



## IRS Issues Final Form 8937 and Related Notice 2012-11

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The final version of IRS Form 8937, Report of Organizational Actions Affecting Basis of Securities, was published by the IRS on January 5, 2012. Form 8937 is required to be filed with the IRS by an issuer of a specified security generally no later than 45 days after the occurrence of a corporate action affecting the basis of the security (although the IRS delayed filing for 2011 corporate actions until January 17, 2012). The IRS released a draft version earlier in 2011 that had little more than a few boxes and a lined page to be filled in with the information required by the cost basis law and promulgating IRS Regulation 1.6045B-1. Final Form 8937 retains boxes for issuer name, contact, and other basic information and adds to Part II new sections 14 through 19 that, while still in an open narrative format, asks for particular information for each section, including:

1. Description of the organizational action and relevant date for measuring shareholder ownership;
2. Quantitative effect of the organizational action on basis;
3. Description of the calculation of basis change and supporting data;
4. Applicable Internal Revenue Code sections; and
5. Whether or not loss can be recognized.

The instructions released with the final Form 8937 are very general in nature and the lack of specificity will likely result in issuer statements that will be lacking certain details, and be difficult for brokers to interpret. The IRS had previously delayed the deadline for issuer statements relating to corporate actions occurring in 2011 to January 17, 2012 and brokers will need to review and assess an entire year's worth of corporate action information when Form 8937s for such corporate actions are filed in the near future. This will be a major challenge for brokers this tax season. In addition, the release of the final version of Form 8937 12 days before the initial deadline and the lack of specificity in the final instructions was apparently subject to significant criticism by issuers of securities. As a result the IRS issued Notice 2012-11 on January 13, 2012 which does not extend the January 17, 2012 deadline but which provides penalty relief for incorrect filing if the issuer makes good faith efforts to timely file Form 8937 (or post the information on their website). Such relief if granted, could further delay the receipt by brokers or reduce the value to brokers of the provided information. This is a particular concern given that under the cost basis regulations, brokers must correct basis information and file corrected Form 1099-Bs with the IRS and investors for up to three years based on updated information reported on Form 1099-B. A whitepaper on issuer statements entitled "Corporate Action Issuer Reporting—Cost Basis Challenges for Brokers" is forthcoming and will be available on [costbasisreporting.com](http://costbasisreporting.com).



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