SIFMA
Securities Industry and
Financial Markets Association

February 8, 2010

Electronic Delivery

Mr. Stephen Schaeffer
Office of Associate Chief Counsel (Procedure & Administration)
CC:PA:LPD:PR (REG-101896-09)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20024

Re: Reporting of Customer's Basis of Customer's Basis in Securities Transactions

Dear Mr. Schaeffer:

The Securities Industry and Financial Markets Association (SIFMA)[1] welcomes the opportunity to provide the Internal Revenue Service (the "IRS") and the Treasury Department with our comments on the proposed regulations on cost basis reporting, which were released on December 16, 2009. SIFMA appreciates that many of our prior comments were incorporated into the proposed regulations. We also would like to commend the work done on providing examples in the proposed regulations that will prove to be helpful to the industry in interpreting and implementing the regulations.

Final regulations are critical for firms to complete the development of systems that will be needed to comply with the new reporting requirements. Accordingly, SIFMA urges the IRS and Treasury Department to complete and release final regulations as soon as possible. As discussed in more detail in our comments, SIFMA requests that the effective date of the transfer statement requirement under Code section 6045A be delayed until January 1, 2012. We believe that the Treasury Department has the authority to delay the effective date, and that a delay would further the legislative intent of assisting taxpayers and the IRS to ensure accurate and complete reporting of tax basis on federal tax returns.

[1] SIFMA brings together the shared interests of securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

SIFMA will also be submitting a request to testify at the February 17th hearing on the proposed regulations. Please feel free to contact me at (202)962-7333 or emccarthy@sifma.org if you have any questions or if we can be of further assistance.

Sincerely,

N. Ellen McCarthy
Managing Director
Securities Industry and Financial Markets Association

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Attachment

Securities Industry and Financial Markets Association
Comments on Proposed Regulations on
Basis Reporting for Securities
February 8, 2010

1. Effective Date for Transfer Statements under Code section 6045A

For the reasons set forth below, SIFMA requests that the effective date of the transfer statement requirement under Code section 6045A be delayed until January 1, 2012. We believe that Treasury has the authority to delay the effective date, and that a delay would further the legislative intent of assisting taxpayers and the Internal Revenue Service ("IRS") to ensure accurate and complete reporting of tax basis on federal income tax returns. Furthermore, we estimate that, based on statistical information with respect to existing account transfers, a one year delay will not significantly impair the government's primary objective of obtaining information reporting on adjusted tax basis.

Transfer statements present a unique challenge to brokers and other applicable persons. Although basis reporting, in general, will be difficult to implement, the development needed to implement most aspects of basis reporting (e.g., wash sales, average basis, etc.) is controllable within each entity. Transfer statement reporting, on the other hand, will require extensive collaboration among unrelated entities that will be obligated to send and receive transfer statements, and it will also require the development of an industry-wide utility that brokers and other applicable persons could use to communicate with each other. Although the proposed regulations allow applicable persons to send a transfer statement in a non-automated manner (i.e., paper statements), the volume of transfers that take place on any one day dictate that an efficient and automated system of sending and receiving transfer statements through a centralized utility is necessary to ensure that basis information is passed in a timely and accurate manner.

The industry is in the process of designing the needed enhancements to an existing centralized utility that could be used for sending and receiving transfer statements between all types of industry participants. This utility is called CBRS (Cost Basis Reporting System), and it will allow industry participants (e.g., securities brokers, transfer agents, custodian banks, etc.) to communicate basis information by sending and receiving transfer statements in a secure, automated and standardized manner. Final regulations under Code section 6045A are needed to complete the design, development and testing of CBRS.

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Implementing CBRS involves a development process consisting of two steps, which must be completed sequentially. First, the development of CBRS must be competed. Then, each participant (or user) must build systems and business processes to interact with CBRS to actually send and receive transfer statements. This two-step, sequential development process (i.e., first CBRS must be developed, then each participant must complete its own development), is critical to the implementation of an industry-wide automated system of sending and receiving transfer statements. It is presently anticipated that the period required for programming and testing of the needed enhancements to CBRS will be at least eight months. Thereafter, brokers and other applicable persons will need at least four months to test the new functionality. Many of the industry participants will be first time users of CBRS. Even if final regulations under Code section 6045A are issued in April 2010, there simply is not enough time prior to the January 1, 2011 effective date for equities to complete the necessary development and testing needed to send and receive transfer statements via CBRS.

SIFMA is concerned that sending transfer statements prior to the complete implementation of CBRS will not result in accurate, complete and timely tax basis information being passed to and from brokers and applicable persons. We believe if brokers and applicable persons are required to send and receive transfer statements beginning January 15, 2011, many statements will not be sent in a secure, automated or standardized manner. This will result in a manually intensive and error-prone process for sending and receiving transfer statements, which could increase identity theft, and cause inaccurate and incomplete information to be furnished to customers and to the IRS. This will, in turn, result in excessive levels of corrected information returns (i.e., Form 1099-B), which will cause taxpayers to file amended tax returns.

SIFMA believes that Treasury has the regulatory authority to delay the effective date of Code section 6045A. Code section 6045A(a) states that the Secretary may provide regulations that prescribe the content of a transfer statement and the manner in which it must be furnished, and Code section 6045A(c) provides that unless the Secretary provides otherwise, the statement must be furnished no later than 15 days after the date of the transfer of the security. We believe this authorizes the Secretary to adjust the requirement that transfers of securities be reported within 15 days of a transfer.

Delaying the effective date of Code section 6045A is consistent with legislative intent. Information is generally reported to the IRS and furnished to taxpayers to assist taxpayers in preparing their income tax returns and to help the IRS determine whether taxpayers' returns

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are correct and complete[2]. The basis reporting rules were designed to further this objective. A delay in the effective date to January 1, 2012 for transfer reporting would further these objectives, and it would give industry sufficient time to develop systems that are needed to comply with the provisions of Code section 6045A in a reliable, efficient and consistent manner.

2. Definition of Applicable Person

Proposed Regulation: Pursuant to proposed regulation section 1.6045A-1(a)(3), an applicable person means a broker as described in proposed regulation section 1.6045-1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities and any agent of these persons. Every transfer (other than a sale) of custody affected by an applicable person to a broker or other professional custodian on or after January 1, 2011 is presumed to be a transfer subject to reporting**.**

Comment: SIFMA's previous comment letter stated that any entity that warehouses securities for a client, record keeps on behalf of a taxpayer, or transfers a physical security from one location to another should be required to maintain cost basis information for covered securities and should be treated as an "applicable person" subject to the transfer reporting requirements.[3] The regulations should clarify that a custodian or trustee of a tax deferred retirement plan or account is an applicable person with a duty to provide a transfer statement at the time securities are distributed to an owner or an heir. The custodian or trustee should provide the fair market value for each distributed security on the transfer statement as of the date of distribution or date of death, as applicable

Comment: Examples should be provided to clarify that the term "applicable person" includes (1) all transfer agents that are not brokers and (2) administrators of an employee stock option, stock purchase or stock award plan, because these persons are agents of the issuer.

Comment: Clarification is needed that a broker is a transferor required to provide a transfer statement when the broker executes a purchase or a short sale and the security is delivered to/received from another broker against payment for the security. In such Delivery versus Payment (DVP) of a short sale or Receive versus Payment (RVP) on a long purchase transaction, the executing broker needs to be obligated to provide the purchase cost or the gross proceeds amount to the custodial broker that has the obligation to file Form 1099-B.

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[2] See "Technical Explanation of H.R. 7060, *The Renewable Energy & Job Creation Tax Act of 2008,"* JCX-75-08, September 25, 2008.

[3] SIFMA response to Notice 2009-17, dated April 9, 2009. All references to our 'previous' comments are in reference to this particular SIFMA response.

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Comment: A trustee or other fiduciary that has responsibility for the preservation of asset in a trust or an estate should be treated as an applicable person required to furnish a transfer statement when assets are distributed from the trust or estate to the designated beneficiaries or heirs.

3. Corporate Actions

a. Corporate Actions – Sequential Numbering

Proposed Regulation: Proposed regulation section 1.6045B-1(a)(1) requires an issuer that has a corporate action to provide information about the organizational action and the quantitative affect on the basis resulting from the action. The proposed regulations also require the issuer to assign and report a sequential number for each corporate action reported by the issuer on a return under Code section 6045B (Proposed regulation section 1.6045B-1(a)(1)(vi)). In turn, a transfer statement must indicate the extent to which the reported basis amount has been adjusted to reflect any corporate actions that affect the basis of the security by reporting the number from the issuer statement (Proposed regulation section 1.6045B-1(a)(1)(v)).

Comment: We believe that the requirement to report an identifying number for each corporate action that affects basis is not appropriate or useful. A transferee broker should be able to rely on the information provided on a transfer statement without having to consider adjusting basis for past corporate actions. If only the last corporate action for which an adjustment has been made is identified on the statement, there is no assurance that all basis adjustments attributable to prior corporate actions have also been made. A transferee broker should not be held responsible for determining whether or not any pre-transfer basis adjustments have been made based on a sequential numbering system. By requiring this number, all brokers would need to maintain a database of all corporate actions, for all issuers regardless of whether the broker holds a position for a client. The only purpose for such a database is to ensure that information received from the transferor is up to date based on a numbering system. Transferors should be held responsible for making and correcting, if necessary, any basis adjustments for corporate actions that occurred during the time that the transferor held the security and thus, a sequential numbering system for corporate actions is unnecessary (see Comment number 5d with respect to a transferor's responsibility to correct transfer statements).

b. Issuer Publication of Information Related to Corporate Actions

Proposed Regulation: Under proposed regulation section 1.6045B-1(a)(1), (a)(2) and (b) issuers that have corporate actions affecting the basis of the security must file a return with IRS and provide a written statement to nominees within a time period specified in the regulations. An issuer is not required to file a return with the IRS or furnish an issuer statement, however, if the issuer posts the return with the required information on its primary public website. Proposed regulation section 1.6045B-1(a)(3) and (b)(4). The

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Treasury Department and IRS requested specific comments on the definition of public reporting including rules about retaining the returns on the website and alternatives other than the use of a central repository.

Comment: While a posting to an issuer's web site may be helpful for taxpayers who hold stock or other securities directly with the issuer or its agent, it would be burdensome for brokers to implement if each and every broker had to search for, visit and re-visit 'primary' issuer websites for updated information on basis-affecting events. Each broker would need to determine an issuer's primary website and possibly look through many segments of the website to find the required basis information. Many issuers do not have a specific section devoted to tax information and thus finding such information may not be easy. We recommend that issuers should be required to file a return with the IRS and to consent to its public disclosure by the IRS. In addition, issuers should furnish an issuer statement to each clearing organization which has designated the securities as eligible for clearing so that the clearing organizations may disseminate the relevant organizational actions to its participants. The definition of the term "clearing organization" as found in the Treasury regulations under Code section 163 should be used for this purpose. This is essentially the same procedure that is currently in place and working for corporate inversions that are reportable on Form 1099-CAP (or Form 1099-B for brokers).

c. Corporate Actions on Foreign Securities

Proposed Regulation: Proposed regulation section 1.6045B-1(b) requires a domestic or foreign issuer to furnish a written statement to each holder of record that is not an exempt recipient as of the record date of the corporate action and all subsequent holders of record through the date the issuer furnishes the statement. The Treasury Department and IRS request comments as to the extent to which foreign issuers will be able to comply with such a reporting requirement, and whether it may be appropriate to limit foreign issuers' reporting requirements (e.g., limiting issuer reporting to securities traded on an exchange in the United States).

Comment: SIFMA recognizes that there are jurisdictional and practical obstacles to compelling foreign issuers to furnish information based on U.S. tax principles on the basis affect of certain corporate actions. We wish to reiterate our prior proposal that a default rule be established so that brokers know how to adjust basis if information is not received from foreign issuers. We recommend that the default rule provide that an exchange of foreign securities should be treated as a fully taxable exchange and that the exchanging broker should use its best efforts to determine the fair market value of securities or other property received.

4. Issuer Classifications

Proposed Regulation: Proposed regulation section 1.6045-1(a)(14) provides, solely for purposes of determining the applicable date for basis reporting, any security an issuer

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classifies as stock is treated as stock. If no issuer classification has been made, the security is not treated as stock unless the broker knows, or has reason to know, that the security is reasonably classified as stock under general tax principles.

Comment: The responsibility for determining the classification of a security should remain with the issuer. Because current regulations do not compel an issuer to provide the classification of a security to its holders or nominees, brokers are not well positioned to make such determinations in order to properly apply US withholding and information reporting rules. We appreciate that these proposed regulations provide for a presumption to treat securities as stock for effective date purposes and only when the broker has no actual knowledge or reason to know otherwise. However, a "reason to know" standard is subjective and inserts uncertainty into the reporting process. The "reason to know" standard should be eliminated for purposes of broker classifications of stock in instances where an issuer has not classified the security for tax purposes. In the event this standard is retained, there should be penalty relief where a broker lacks actual knowledge.

5. Transfer Statements

a. Reporting Required in Connection with Transfers of Securities

Proposed Regulations: The proposed regulations regarding transfer statements do not impose a duty on those that do not affect sales to update basis in response to adjustments announced by issuers under Code section 6045B or to compute basis by average cost under Code section 1012. Proposed regulation section 1.6045A-1(b)(1)(vii). The Treasury Department and the IRS requested further comments on the scope of these transfer statement requirements.

Comment: All applicable persons that are not brokers should be required to make basis adjustments announced by issuers. Determining the adjusted basis as of the date of transfer should the transferor's responsibility, not the receiving broker's responsibility. A transferee may not be able to determine whether or not all pre-transfer adjustments to basis have been made or what adjustments are needed. Further, a broker may never have held a particular CUSIP and may not have a record of corporate actions that occurred prior to the transfer. Each transfer agent, custodian or nominee holder of securities and other applicable persons as described in Comment number 2 needs to be responsible for making the adjustments to basis for any basis-affecting event that occurs during the period that the applicable person holds the securities. Under the current proposed regulations, a transferee broker would have to go back several years or more to determine basis.

b. Transfers of Securities Pursuant to a Securities Lending Agreement

Proposed Regulation: Proposed regulation section 1.6045A-1(a)(1) creates a

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presumption that every transfer (other than a sale) of custody effected by an applicable person to a broker or other professional custodian is a transfer of a covered security subject to reporting under Code section 6045A. Thus, a transfer statement must be furnished for every such transfer even if the security is uncovered.

Comment: A transfer statement should not be required if the transfer to a broker represents a transfer of securities in a loan or a loan return pursuant to a securities lending agreement and the transfer is clearly identified as such in the records of the applicable person and the broker. For example, a lender or its agent should not be required to provide a transfer statement to a borrower pursuant to a transfer of securities in a securities loan. Similarly, a borrower should not be required to provide a transfer statement to a lender or its agent pursuant to a transfer of securities in a return of borrowed securities. The lender and borrower know at the time of transfer that the transfer is pursuant to a securities loan. Further, the adjusted basis in the hands of the transferor is not relevant to the transferee. If a transfer statement is required for securities lending transfers in the final regulations, we recommend that each such transfer that is clearly indicated on the transfer statement as a securities lending transfer be treated as a transfer of noncovered securities for which the reporting of information under proposed regulation section 1.6045A-1(b)(1)(vii) (adjusted basis and acquisition date) is not required. An applicable person that chooses to report adjusted basis and acquisition date information with respect to a transfer pursuant to a securities lending agreement shall not be subject to penalties under Code section 6722 for any failure to report such information correctly. Note that this comment does not pertain to a transfer of a customer's short position from one broker to another for which a transfer statement should be required and is required pursuant to proposed regulation section 1.6045-1(c)(3)(xi)(C).

c. Electronic Transfer Reporting

Proposed Regulation: Proposed regulation section 1.6045A-1(a)(2) does not mandate the use of electronic communication of transfer statements. Furthermore, a transfer statement must be in writing unless both parties agree to a different format or method prior to the transfer. The Treasury and the IRS requested further comments about the form and format for the transfer statement and any substitutes thereto.

Comment: SIFMA's previous comments stated that electronic transfer reporting was preferable. Requiring paper statements creates a heightened risk for identity theft, misdelivery and lateness. Accordingly, we recommend that electronic statements be mandated unless both parties agree to a different method prior to the transfer.

d. Correcting Transfer Statements for Corporate Actions

Proposed Regulation: Under proposed regulation section 1.6045A-1(c), corrected transfer statements are required when a transferor receives a transfer statement from an

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earlier transfer that is inconsistent with the subsequent transfer statement. The proposed regulations do not require corrected transfer statements due to incorrect or late-furnished information from issuers for their corporate actions.

Comment: A transferor should be responsible for correcting a transfer statement if an issuer files an issuer statement for a corporate action that took place before a transfer statement is provided to the receiving broker, e.g. a reclassification of a dividend to return of capital. Such a requirement should be limited to issuer statements filed within 18 months of a transfer statement. It is unusual for an issuer to correct a corporate action more than 18 months after the corporate action. Furthermore, 18 months coincides with most brokers' internal procedures for "purging" accounts that have no activity or have been transferred to another broker. Brokers should not be expected to maintain records and full functionality to affect a basis adjustment to transferred records beyond a reasonable timeframe.

e. Taxpayer Identification Numbers

Proposed Regulation: Under proposed regulation section 1.6045A-1(b)(1)(iv), a transfer statement must include the taxpayer identification number (TIN) of the beneficial owner of the security.

Comment: SIFMA recommends removing this requirement to reduce the possibility of identify theft consistent with Notice 2009-93.If the proposed regulations do not reflect our comments with respect to electronic transfer reporting (see Comment number 5c), brokers will receive certain transfer statements by paper, fax or other unsecure methods. . Also, a receiving firm sets up an account in anticipation of the transfer of securities. When the transfer occurs, the transferring broker includes the receiving brokers' account number to ensure that the transfer of securities is made to the correct account at the receiving broker. Thus, the use of a TIN is not necessary for identification purposes by the receiving broker.

6. Basis Methods and Calculations

a. Date for Determining Basis

Proposed Regulation: Under proposed regulation section 1.6045A-1(b)(1)(vii), the transfer statement must include the total adjusted basis of the securities, the original date of acquisition, and the date for determining whether any gain or loss with respect to the security would be long-term or short-term at the time of the sale.

Comment: The rules should clarify what the date is for determining when a security goes long-term and circumstances under which it is different than the acquisition date. Brokers

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should not be held responsible for taking into account various hedging strategies that a taxpayer may use that could affect the determination of holding periods. In some cases, customers hold their hedges at different brokerage firms making it impossible for a broker to account for these hedges in determining whether a security would be long or short term. In addition, tracking hedging positions in a particular account is difficult because brokers would need to make a substantive determination as to which transactions would affect the holding period, build systems capacity to track each hedge and store information to provide customers with the reasoning for a broker's subjective determination as to which transactions would affect a holding period.

b. Communicating Lot Selection by a Taxpayer's Agent

Proposed Regulation: Under proposed regulation section 1.1012-1(c)(8), a taxpayer makes an adequate identification of stock at the time of sale, transfer, delivery or distribution if the taxpayer identifies the stock no later than the earlier of the settlement date or the time for settlement under Securities and Exchange Commission regulations. Furthermore, a taxpayer may establish a lot selection method by standing order. The proposed regulations permit any reasonable method of communication, including electronic and oral communication, to be used by taxpayers to communicate their lot selection.

Comment: An investment advisor or asset manager that is an authorized agent of the taxpayer should be able to communicate lot selection to the broker and the broker should be permitted to rely on this communication as adequate identification of stock sold. When an investor opens a managed account, they give their asset manager, investment advisor or introducing broker discretionary authority to trade in securities. Pursuant to this authority, the manager or advisor should be able to relay instructions on basis reporting to the broker. In cases where there is an agent of the taxpayer between the taxpayer and the broker, it will be difficult for taxpayers to communicate lot selections directly to the broker. Taxpayers may have standing instructions with investment advisors. Similarly, an introducing broker that maintains a business relationship with a taxpayer should be able to communicate tax lot selections to a clearing broker that is responsible for information reporting on the sale or transfer. In regards to transfer statements, proposed regulation section 1.6045-1(d)(2)(iv) provide that with respect to penalties under Code sections 6721 and 6722, a broker that takes into account information received from a customer or third party other than information reflected on a transfer statement or issuer statement is deemed to have relied upon it in good faith if the broker neither knows or has reason to know the information is incorrect. This reference to third parties implies that proper notification may be given through third parties. We would welcome an example or other clarifying language in the regulations to eliminate any uncertainty as to whether instructions from an investor's agent would constitute proper notification.

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c. Order of Disposition of Shares Sold or Transferred

Proposed Regulation: Where an average basis method election is in place, proposed regulation section 1.1012-1(e)(7)(ii) provides that the shares sold or transferred are deemed to be the shares first acquired. Thus, tax lots are to be depleted on a FIFO (first-in, first-out) basis in determining the average basis of the lot sold and the tax lots remaining.

Comment: Brokers need clarification on whether uncovered but identical securities held in the same account as covered securities should be taken into account in applying this ordering rule. If so, then shares acquired before the January 1, 2012 effective date (i.e., uncovered securities) would be treated as sold or transferred first, because, generally, they are the earliest shares acquired. If not, then the uncovered securities would be deemed to be the last shares sold or transferred.

d. Single-Account Election and Reason to Know Standard

Proposed Regulation: Proposed regulation section 1.1012-1(e)(11)(ii) provides that a company, plan, or broker may make a single-account election for one or more taxpayers for whom it maintains an account, and for one or more stocks it holds for a taxpayer. The company, plan or broker may make the election for the shares of stock for which it has accurate basis information if the company, plan, or broker neither knows nor has reason to know that the basis information is inaccurate.[4]

Comment: Consistent with Comment number 4, we believe a "reason to know" standard is subjective and inserts uncertainty into the reporting process. This standard should be eliminated for purposes of single-account elections. In the event this standard is retained, there should be penalty relief where a broker lacks actual knowledge.

e. Elimination of Double Category Method

Proposed Regulations: The proposed regulations provide that average basis is computed by averaging the basis of all identical stock in an account regardless of holding period and include a transition rule that requires taxpayers using the double-category method to average the basis of all identical stock in an account on the date of publication of final regulations. Proposed regulation section 1.1012-1(e)(7)(iii). The Treasury Department and the IRS requested further comments on whether the double category method for calculating average cost should be retained.

Comment: SIFMA's previous comments recommended that the double category method for calculating average cost should be eliminated. We noted that it would cause complications if basis was calculated using one method, and then shares were subsequently transferred to an account using the other method. We appreciate that the proposed regulations followed this recommendation.

[4] Proposed regulation section 1.1012-1(e)(11)(ii).

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7. Dividend Reinvestment Plans

Proposed Regulation: Proposed regulation section 1.1012-1(e)(6) provides that a plan qualifies as a dividend reinvestment plan (DRP) if the plan documents require that at least 10 percent of any dividend paid to be reinvested in identical stock. However, the term dividend is not defined. Specific comments were requested on whether and how the regulations should define dividends, such as whether the regulations should define the term by reference to Code section 316 or more broadly for purposes of the rules regarding dividend reinvestment plans.

Comment: We recommend that any distribution with respect to stock, including ordinary dividends, capital gain distributions, non-taxable returns of capital and cash in lieu of stock dividends that is reinvested in identical stock in a dividend reinvestment plan should be treated as amounts acquired in connection with a dividend reinvestment plan.

8. Gifted and Inherited Securities

a. Transfers of Gifted Securities

Proposed Regulation: When covered securities are transferred to a different owner as a gift, proposed regulation section 1.6045A-1(b)(4) requires the statement to indicate that the transfer consists of gifted securities and to state the adjusted basis of the securities in the hands of the donor and the donor's original acquisition date of the securities. The transfer statement must also report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable).

Comment: We recommend that the regulations only require the transfer statement to report the donor's carry-over basis and holding period for gifted securities. Generally, under the gift tax rules, the basis of property received in a gift in the hands of the done is the same as the basis was in the hands of the donor. There are exceptions, but brokers are not trained in the application of complicated gift tax rules and should not be expected to consider the exceptions for the purpose of cost basis reporting.

b. Inherited Securities

Proposed Regulations: Under proposed regulation section 1.6045A-1(b)(3), when covered securities are transferred from a decedent, the transfer statement must indicate that the securities are inherited. The transfer statement must also report the date of death as the acquisition date and must report adjusted basis in accordance with the instructions and valuations provided by an authorized representative of the estate. If the applicable person that effect the transfer does not receive instructions and valuations

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from the authorized estate representative, the applicable person must request this information from the authorized estate representative before preparing the transfer statement. If this information is not provided before the transfer statement is prepared, then the transfer statement must indicate that the transfer consists of an inherited security but must report the security as a noncovered security. If this information is provided after the transfer statement is sent, the applicable person effecting the transfer must send a corrected transfer statement. The selling broker then is required to take these basis adjustments into account in reporting adjusted basis upon the subsequent sale or other disposition of these securities.

Comment: The above process of soliciting and perhaps correcting adjusted basis information on inherited securities would be an intensely manual process as it is not readily programmable. In lieu of a requirement that an applicable person request missing basis information from the estate representative, we propose that brokers be allowed to presume that the fair market value of the security as of the date of death is the adjusted basis of inherited securities being transferred to an heir. This would greatly expedite and simplify the providing of a transfer statement to a transferee. If adjusted basis on inherited securities is provided by the estate representative after the transfer statement is sent, the applicable person making the transfer must send a corrected transfer statement as is required by the proposed regulations.

9. Exceptions from Reporting Wash Sales

Proposed Regulation: Proposed regulation section 1.6045-1(d)(6)(iii) provides that a broker is required to report adjusted basis in accordance with Code section 1091 only if both the purchase and sale transactions occur with respect to covered securities in the same account with the same Committee on Uniform Security Identification Procedures ("CUSIP") number (or other designated security identifier number). The broker must report the amount of the disallowed loss in addition to adjusted basis and gross proceeds for the sold security. The proposed regulations further provide that the broker must adjust the basis of the purchased security by the amount of the disallowed loss when reporting the eventual sale of the purchased security.

Comment: Brokers should not be required to take into account purchases of shares pursuant to a DRP in determining whether any portion of a loss on a sale should be disallowed as a wash sale. Reinvested dividends can result in the disallowance of a very small portion of a realized loss. For most taxpayers, these reinvestments are too small to justify the accounting effort. To require taking reinvested dividends into account makes it significantly more difficult for brokers trying to develop wash sale accounting systems for implementation by the January 1, 2011 effective date and would provide minimal tax revenue.

Comment: In addition, the sale of fractional shares that otherwise would have been received by a shareholder in an exchange pursuant to a corporate action (including stock

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splits, spin-offs, and mergers) or upon exiting a dividend reinvestment plan should not be treated as a wash sale even if identical stock is acquired during the 61-day period. This exception is needed as a practical matter to avoid wash sale accounting for sales of less than one share of stock.

10. Reporting Sales by S Corporations

Proposed Regulation: Code section 6045(g)(4) requires that brokers report sales by customers that are S corporations of covered securities acquired on or after January 1, 2012. Accordingly, proposed regulation section 1.6045-1(c)(3)(i)(B)(1) excludes S corporations from the list of exempt recipients for such sales. While the proposed regulations do not impose a requirement to solicit or re-solicit Form W-9 from all existing corporate customers, a broker must request a Form W-9 exemption certificate from such customers, unless it has actual knowledge that the corporate customer is a taxed as a C corporation.

Comment: To facilitate the identification of customers who are S corporations and support brokers in their efforts to collect needed Forms W-9 to meet the regulations' requirements, we urge the IRS to amend the official Form W-9 very soon to provide two separate boxes to be used by corporations to indicate whether it is an S or a C corporation. In addition, the regulations should mandate that S corporations identify themselves on a Form W-9.

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11. Short Sales

a. Reporting Short Sales

Proposed Regulation: Code section 6045(g)(5) provides that gross proceeds and basis reporting is generally required for the year in which the short sale is closed rather than, as under present law, the year in which the short sale in entered into. If finalized as written, proposed regulation section 1.6045-1(c)(3)(xi) would implement this change by requiring brokers to report short sales opened in 2010 under the current rules, unless the short sale remains open into 2011 in which case, the short sales would only be reported in the year in which the sale is closed. This is intended to avoid duplicate reporting on short sales opened prior to January 1, 2011.

Comment: We believe the proposed transition rule for reporting open 2010 short sales on their closing date would be difficult, if not impossible, to implement and furthermore is unnecessary. Most firms do not currently have systems in place to report the closing of short sales. Gross proceeds from sale transactions are typically captured in the month the sale occurs, are stored in a tax reporting data base, and then are printed on a Form 1099-B after year-end. Since most brokers do not yet have in place systems for pairing the opening with the closing of short sales, they are not able to suppress the opening of a short sale from information reporting in 2010. To do so retroactively would be very

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difficult. In addition, we believe that duplicate reporting of short sales entered into in 2010 and closed in a later year does not present an undue burden on taxpayers. A taxpayer would simply continue to do what they do now to reconcile Forms 1099-B on open short sales by reporting an offsetting entry on Schedule D in 2010. Furthermore, if a short sale opened in 2010 is transferred to another broker before the transfer reporting rules and procedures under Code section 6045A are effective, the transferee broker would not ordinarily have information on the gross proceeds from the 2010 short sale. Then, there would be no reporting of gross proceeds for such transactions. For these reasons, we believe that all short sales opened in 2010 should be reported at the option of the broker on the date they are entered into or the date they are closed, as under current law..

b. Backup Withholding on Short Sales

Proposed Regulation: Under proposed regulation section 31.3406(b)(3)-2(b)(4)(ii), backup withholding on a short sale would occur only at the time the short sale is closed and becomes subject to reporting under Code section 6045(g)(5). The amount subject to withholding would be the gross proceeds or, at the option of the broker, the gain upon the closing of the short sale (if any) if the broker reports the proceeds and basis on Form 1099-B.

Comment: The proceeds from a short sale are held by the broker. The inherent gain can be withdrawn from the account if the value of the shorted stock declines. If the value of the shorted stock appreciates, it may be necessary for a taxpayer to put up additional collateral in cash or securities. As a result of these mark-to-market adjustments of short sale proceeds, it is possible that a broker could have insufficient cash at the time the short sale is covered to perform backup withholding at the full 28 percent rate. Then, the broker would be required to impose backup withholding on other cash balances or to sell securities sufficient to produce the necessary cash. This would be a cumbersome procedure and may still result in debit balances in an account which the broker may need to cover. We recommend that backup withholding, if required, be imposed at the time the short sale is entered into and that a Form 1099-B be filed that reports only the amount of the backup withholding.

12. Corrected Reporting

Proposed Regulation: If a broker receives the information required on the transfer statement or an issuer statement after the broker has reported the sale of the security on Form 1099-B, proposed regulation section 1.6045-1(d)(2)(v) requires the broker to file a corrected Form 1099-B to report any adjustments to basis not reflected previously. Such corrections are required to be filed within 30 days after the broker receives the corrected information. The Treasury Department and the IRS requested comments regarding corrected reporting.

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Comment: There should be a time limit on the requirement for a broker to file corrected Forms 1099-B due to late provided information from a transferor or an issuer. There should be a reasonable point after which a broker can close its books on the tax year. Because this type of correction is due to an event outside of the broker's control, we recommend that a broker not be required to file corrected information returns if it receives corrected information more than 3 calendar years after the transfer of securities or the effective date of the corporate action.

13. Application of Penalties

Proposed Regulation: Proposed regulation section 1.6045-1(d)(2)(iv)(B) permits, but does not require, a broker to adjust the reported basis in accordance with information that is not reflected on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations deem that a broker that takes into account information received from a customer or third party other than information reflected on a transfer statement or issuer statement relies upon such information in good faith in accordance with existing rules if the broker neither knows nor has reason to know that the information is incorrect.

Comment: The "reason to know" standard creates an obligation to perform an excessive level of due diligence to determine the accuracy of information provided by a person other than a transferor or an issuer. Furthermore, there are no examples or objective means for a broker to recognize when it has "reason to know" information is incorrect. This creates an uncertain performance standard. We recommend that the reason to know standard be removed. If that recommendation is not adopted, we propose that penalties for reliance on inaccurate information provided by a person other than a transferor or an issuer be imposed only when the relying broker has actual knowledge that the information is incorrect.

14. Definition of Broker

Proposed Regulation: Proposed regulation section 1.6045-1(a)(1) provides that the term "broker" means any U.S. or foreign person that, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. Historically with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker included only a person described as a U.S. payor or a U.S middleman in existing Treasury regulation section 1.6049-5(c)(5). Under this existing rule, only U.S. controlled entities are considered U.S. payors or U.S. middlemen. However, the proposed cost basis reporting regulations expand the definition of broker to include a non-U.S. payor or non-US middleman that has entered into a qualified intermediary withholding agreement with the IRS under Treasury regulation section 1.1441-1(e)(5)(iii). Treasury and IRS requested specific comments regarding the usefulness of information received from non-U.S. payors and non-U.S. middlemen of complying with such a requirement, and other potential effects of such a requirement in a withholding or reporting agreement with the

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IRS.

Comment: Non-US owned foreign brokers that have not historically been required to report gross proceeds with respect to U.S. accounts should be given permanent relief from cost basis reporting. Foreign brokers do not have systems in place to isolate, track and capture security-specific adjustments required for detailed cost-basis reporting under US tax rules. It should be sufficient for IRS enforcement purposes to require such foreign brokers to report only the gross proceeds and excuse them from basis reporting.

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