

Notice 2009-17

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

AUG 10 2009

Jon Lakritz  
Chairperson

LEGAL PROCESSING DIVISION  
PUBLICATION & REGULATIONS  
BRANCH

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Joan Hagen  
Kathy Ploch  
Ron Whitney

August 5, 2009

Mr. Stephen Schaeffer  
Office of Associate Chief Counsel (Procedure & Administration)  
CC:PA:LPD:PR (Notice 2009-17), Couriers Desk  
Internal Revenue Service

**Burden Reduction**  
**Sub-Group:**  
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1111 Constitution Avenue N.W.  
Washington, DC

Re: Supplement to March 2 IRPAC Letter on Reporting of Customer's Basis in Securities Transactions – Notice 2009-17

**Emerging Compliance**  
**Issues**  
**Sub-Group:**  
Richard Hollingsworth,  
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Lisa Maria Chavez  
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Paula Porpilia  
Susan Segar

Dear Mr. Schaeffer:

The Information Reporting Program Advisory Committee (IRPAC)<sup>1</sup> again appreciates the opportunity to provide comments on the development of a new cost basis reporting regime. Due to the short time frame in which we had to respond to Notice 2009-17, our preliminary letter to you dated March 2, 2009, omitted comments to several of the 36 questions where input was needed. We promised to provide a more comprehensive analysis of those matters at a later date. This correspondence is intended to fill those gaps. Please find attached a chart of our thoughts on those additional matters of importance as well as a few others we felt that the IRS should consider in the rules-making process.

**Modernization**  
**Sub-Group:**  
Philip Kirchner, Chair  
Elizabeth Dold  
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Emily Lindsay  
Timothy McCutcheon  
Suzanne Sullivan

Our comments reflect input from a variety of sources, including tax preparers, securities brokers, mutual fund companies, transfer agents and tax advisors. IRPAC looks forward to working with you to help ensure that basis reporting is introduced in a manner that is fair and workable for all stakeholders. If you have any questions, please contact the undersigned.

**Tax Gap**  
**Sub-Group:**  
Eric Toder, Chair  
Marsha Blumenthal  
Charles Christian  
Andrew Lyon  
Lillian Mills  
George Plesko  
John Sholz  
George Yin

Sincerely,



Jon Lakritz  
2009 IRPAC Chair

cc: Douglas H. Shulman, Commissioner, Internal Revenue Service

<sup>1</sup> IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities, and state taxing agencies.

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<b>Reconciliation with Customer Reporting</b>	
<b>Issue From IRS</b>	<b>Response</b>
<p>13</p> <p>How to ensure consistency between customers making specific identification of securities sold or transferred and broker reporting</p>	<ul style="list-style-type: none"> <li>• Investors should be held responsible to verify that the tax lots chosen for sale were correctly reflected as sold in a subsequent communication by the broker in a monthly statement, a quarterly statement, a trade confirm or otherwise. If an investor does not inform the broker that a correction is necessary within 60 days after receiving the communication by the broker in a monthly statement, a quarterly statement, a trade confirm or otherwise, then after 60 days following delivery/receipt of the broker's first communication in which the tax lot allocation is reflected, the broker should be allowed to 1099-B report in a manner consistent with that communication. It is noted that most accounts would receive a monthly statement, but some with infrequent account activity may be sent a quarterly statement that should suffice for purposes of this notice.</li> <li>• In consideration of year end processing requirements and 1099-B mailing deadlines the aforementioned 60 day requirement should be shortened to a January 31 deadline for transactions occurring in December. This allows time for clients in January and for brokers who may avail themselves of the February 15 Consolidated reporting deadline.</li> <li>• Any form of broker communication sent to the investor after a sale that reflects the specific allocation of the tax lots should be considered appropriate confirmation of the sale of specifically identified tax lots. This would include a monthly or quarterly account statement, or a confirmation of the allocation which may be part of the security's sale confirmation or made as a separate communication to the investor. Communication medium should be the same as now approved for 1099 statements, including E-delivery.</li> <li>• Brokers will 1099-B report based on the cumulative information found in the investor's statement and allowing the use of the account statement process as the medium for confirming the tax lots in the sale should assure consistency between an investor's specific identification and the broker's 1099-B report.</li> </ul>

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- Where investors request that specific tax lots be transferred to another financial institution, investors should also be responsible for reviewing the subsequent broker's communication to assure that the correct lots were transferred. This would also include a monthly or quarterly account statement, or a confirmation of the allocation made as a separate communication to the investor. Primary responsibility of the sales or transfers of the correct tax lots belong with the investor as long as the broker meets the required confirmation to the investor of the event.
- Note that some systems will transfer securities out the same way they close tax lots – only by FIFO and not by specific identification. Therefore, for some industry members this simple procedure allowing transfers of specifically identified securities would not be possible without new programming. If a broker is unable to technologically handle security transfers by specific identification of tax lots and discloses the inability to the investor when the investor opens the account, making that notice upfront should be sufficient for the broker to then not have to do the specific identification if the customer later requests such a transfer.
- IRS should consider guidance for a limited timeframe to correct inconsistencies. In our letter dated March 2, 2009, see items 19, 23 and 30 in the attached chart where we were clear that a broker's obligation to issue corrections should be confined to a reasonable period after the initial filing.
- **Day trading exception:** IRPAC suggests consideration be given to exempting day traders in general from the basis reporting rules, particularly those that elect to be subject to mark –to-market taxation. Many brokers do not have robust systems to track basis in fast moving trading currently that is part of today's day trader market activities. This is true whether or not the trader qualifies and elects mark-to-market taxation. It is hoped that the IRS can accept the brokers' fairly universal systemic limitations as the cost to build a cost basis tracking system will be foreboding, particularly regarding the wash sale applications. IRPAC suggests that the IRS consider a threshold exemption from cost basis reporting for accounts that average more than 25 trades a day over a calendar

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		<p>year. In the alternative, the IRS could consider building an exemption around the qualifications for making the mark-to market election. See IRS Pub. 550, p.72. Brokers can incorporate the exemption language in their trading agreements.</p>
<b>Special Rules and Mechanical Issues</b>		
<p align="center">16</p>	<p><b>Issue From IRS</b></p> <p>The scope of the wash sales exception, including the definition of "identical securities" (including identical options), the wash-sale period, and any de minimis or other exceptions</p>	<p align="center"><b>Response</b></p> <ul style="list-style-type: none"> <li>• See #7 in "IRPAC Preliminary Comments as of March 2, 2009" previously submitted.</li> <li>• We note that under IRC §6045(g), the reportable adjusted basis is determined without taking into account the wash sale rules under §1091 unless the acquisition and sale transactions resulting in a wash sale occur in the same account and are in identical securities (rather than substantially identical securities).</li> <li>• Wash sales should only apply to securities having the same CUSIP identifier number if held in the very same account with other securities with the same CUSIP identifier number. Most are reading the term "identical security" to mean wherever the security carries the exact same CUSIP as another security, it will be treated as "identical" and wherever the CUSIP is not exactly identical, the security will not be treated as "identical."</li> <li>• At issue are whether there other cases where the IRS will consider securities to be "identical" where CUSIPs may not be exactly the same? For example, in a tax free corporate reorganization, where the stocks and securities of the predecessor corporation are exchanged for those of the successor corporation, will the new securities be considered "identical" to the old and wash sale rules attach even where the CUSIP on the new issue varies, but the old security was traded within the 61 day period that includes the holding of the new issues? Or the reverse?</li> </ul>

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- Sometimes securities with different classes carry the same CUSIP with only alpha characters present in trading codes to distinguish between classes. The securities are not "identical" since they are separate classes with separate trading markets, but the CUSIPs are identical. For example, see CUSIPs for Sunpower Corp Cl A (SPWRA) and Sunpower Corp Cl B (SPWRB).
- Provisions are needed in the final rules to define "identical securities." IRPAC believes that broker reporting should be required to reflect the wash sale rules only where the securities have exactly identical CUSIPs and are held in the same account and should not apply where CUSIPs are the same but classes of securities vary.
- Option transactions currently do not carry a CUSIP identifier number, but the industry has been moving to rectify this to establish universal identification. The tax rules should consider whatever the outcome of this project the same as would apply if CUSIPs were designated. Even if options are held in the same account with stock that is the subject of the option, the option will not be identical to the stock and thus wash sale consideration is not required in developing reportable information on Form 1099-B. There will be a variance between the investor's requirements in filing his or her Form 1040 and the amounts reportable on Form 1099-B. **Recommendation:** Brokers should not be required to link option activity in an account to any activity in the underlying security.
- In the case of mutual funds or DRIPS, the wash sale rule should not be triggered if a reinvested dividend occurs following a complete sale of the entire CUSIP position. Dividends on securities can be declared but not made payable until after sale of the particular security. If part of a DRIP, the dividend could automatically be reinvested, requiring another security sale to clear the account. This is a frequent occurrence where a security position is liquidated.
- There should be a specific exception from the wash sale rules for any DRIP automatic reinvestment after a position is totally liquidated (sold) where there is a declared dividend vested at the point of the sale. Reliance on any de

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		<p>minimis exception to cover this matter will not work efficiently since dividends will relate to the size of the position and not always be small. An exception is warranted for any lagging dividends since it is the intent of any investor selling out the full position to close the position out totally. Accounts with auto-reinvest will inadvertently create a wash sale if the position was closed after ex-dividend date but prior to pay date.</p> <ul style="list-style-type: none"> <li>• IRS and the industry must consider how to treat professional traders who are not subject to wash sales rules. Brokers currently have no method of clearly identifying any professional trader (a day trader who meets the broader definition) for exception treatment. It is unclear to what extent broker-dealers have programmed in place to identify traders and where this has been programmed for it would likely be to an industry standard such as New York Stock Exchange definition.</li> <li>• There should be a look back limitation placed on a broker's responsibilities to report wash sales that restrict adjustments to events within the same tax year as the 1099-B reportable trade occurs, and no later than January 15 of the following year. Wherever events are generated that trigger wash sales and they occur after the cut date for the 1099-B, a correction process will be very costly. Investors should be required to adjust these reports in their tax returns</li> </ul>
17	How to apply the rules for basis reporting of options	<p>Effective 2013, gross proceeds option reporting as well as basis reporting is required when there is a lapse of, or closing transaction with respect to an option on a "specified security" or an exercise of a cash-settled option on a "specified security". There is a great deal to consider as we discuss tax reporting for the first time of many option transactions. Our discussion below deals with equity options and basic trading in equity options. Equities are just one of the many "specified securities" listed under IRC §6045(g). [IRC §6045(h)] Options exist on all forms of covered securities. Each will need to be looked at separately to be assured that the unique aspects of each are covered in the final rules. This discussion is only a start to what will need to be ultimately considered to finalize reporting rules. The largest volume in retail option investment is in equity options and for this reason IRPAC comments are on these options first.</p>

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Under current Treas. Reg. §1.6045-1(a)(9), the term "sale" does not include grants or purchases of options, exercises of call options, or entering into contracts that require delivery of personal property or an interest therein. For the present, opening or closing options are not reportable unless based on a broad index. See Rev. Rul. 94-63, 1994-41 IRB 5 and the discussion below on reporting broad based equity options. For this reason, many brokers have not yet developed any resource for basis tracking of options. It will take time to build these processes from scratch. Although option reporting is deferred to 2013, instructions are needed as soon as possible so systems can be developed to appropriately track these items.

**Option buyers ("holders"):** Buyers of options hold the rights to exercise the options against the writers. For buyers, a requirement to 1099-B report an equity option should arise when one of the following closing events takes place: (1) on expiration or lapse when the buyer chooses not to exercise and for some reason fails to sell the position or (2) when the buyer sells the option. A third event, the exercise of the equity option, will also close out the position, but this event should not cause a separate 1099-B report apart from any required for the underlying equity. Instead, the exercise closeout will affect either the basis or the sales proceeds of the acquired or disposed of underlying equity. Where the option is an investment not linked to any underlying security held in the account, the option is considered "naked." Naked positions are usually bought for a price; the basis to be tracked is the purchase price.

**Option sellers ("writers"):** Options can also be written (sold) and a premium received. Where the option is related to a position in the account, it is called a "covered" option. It is important to distinguish the two as basis applications will vary and thus, 1099-B reporting will also vary depending upon whether the option is naked or covered. Option premiums received by writers are carried in a deferred brokerage account (held in margin) until the option lapses and the premium seasons as income to the investor. It is only at point of lapse when it becomes clear that the buyer will not exercise the right, that an investor can withdraw the premium from the account. If the option is exercised against the writer, the premium becomes part

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of a basis or proceeds adjustment in an acquired or sold security.

**1099-B reporting of option expirations, lapses, or sales:** In each case, we have first outlined the substantive tax result of the event based on the holder's or writer's position and then recommended the 1099-B reporting position.

**Enter position through buying (holding) call:** The investor has the right to purchase the stock for a fixed price (the "strike" price) over a fixed period of time. Close out through:

- Selling call: investor reports capital gain (or loss) calculated as the difference between price paid for the call (the basis) and price received (gross proceeds) for its sale, characterized as short or long -term capital gain depending on how long the call was held . The gain/loss is calculated and characterized the same as for buying and selling stock directly.
  - Call expires unexercised: investor has a loss in amount of the entire purchase price, short or long -term based on holding period of the call at expiration date. There are no gross proceeds received on the expiration.
  - Recommend: The 1099-B reporting should be of the gain or loss on sale or expiration of the call rather than separately reporting proceeds and separately reporting basis. Expirations and lapses have no proceeds to report, so the entire cost basis becomes the actual amount of the capital loss offset by any commissions on the purchase. Character of gain or loss to be reported is based on the holding period of the call.
- In the alternative, option sales could be reported the same as actual stock sales with basis reported as the original purchase price minus commission and gross proceeds reported as the close out amount posted to the account (net commission). Using this strategy,

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expirations and lapses should be reported with "0" proceeds and the original cost net commission as basis.

IRPAC believes the reporting should be consistent for all options: either report the proceeds and basis separately for all options using "0" where a component is missing or only report the gain or loss from the transaction. In either case, long-term or short-term character should be specified. It would be easier to understand on the part of the investor and easier match to the Schedule D of the 1040 if the actual gain or loss was reported.

**Enter position through buying (holding) put:** The investor has the right to sell stock for a fixed price (the "strike" price) over a fixed period of time.  
 Close out through:

- Selling put: investor reports capital gain (or loss) calculated as the difference between price paid for the put (the basis) and price received (gross proceeds) for its sale, characterized as short or long -term capital gain depending on how long the put was held . The gain/loss is calculated and characterized the same as for buying and selling stock directly.
- Put expires unexercised: investor has a loss in amount of the entire purchase price of the put, short or long -term based on holding period of the put at expiration date. There are no gross proceeds posted to the account.
- Recommend: The 1099-B reporting should be of the gain or loss on sale or expiration of the put rather than separately reporting proceeds and separately reporting basis. Expirations and lapses have no proceeds to report, so the entire cost basis becomes the actual amount of the capital loss offset by any commissions on the purchase. Character of gain or loss to be reported is based on the holding period of the put.

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In the alternative, option sales could be reported the same as actual stock sales with basis reported as the original purchase price minus commission and gross proceeds reported as the close out amount posted to the account (net commission). Using this strategy, expirations and lapses should be reported with "0" proceeds and the original cost net commission as basis.

IRPAC believes the reporting should be consistent for all options: either report the proceeds and basis separately for all options using "0" where a component is missing or only report the gain or loss from the transaction.

**Write (sell) call and receive a premium:** the writer of a call has agreed to sell stock for a fixed price (the "strike" price) over a fixed period of time at the buyers option and takes back a premium that is held in a deferred account (on margin) until the position closes. Close out through:

- Call expires unexercised, the premium held in the account is the gain on the closing event and it is always short-term gain. There is no cost basis posted to the account.
- Closing (buying back the call or entering an offsetting position): To close out a writer's call, the writer usually enters into the market and purchases a call on the very same stock for the same strike price over the remaining open period of the original call. The writer always has short-term capital gain or loss no matter the actual holding period of the call, calculated as the difference between the premium already received (potentially treated as the gross proceeds minus a commission even though received first in the transaction) and the close out call purchase proceeds minus any commission (not really a cost basis in the calculation, but treated like a cost basis in the calculation process).

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- **Recommend:** Require 1099-B reporting of the actual gain or loss on expiration or buy back of the call and not require reporting of separate proceeds and basis information as technically there is none. There is no recognized cost basis in expiration or in entering an offsetting position so to report as "0" in a lapse or to place the cost of the offsetting position in the "basis" calculation could cause a great deal of confusion. Character of gain or loss to be reported is always short-term.

IRPAC believes the reporting should be consistent for all options: either report the proceeds and basis separately for all options using "0" where a component is missing or only report the gain or loss from the transaction.

**Write (sell) put and receive a premium:** the writer of a put has agreed to buy stock for a fixed price (the "strike" price) over a fixed period of time at the holder's option and takes back a premium that is held in a deferred account until the position closes. Close out through:

- **Put expires unexercised:** The premium held in the account is the gain on the closing event and it is always short-term gain. There is no cost basis posted to the account.
- **Closing (buying back the put or entering an offsetting position):** To close out a writer's put, the writer usually enters into the market and purchases a put on the very same stock for the same strike price over the remaining open period of the original put. The writer always has short-term capital gain or loss no matter the holding period calculated as the difference between the premium already received (potentially the gross proceeds minus a commission) and the cost of the close out put purchase minus any commission (not really a cost basis in the calculation, but treated like a cost basis in the calculation process).

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- **Recommend:** Require 1099-B reporting of the actual gain or loss on expiration or buy back of the put and not require the separate reporting of proceeds and basis information as technically there is none. There is no recognized cost basis in expiration or in entering an offsetting position so to report as "0" in a lapse or to place the cost of the offsetting position in the "basis" calculation could cause a great deal of confusion. Character of gain or loss to be reported is always short-term.

IRPAC believes the reporting should be consistent for all options: either report the proceeds and basis separately for all options using "0" where a component is missing or only report the gain or loss from the transaction.

**Exercises of options:** The holders have the right to exercise the option and when they do the writers (sellers) must comply. Where the holder exercises, the reporting of the option will need to be as part of the 1099-B reporting of the ultimate disposition of the security acquired or sold pursuant to the option's exercise for both the holder and the writer. 1099-B timing needs to relate to the underlying security.

- **Enter position through buying (holding) call:** Holder exercises the call to buy the stock. The premium paid for the call is added to the purchased stock's basis. IRPAC believes that no 1099-B reporting should be required until the acquired stock is later disposed of at which point the basis reported for the sold stock will reflect the purchase price of the call.
- **Enter position through buying (holding) put:** Holder exercises the put and sells shares based on put price. The present tax accounting requirement for the investor is to calculate gross proceeds from stock sale pursuant to the put by reducing the actual gross proceeds

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by the put premium paid. IRPAC believes that this net amount is what should be required to be 1099-B reported as the proceeds from the sale of the stock. Look to holding period of stock for short- or long-term character of the gain or loss.

- **Write (sell) covered call and receive a premium:** Where the option is associated with a position in the account, the option is considered to be "covered." "Covered calls" are frequently written by shareholders to maximize the yield in their investment. When the call is exercised, the holder of the call buys the stock from the writer who is required to sell it. Writers then add the premium they received from writing the call to the gross proceeds received from the stock sale. The total amount (premium plus sales proceeds) should be the gross proceeds reportable on Form 1099-B. Currently this is already an optional reporting event on Form 1099-B for these premiums. See instructions to line 2 of the 1099-B regarding the check box on the present version of the form. Short-or long-term character depends on stock holding period.

IRPAC recommends that the optional method for reporting these premiums now allowed on the 1099-B be the required method for reporting exercised covered calls under the new law.

- **Write (sell) put and receive a premium:** When the put is exercised, the holder of the put sells the stock to the writer who is required to buy it at the price agreed in the option. A writer required to buy the stock, subtracts the premium received from writing the put from the cost basis paid for the stock. IRPAC believes that no 1099-B reporting should be required until the acquired stock is later disposed of at which point the basis reported for the sold stock will reflect receipt of the premium received for writing the put. The stock holding period begins on date is stock purchased pursuant to the put and does not include the period the put was outstanding prior to exercise.

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**Wash sale impact on options:** Generally, when an investor sells stock options at a loss and within 30 days before and 30 days after the date of the sale, exchange or termination, purchases stock of the same corporation; the loss is allowable unless the stock options are considered "substantially identical property" to the shares of the stock. We note that under IRC §6045(g), the reportable adjusted basis is determined without taking into account the wash sale rules under §1091 unless the acquisition and sale transactions resulting in a wash sale occur in the same account and are in identical securities (rather than substantially identical securities). Even if options are held in the same account with stock that is the subject of the option, the option will not be identical to the stock and thus wash sale consideration is not required in developing reportable information on Form 1099-B. There will be a variance between the investor's requirements in filing his or her Form 1040 and the amounts reportable on Form 1099-B.

**Recommendation:** Brokers should not be required to link option activity in an account to any activity in the underlying security.

**The short sale rules** apply only where a put is purchased giving the owner the right to sell substantially identical property to that which is already held by the investor. The short sale restrictions generally do not apply if the investor is writing a call. However, technically the acquisition of a put is a short sale and the exercise, sale or expiration of the put is a closing of the short sale. The short sale rules stop the running of any holding period in the substantially identical property held by the investor, and forces short term gain treatment if stock held is short-term unless the put and identified stock are acquired on same day. IRPAC believes that most brokers will not be able to consider the impact of put acquisitions in calculating the holding period of any other stock positions held.

**1256 contracts:** In Rev. Rul. 94-63, the IRS has determined the circumstances under which stock index options would be treated as "Sec. 1256 contracts" where the trading is permitted by the Securities and Exchange Commission but the Commodity Futures Trading Commission has not designated a market for a futures contract based on the stock index. Options based on a stock index that are traded on, or

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subject to the rules of, a qualified exchange would be treated as "Sec. 1256 contracts" if (1) the options provide for cash settlement and (2) the SEC has determined that the *stock index is a "broad-based" index*. Further, the IRS determined that warrants will be treated as options based on a stock index if they are, economically, substantially identical in all material respects to options based on a stock index. Most brokers are currently reporting gross proceeds in Box 2 of Form 1099-B from the sales of broad based index options and warrants when recognized as such, but are not able to report based on the mark-to-market rules that control reporting using Boxes 8-11 of Form 1099-B due to system incapacities. For the most part, only commodity houses or financial conglomerates with commodity operations as part of their businesses have the ability to report using these boxes.

**Recommendation:** IRPAC believes that the generic reporting structure outlined above should not apply to these options and that use of Box 2 should be sanctioned as the reporting method rather than the mark-to-market reporting required for other 1256 contracts. These securities are widely held through many financial industries. The mark-to-market reporting has been developed for the most part only by those that serve the commodity industry. IRPAC also believes that cost basis reporting for these securities should respect the difficult 1256 contract nature of their character and basis information should only become reportable when the Secretary develops the protocols and determines their reportability for this purpose, no earlier than on or after Jan. 1, 2013. [IRC §6045(g)(3)(B)(iv)]

**Investment units:** Rev. Rul. 88-31 provides that if a corporation issues an investment unit consisting of a share of common stock and a contingent payment right, the value of which varies inversely with the value of the stock, the contingent payment right is a cash settlement put option. Shares of common stock become subject to basis reporting in 2011, but options are not reportable until 2013. The IRS has authority to extend reporting requirements under IRC §6045(g) for any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate to when the Secretary determines but no earlier than on or after Jan. 1, 2013. Presently, reporting in the industry is inconsistent on these securities for many reasons including their difficulty in identifying as there are no dedicated CUSIP ranges, and even more difficult in gaining issuer information of their tax character.

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	<p><b>Reverse convertibles:</b> Similar to Investment units these are composed of a deposit and sale of put option. The deposit earns interest. The put option creates periodic option sale premium income to the investor. The reverse convertible may redeem for the original investment amount if the indexed security does not fall below a certain level or rises. In this case of cash redemption the option premium represents a short term capital gain. Alternatively the reverse convertible converts to a common stock in which case the option premium received becomes part of the cost basis of the stock. The option premium may be paid monthly or quarterly but is paid in combination with interest as one payment. As a consequence of receiving one income payment transaction that represents both interest and put option premium, brokers must allocate the payment to properly account for income and basis adjustment. Capabilities vary within the industry on whether this allocation occurs with each payment, at maturity or following year-end. These and other "hybrid" securities present very challenging processing issues without uniform processing procedures in the industry.</p> <p><b>Recommendation:</b> IRPAC recommends respecting these securities under IRC §6045(g)(3)(B)(iv) as "other financial instrument(s)" with respect to which the Secretary needs to determine proper protocols before basis information becomes reportable, no earlier than on or after Jan. 1, 2013.</p>	
	<p>When reporting requirements for Widely Held Fixed Investment Trusts (WHFITs) are in effect for 2009, it is understood that there will be approximately 1 million + assets falling under these rules. Separate tax reporting rules now in place for WHFITs were designed to facilitate basis information for investors. Guidance is needed that aligns the present new reporting regime with the new basis reporting requirements and consideration needs to be given to the timing now in place for issuers to provide the needed information. Complete exemption should be considered from the basis reporting rules.</p> <p>IRPAC also believes that other forms of investments should be exempted from the basis reporting rules, such as investments in partnerships and S-corporations (even</p>	<p>WHFITs and other difficult investments for basis tracking (new topic)</p>

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		<p>though a 1099-B may be required to report the disposition of the investment). Calculating a correct basis would require brokers to have access to the investor's Schedules K-1 every year and perhaps to hire a tax accountant to perform the calculations. Basis tracking in these investments should remain with the investor and his or her tax advisor.</p> <p><b>Recommendation:</b> IRPAC recommends respecting these securities under IRC §6045(g)(3)(B)(iv) as "other financial instrument(s)" with respect to which the Secretary needs to determine proper protocols before basis information becomes reportable, if at all, and under no circumstances earlier than on or after Jan. 1, 2013, even if the only assets in the pass-through vehicles are equities or debt instruments.</p>
<b>Issuer Reporting</b>		
	<b>Issue From IRS</b>	<b>Response</b>
<p>29</p> <p>How to account for basis-changing organizational actions by foreign issuers of securities to the extent that foreign issuers are not subject to the issuer reporting requirements</p>		<ul style="list-style-type: none"> <li>• In order to promulgate consistency the IRS should issue guidance to brokers on their actions if the parties to a merger do not provide advice within a certain timeframe. We would recommend that corporate actions where no advice has been given by issuers should be treated by brokers as non taxable, non-reportable transactions without impunity and the basis information on file prior to the transaction should be transferred over to the new position. There needs to be a designated fallback position that is easy to code and apply should there be no instructions from the issuer.</li> <li>• IRPAC suggests: If cash and securities are received in exchange for existing position, cash should be reported on Form 1099-B as gross proceeds from the disposition of the existing security, used to reduce the basis of the existing security with the result carried over as the basis of the new security. Holding period of original position would also carry over to new position along with the adjusted basis.</li> <li>• If a security that is restricted from trading is received in the transaction, basis should also simply transfer prorata.</li> </ul>

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<ul style="list-style-type: none"> <li>• "Account" is a term of art and its use can vary from one industry to another. In the mutual fund industry, investment in each separate fund is a separate account. This limitation results in an account only holding shares in a specific fund. Looking to the terms of legislation, applying a single method of calculation or the wash sale rules to the "account" is simpler since restricted to only investment in one fund unless the account holds "covered" and "uncovered" shares. §403(b) of the Energy Improvement and Extension Act of 2008 contemplated resolution for mutual funds of the covered and uncovered matter by allowing an election on the part of the fund to treat the uncovered shares as covered shares held in a single account.</li> <li>• For brokerage and banking firms, the term "account" has a much broader meaning. An account can hold many different investments, including multiple mutual funds, equities, and fixed income and in each case contain covered and uncovered securities. Many financial services can provide for averaging for a fund, for example, and tax lot accounting for other positions held in the same account. With the entry of a DRIP into the equation, where the firm can support a DRIP, the cost basis system may allow for averaging of the position where the investor has elected the DRIP feature, and tax lot accounting for other equity positions held in the same account. From a substantive tax standpoint, this is totally allowable. We note that §403(c) of the Energy Improvement and Extension Act of 2008 contemplated resolution for DRIPS with covered and uncovered shares by allowing for a similar election to that allowed for mutual funds to treat the uncovered shares as covered shares held in a single account. This feature, however, will not address covered and uncovered securities held in the same account not part of a DRIP.</li> <li>• Most brokers and banks are prepared to handle wash sale rules for all identical securities held in the same account and the generally understood definition of single account may not pose serious concern in this application. However, to impose a restriction that would force separate accounts for securities that are subject to tax lot from those mutual funds where averaging is being used would pose hardship. Accounts are set up to allow for sweeps of free cash into funds held in the same account. Those funds are not always non 1099-B reportable</li> </ul>	
	<p>New Topic : term and meaning of "account" used in IRC §6045(g) and (h)</p>

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<p>money market funds. An imposition of a rule that would disallow the investments in the same account from having multiple tax basis calculation methods could cause harm to the capital market structure surrounding the accounts and have the unwarranted effect of reducing investment.</p> <ul style="list-style-type: none"> <li>• We suggest that consideration be given of reading this restriction regarding multiple methods of calculation in the same account as meant to apply to the same position (same CUSIP number) rather than all securities in the same account. The better read is to restrict multiple ways of calculating basis to the same position in the same account similar to the application of the wash sale rules to identical securities held in the same account. Certainly it makes sense not to allow tax lot accounting of the same identical equity where other shares of that equity are averaged as part of a DRIP investment in the same account. The statute uses the broad term "account" in a simple context when it may actually mean security position. We note that there is concern that needs to be resolved in allowing DRIP investments to be averaged and not also allow general purchases upon which the DRIP is based to be averaged with the DRIP investments. We note that §403(c) of the Energy Improvement and Extension Act of 2008 contemplated resolution for DRIPS with covered and uncovered shares by allowing for a similar election to that allowed for mutual funds to treat the uncovered shares as covered shares held in a single account. We believe it best if the entire position no matter how the shares are acquired if part of a DRIP plan be averaged. See #8-11 in our chart attached to our letter on this subject dated March 2, 2009.</li> </ul>	
<ul style="list-style-type: none"> <li>• Many times if the account had a DRIP such dividends are reinvested pursuant to the DRIP and then sold to cash out and effect full account closure.</li> <li>• As discussed in our June meeting, IRPAC believes there should be exceptions to wash sale rules, to basis averaging requirements, and to transfer statement calculations when accounts are closed with dividends still owed. Where such shares are later sold, reported basis should be the cash paid for the shares. If instead the shares are transferred, the transfer statement should only contain the actual cash purchase price as basis. It is important to note that wash sale application is unfair to an investor who technically has</li> </ul>	<p>New topic: No lookback or forward adjustments when an investor closes an account with dividends due to be paid after closure which are reinvested pursuant to a DRIP still active in the closed account.</p>

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		no control over how these amounts are treated after an account is closed.
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