

# IRS Releases Notice 2011-18 Providing Penalty Relief to Stock Issuers for Delayed Reporting of Corporate Actions to the IRS Until January 17, 2012

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On February 22, 2011, the IRS issued Notice 2011-18 ("Notice") providing that the IRS would not impose penalties on an issuer for failing to file an issuer corporate action return within 45 days after the date of a corporate action relating to a specified security provided that the issuer files the return (or publicly reports the information on its website) by January 17, 2012. Although the cost basis law became effective for stock acquired on or after January 1, 2011, the IRS had not yet issued a new form for issuer corporate action reporting. This penalty relief gives the IRS more time to develop, complete and release its form for issuer corporate action reporting while not penalizing issuers since they will be unable to file until the IRS releases the form.

An important element of the cost basis reporting law is that brokers must adjust the cost basis of covered securities to take into account corporate action information reported by issuers of securities on "issuer statements." The cost basis law added new Section 6045B to the Internal Revenue Code requiring issuers of specified securities to file a new type of information return with the IRS ("issuer corporate action returns") and provide holders of such securities written statements setting forth key information provided in the return ("issuer statements").

The cost basis law required issuers to file issuer corporate action returns with the IRS generally within 45 days after the date of the corporate action and to provide holders with issuer statements no later than January 15 of the year following the calendar year in which the corporate action occurred. Under the final cost basis regulations the IRS waives an issuer's obligation to file an issuer corporate action return with the IRS and provide issuer statements to holders if the issuer publicly reports the required information on its primary public website and keeps the information accessible for ten years ("public reporting"). Note that public reporting is optional at the issuer's discretion.

The issuer corporate action reporting requirement applies to corporate actions relating to stock (other than stock in a regulated investment company or dividend reinvestment plan as such terms are defined for cost basis purposes) beginning on or after January 1, 2011. However, the IRS has not yet issued an issuer corporate action return form or an issuer statement form. Thus, in the case of stock that undergoes a corporate action in 2011 that affects cost basis, it was unclear how an issuer that chose to file an issuer corporate action return and provide holders with issuer statements (rather than rely on public reporting) would comply with this rule given that there was no IRS form.

By providing penalty relief, the IRS approach likely defers the filing of issuer corporate action returns by issuers for corporate actions affecting cost basis relating to stock that occur during 2011. It creates a potential logjam because issuers may simply wait and file all of their issuer corporate action returns at once on January 17, 2012 given the penalty relief provided by the Notice. The Notice provides that the penalty relief does not apply to issuers' obligations to provide issuer statements to holders relating to corporate actions for stock occurring during 2011 no later than January 15, 2012 (actually January 17 due to weekend and holiday schedules in 2012). Thus, there will presumably be a comparable logjam in January 2012 in the delivery of issuer statements that are sent to holders of stock for corporate actions occurring in 2011. A potential disadvantage of the Notice is that its penalty relief may discourage public reporting of corporate actions on issuer websites before January 17, 2012. Brokers generally prefer receiving corporate action basis adjustment information at the time of a corporate action rather than later so that they can process and update customer records. The receipt of this information in January of the year following the year in which the corporate action occurs is generally viewed as significantly too late.

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