

Richard Ryndak
Senior Product Manager

John Kareken
Senior Analyst



Top Ten Corporate Actions of 2011

January 26, 2012

Capital Changes

Copyright 2012 by Wolters Kluwer Financial Services.
Redistribution without written permission prohibited.

Richard Ryndak

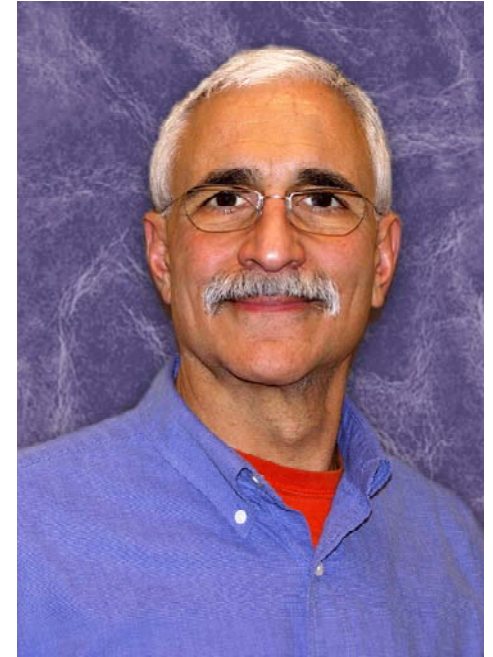
Richard is the Senior Product Manager of Capital Changes. Before assuming that position, he was in charge of Capital Changes international content. Richard started with Wolters Kluwer Financial Services in 1997 as an editor in the international tax department. Before then he practiced law for 15 years, both in small firms and as in-house counsel for several multinational corporations.

Richard is a regular speaker at industry events and has published articles on tax and legal issues as well as corporate actions.



John Kareken

John is a Senior Tax & Regulatory Analyst, Capital Changes. John has been with Wolters Kluwer Financial Services since 2001. Previously, he was in charge of the legal research department of a major title insurance company and practiced law in the Chicago area.



Introduction

How the list was compiled

- Input from securities industry professionals
- Consideration of events
 - Especially challenging or unusual
 - Illustrating common problems
 - Involving widely held securities

What to expect from this presentation

- Quick overview of issuer statements
- Focus on top 3 transactions and summarize remaining 7
- Submit your questions/comments and we will respond in the days following the presentation

Special Consideration:

Wolters Kluwer Financial Services does not provide tax advice. The information in today's presentation is not and therefore should not be construed as tax advice

Top Ten Corporate Actions for 2011

Top U.S. Transactions

- American International Group (Warrant Distribution)
- General Motors (Bankruptcy)
- Motorola (Spin-off of Motorola Mobility Holdings)
- Genzyme Corp. (Merger Into Sanofi)
- Alkermes, Inc. (Merger Into Irish Holding Company)

Top International Transactions

- Alcon (Merger Into Novartis)
- Western Copper Corp. (Plan of Arrangement)
- Brookfield Office Properties (Rights Offering)
- New Flyer Industries (Rights Offering)
- Telecom Corporation of New Zealand (Demerger of Chorus Ltd.)

Issuer Statements - New For 2011

- Issuers must report on any corporate action that has a quantitative effect on basis
- Deadline for all 2011 issuer statements was January 17, 2012
- Flood of new issuer statements since then - both US and foreign
- Only 4 out of top 10 have posted issuer statements so far
- Why is this important?
 - Brokers must take into account all information furnished on an issuer statement
 - Issuer statements are hard to find and hard to decipher
 - Capital Changes is developing new service to analyze and report issuer statements
- White paper on issuer reporting will be available soon

American International Group (AIG)

- AIG gets U.S. assistance in TARP program; in debt restructure U.S. gets preferred stock and warrants for common
- Jan 2011 Distribution of warrants to holders of common stock
 - Jan. 19, 2011, 0.533933 AIG warrant per AIG common share held
 - 10 year warrant exercisable for AIG common at \$45 per share
 - FRB NY, Treasury, AIG Credit Facility Trust did not receive these warrants
 - “According to Treasury officials, the warrants were issued to address the AIG board ... desire to compensate existing shareholders for the dilutive effect of the recapitalization plan. (GAO report 7-18-2011)
- **ACT I: Taxable? Nontaxable? (Both?) (Neither?)**
- March 4 issuer statement: Treating distribution as dividend; If subsequently determined that not a dividend, company will publicly announce determination
- Effect on Basis: Unless, prior to Form 1099, company determines distribution is not taxable, it intends to report as taxable dividend distribution in amount [and basis] of \$16.29 / warrant. If determined nontaxable, basis of common allocated in proportion to market values as of distribution (16.331455% to warrant)

American International Group

- **ACT II (or intermission?): 2011 Watch Wait Speculate**
- “How those warrants will be taxed is a puzzlement ...”
 - Barrons, Speaking of Dividends (6-20-2011)
 - Seems to depend ... on whether AIG takes additional federal assistance and issues class G preferred to U.S. If not issued, not dividend
- Sec. 305 - Distribution of stock or warrants **treated as dividend if** results in (a) receipt of money/other property by some shareholders and (b) increase in proportionate interests of others in assets or earnings and profits (disproportionate distribution)
 - Other exceptions; receipt of preferred by some common holders, common by others
- **Sec. 301 - Distributions of property**
 - Distribution by corporation with respect to its stock of property (money, securities or other property)
 - Amount taxable: amount constituting dividend includible in income
 - Taxable as dividend income to extent of earnings and profits, then as return of capital in reduction of basis (but not below zero), and thereafter as capital gain (exchange)

American International Group

- **ACT III: (12-29-2011)** Announced that IRS ruled “the issuance ... does not qualify as a tax free stock distribution. However, based on available information and under the rules of the [IRS Code], AIG expects that the distribution of the warrants will not be taxable (except to the extent that a holder's adjusted tax basis in each common share on which the warrants were distributed is less than \$8.70)”
 - No implication should be drawn with respect to AIG 2011 4th Q or annual results from tax treatment of warrants (results 2-23-2012)
- Income (loss) per common share (diluted) through 3rd Q:
 - Continuing operations income (\$2.37)
 - Discontinued operations \$0.78
- **Impact on Equity Units AIG PR A (forward contract for common + debt)**
 - Anti-dilution adjustment to settlement rate of unit
 - Taxable distribution if warrants treated as taxable
 - Return of capital treated as capital gain because forward contract has zero basis to initial issuance purchasers

Alcon - Switzerland

- Novartis and Alcon had complementary product portfolios covering more than 70% of global vision care sector (pharmaceuticals, surgical products, contact lenses and OTC brands)
- Novartis entered into agreement with Nestle resulting in
 - 2008 purchase of 25% stake in Alcon
 - 2010 exercise of call option for remaining 52% stake in Alcon
- In April 2011 Novartis acquired remaining 23% of Alcon under Swiss Merger Act
 - Note: dates are relevant for US tax treatment
- Shareholders received
 - 2.9228 Novartis registered shares or ADRs
 - \$8.20 cash

Alcon - Swiss Tax Considerations

- Cash payment subject to Swiss withholding tax
 - Stock consideration (important for US tax purposes):
 - Increase in nominal value of Novartis shares over Alcon shares also subject to Swiss withholding tax
 - Paid by Novartis on behalf of non-Swiss shareholders
 - Increase in nominal value:
 - Alcon share nominal value (CHF 0.20)
 - Novartis share nominal value (CHF 0.50)
 - 2.9228 Novartis shares paid per Alcon share held
 - Nominal value of 2.9228 Novartis shares CHF 1.4614
 - **Increase in nominal value = CHF 1.2614**
 - Novartis paid approximately 153.8% of increase in nominal value (approximately CHF 1.94 or about \$2.17)
 - US shareholders may be entitled to partial refund of Swiss withholding tax paid
- Caution: Amounts above are estimates - for illustration only!**

Alcon - US Tax Considerations

- Company was uncertain about US tax treatment - whether (a) 2008 acquisition of 25% and (b) 2010 exercise of call option for 52% be integrated with (c) 2011 merger of remaining 23%
 - If integrated, not sufficient continuity of interest - merger would be taxable
 - If not integrated, e.g. because of intervening 3 years, merger would be nontaxable
 - Company opted to treat merger as integrated, i.e. taxable
- If merger was taxable: Holders recognized capital gain or loss on difference between basis in Alcon shares surrendered and total consideration received, i.e.
 - FMV of Novartis shares received
 - USD value of gross amount of cash received (without reduction for Swiss withholding tax)
 - USD value of Swiss withholding tax paid by Novartis on behalf of holder
- *Assuming* amounts and calculations on previous slide are correct:
 - US taxpayers must include approximately \$2.17 per share as additional consideration received for purposes of computing capital gain or loss

Old General Motors (Motors Liquidation)

- Chapter 11 bankruptcy: Filed June 2009
- July 2009 court approves sale of General Motors Corp. assets to new General Motors Co. (New GM) which assumes certain liabilities and leases
 - Old GM renamed Motors Liquidation Co. market effective 7-15-2009
 - Motors Liquidation holds 10% General Motors common and warrants exercisable for 15% of General Motors (class A \$10 and class B \$18.33 exercise)
- Equity holders get nothing;
- **GUC Trust** administer claims/litigation; distributions to Class 3 debt claims
 - No transferable units issued. Class 3 holders retain contingent right to receive distributions of common and warrants not required for satisfaction of disputed claims
- Sec. 368(a)(1)(G) reorganization: Transfer by corporation of assets to another corporation in bankruptcy or similar case . . . followed by distribution of stock/securities, under court-approved reorganization plan, of corporation that acquired assets in transaction under Sec. 354, 355, or 356

Motors Liquidation

- March 2011 Motors completed reorganization and distributes stock and two classes of warrants to debt holders (Class 3 General Unsecured Claims)
- **Distributions** - April (initial), July (1st Q), Oct. (2nd Q)
 - First largest (75.5% distributable assets); smaller ones July and Oct.
 - Jan. 2012 was to be 3rd Q distribution; holdbacks kept distributable assets under threshold
 - Opinion not specific on taxability of stock and warrants; generally treated as nontaxable because claims treated as securities
 - Problem of allocation of basis to stock and warrants
 - Based on relative fair market values
- Basis allocated in first distribution; Question how to account for subsequent distributions
 - Could reallocate some basis to subsequent distributions or subsequent distributions could be zero basis.
 - Reallocation difficult because original stock and warrants received could have been sold, and many accounts hold
- Different solutions implemented
 - Reapportionment of basis when new distributions were received
 - Retention of initial allocation and zero basis to subsequent distributions

Motors Liquidation

- Per \$1000 principal amount 9.4% debentures
 - April 2011: (a) 3.927557 stock (b) 3.570507 warrants (c) 3.570507 warrants
 - July 2011: (a) 0.107261 stock (b) 0.097509 warrant (c) 0.097509 warrant
 - Oct. 2011: (a) 0.079757 stock (b) 0.072507 warrant (c) 0.072507 warrant
 - First distribution about 95.5% of total so far
- \$278.65 Total market values of distributions (approximate)
 - April 268.07 96.20%
 - July 6.34 2.28%
 - Oct. 4.24 1.52%
 - July stock value $3.06/6.34 = 48\% \times 2.28\% = 1.09\%$
- 12-15-2011 Certificate of Dissolution filed with Delaware Secretary of State
- GUC Trust Agreement - Administrator has responsibility for claims not concluded
 - Trust winds down company; resolution of disputed administrative expenses, priority tax/non-tax claims and secured claims against company and subsidiaries
- Company and subsidiaries transferred to Trust \$43,378,627 cash and remaining undistributed common and warrants (SEC 8-K 12-21-2011)
 - 30,967,561 shares and 28,152,186 of each warrant class

Western Copper - Canada

- In October 2011, Western Copper spun off two new companies
 - Copper North Mining Corp., which took control of the Carmacks Copper project and the Redstone deposit in the Northwest Territories, and
 - NorthIsle Copper and Gold Inc., which took control of the Island Copper Project on Vancouver Island
- Western Copper also changed its name to Western Copper and Gold Corporation which continues to trade under the same symbol (WRN) on both the Toronto Stock Exchange and the Amex on the New York Stock Exchange
- Under Plan of Arrangement shareholders received
 - 1 share Western Copper and Gold Corp. common (formerly Western Copper Corp.)
 - 0.5 share Copper North Mining Corp. common
 - 0.5 NorthIsle Copper and Gold Inc. common

Western Copper - US Tax Consequences

- Key consideration: Western Copper, Copper North and NorthIsle Copper were and expected to continue to qualify as PFICs
- Reorganization: Western Copper into Western Copper and Gold Corp probably tax-free reorganization
- Distribution: Taxability of distribution of Copper North and NorthIsle Copper is uncertain, but was probably taxable because both companies probably were not engaged in active trade or business for 5 years
- Assuming distribution does not qualify as a reorganization under Sec. 355
 - Normally, FMV of shares received taxable as a dividend
 - However, PFIC rules trump usual tax treatment, i.e.
 - Value of distribution prorated over entire holding period during which Western Copper was a PFIC
 - Taxed at highest rate for ordinary income for such year
 - Plus interest on value of distribution allocated to years before 2011
- **Caution: All three companies probably continue to be PFICs, subject to adverse tax consequences**

Motorola

- **Distribution** of Motorola Mobility Holdings common to holders of Motorola, Inc.
- **Name change/reverse split:**
 - Distribution 6 a.m. (ET); At 6:15 a.m. **Motorola changed its name to Motorola Solutions, Inc.** [NYSE: MSI] and 1-7 reverse split
- Motorola Mobility merging into Google; merger requires legal opinion that merger does not affect spin-off tax
- Basis allocation (Capital Changes) 1-4-2011 average
 - 1 share Motorola Solutions 57.6944%; 0.125 share Motorola Mobility Holdings 42.3056%
 - Company allocation 1-4-2011 opening; 57.75% and 42.25%
 - Motorola Solutions prices post-reverse split; divided by 7 for pre-reverse split price
- **Year(s) of the Spin-Off**
 - Expedia and NTELOS (1-2 reverse split before spin-off); Fortune Brands (now Beam), Marathon Oil; etc.; More to come - Kraft, P&G/Pringles, Abbot Labs
- Sec. 358(b)(1): Basis allocated under regulations among nonrecognition properties
- 358(b)(2): For Sec. 355 distributions, take into account property received, but also stock of distributing corporation
- Sec. 358(c) - 355 Transactions Which Are Not Exchanges
 - Treated as exchange; retained stock of distributing corporation treated as surrendered and received back in exchange

Brookfield Office Properties - Canada

- Rights offering
 - 1 right issued per Brookfield Office Properties Inc. common held
 - Each right exercisable for purchase of 0.1024 share Brookfield Residential Properties Inc. common at \$10
 - Rights offering made in connection with merger of Brookfield Homes Corp. [NYSE: BHS] into Brookfield Residential Properties Inc. on 3-31-2011
- Rights offerings are normally nontaxable ... however
- Here, rights are exercisable for common different than common on which rights were distributed
- Rights traded on NYSE (\$0.0925) and TSX (\$0.0775)
- FMV of rights received taxable as a dividend in US and subject to Canadian withholding tax

- **UPDATE:** Company reports common share distributions paid to US shareholders should be treated as a return of capital. However, company determined that rights had no value at time of issue, and therefore is not required to provide an issuer statement

Genzyme Corp.

- Genzyme Corp. merges into subsidiary of Sanofi-Aventis, French company.
 - \$74 cash AND 1 Sanofi-Aventis contingent value right (CVR) [NASDAQ: GCVRZ]
 - CVR: Cash payments on achievement of certain milestones (production levels, regulatory approval, certain net sales thresholds)
 - Outstanding until 12-31-2020; redeemable under certain circumstances
 - Sanofi SEC 6-K 7-28-2011: Does not expect 2011 CVR milestone will be met
- Capital gain or loss equal to cash + FMV of CVRs - basis
 - CVR fair market value (about \$2.35) is basis; New holding period
 - No French withholding tax (unless law changes) on delivery of cash or CVR
- **Future payments on CVR:** No direct authority exists
 - Portion of payment may be imputed interest / ordinary income under Sec. 483
 - unstated interest rules; impute interest income on payments for sale/exchange of property due > 6 months afterward if any payments are due > 1 year after
 - Probably nontaxable return of basis; After basis recovered, additional payments taxable; Uncertain whether capital gain or ordinary income
 - Loss if payments less than basis (probably capital loss)

New Flyer Industries - Canada

- New Flyer Industries (NFI) wanted to change its corporate structure
 - From IDS structure (income deposit securities) trading as stapled securities consisting of:
 - One common share of NFI and
 - \$5.53 principal amount of 14% subordinated notes
 - To common share structure
- Corporate action consisted of:
 - Proposed amendments to note indenture
 - Non-cash rights offering
- Pursuant to rights offering
 - Each right entitled holder to acquire 9 shares NFI common
 - Each right exercisable on delivery of \$5.53 principal amount of notes
 - Rights not exercisable for cash or any other consideration
- US tax consequences:
 - Proposed amendments to note indenture - no material tax consequences
 - Distribution of rights - nontaxable
 - Exercise of rights - **taxable sale of subordinated notes**
 - Amount realized based on value of common received

Alkermes

- **Merger into new Ireland holding company Alkermes plc** created by Elan Corp. PLC to sell Elan drug technology business unit to Alkermes
- Taxable (gain or loss) exchange of Alkermes stock for holding company stock
 - Basis = fair market value; new holding period
- Former shareholders of Alkermes own approximately 75% of Alkermes plc
 - Alkermes plc should not be treated as U.S. corp. under Sec. 7874
- Company noted possible (not expected) application of Sec. 367 inversion rules
 - No loss; Gain = FMV over basis; Basis increased by gain; Carryover holding period
- 1-18-2012 Jazz Pharmaceuticals merger into Azur PLC (Ireland) (New Jazz); Sec. 368(a) reorganization subject to 367(a) / no loss rule
 - Jazz Pharma holders own just under 80% of New Jazz after pre-merger changes to New Jazz capital structure
- Coming in 2012 - Aon Corp. to U.K.; expected to be Sec. 367(a) taxable
 - *Big tax hit if Aon exits* (Chicago Tribune 1-20-2012)

Telecom Corporation of New Zealand

- Telecom Corporation [NYSE: NZT] demerged Chorus Ltd. pursuant to scheme of arrangement
 - Demerger is essentially equivalent to spin-off
- Shareholders received 0.2 Chorus ordinary or ADR per share of Telecom Corporation
- Nontaxable for US shareholders, company's basis allocation:
 - 1 Telecom share 75.17%
 - 1 Chorus share 24.83%
 - Company used volume weighted average prices on NZX over 5 days
- Issuer statement, and basis allocation, provided on December 2 - two days after effective date
- **Note: Telecom gets high marks for prompt basis allocation and issuer statement**

Questions?

Considerations

- Wolters Kluwer Financial Services does not provide tax advice. You should consult your own tax advisers and they (and not Wolters Kluwer Financial Services, Capital Changes or GainsKeeper) are solely responsible for any tax, tax penalties or interest related to their tax returns.

For More Information

Capital Changes Offerings

- Please visit www.capitalchanges.com or call 800-472-1009 and select option 2 to learn how we can help you with your complex cost basis tracking and objective tax analysis needs on a wide variety of corporate actions

Wolters Kluwer Financial Services

- Please visit www.wolterskluwerfs.com to learn more about Wolters Kluwer Financial Services.

Learn more about the cost basis law at
www.costbasisreporting.com