document.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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