

June 29, 2007

Dear Mr. Sullivan and Mr. Davis:

GainsKeeper and CCH Capital Changes Reporter, divisions of Wolters Kluwer Financial Services, appreciate the opportunity to comment on the cost basis reporting proposal released by the Senate Finance Committee and the related technical explanation prepared by the Joint Committee on Taxation on May 25, 2007 (the "Proposal"), that would require brokers to report to the Internal Revenue Service and to investors the adjusted basis of publicly traded securities that are sold during the preceding year.

GainsKeeper provides award-winning tax lot accounting automation and basis tracking to mutual funds, brokers and individual investors through its FundTax, GainsKeeper and BasisPro software products. These products provide or take into account adjustments to basis for corporate actions and wash sales in computing capital gains and losses. GainsKeeper introduced the first fully automated tax lot accounting product to retail brokerages in January 2000. GainsKeeper provides cost basis and tax gain and loss computation software for several leading electronic brokerage firms and tax return software companies, currently provides wash sale reporting to 25 fund companies, 1,500 funds, and has processed wash sales successfully for customers involving close to 5,000 tax years. GainsKeeper also provides additional tax reports including QDI, DRD, REIT and custom reporting.

The CCH Capital Changes Reporter is the longstanding leader in providing tax information on corporate actions. It includes a database of more than 100,000 corporations and spans corporate action events over 100 years. A daily web version of the reporter, CCH Capital Changes Daily, provides a comprehensive, fully searchable source for current corporate action reporting. In addition to detailed tax information and analysis, including basis factors and fair market values, it provides timely and concise summaries –updated daily— of spin-offs, mergers, exchange offers, reorganizations, bankruptcies, stock dividends, splits and other corporate actions affecting publicly traded securities of both U.S. and foreign companies.

We understand that the securities industry strongly supports efforts to close the tax gap, and as a provider of tax lot accounting software solutions and corporate actions information to this industry, we are also committed to working with your Committee as you consider new basis reporting requirements. We would like to thank you, your staffs, and other congressional staffs involved for your focus on tax simplicity and the details of cost basis reporting.

General Comments

We are aware of general concerns raised regarding the scope of the Proposal and we understand the potential complexities in applying cost basis reporting to securities such as partnership or trust interests, options and other derivative financial instruments. We are also sensitive to concerns raised relating to the relatively short period contemplated between enactment and effectiveness of the Proposal. It could be difficult to approve and implement software systems within an 18-month period. Moreover, it seems that the actual implementation period could be dramatically less given that certain key aspects of

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the Proposal will likely be addressed in future Internal Revenue Service regulations. We expect that these and other general comments will continue to be raised by others. However, we would be pleased to discuss our own perspectives on such general matters if helpful.

Specific Comments

Our specific comments set forth below are not intended to be comprehensive but rather focus on certain concerns we have identified relating to the Proposal.

1. Reporting of corporate actions where the tax consequences are unclear or presented in the alternative

The Proposal includes new information reporting requirements that would apply when issuer actions affect basis. An issuer would need to provide the quantitative effect on basis of a security resulting from the issuer action.

Currently, issuers of publicly traded stocks and securities provide varying levels of information to holders regarding the tax consequences of various corporate actions. Some do not provide any information regarding the tax treatment of a corporate action. In other cases, tax treatment may be presented in the alternative. For example, it may be unclear whether a transaction qualifies as tax-free reorganization. Or it may be unclear whether a distribution constitutes a dividend or part of merger consideration. The general reason for the presentation of alternative tax treatment or the failure to state definitive tax treatment of a corporate action may be due to uncertainties relating to substantive federal income tax law issues for financial instruments or the tax law for various corporate actions such as corporate tax rules for distributions and reorganizations.

Moreover, the tax consequences of reorganizations or other actions involving entities other than corporations such as partnerships or trusts may involve greater uncertainties. Similarly, there may be little, if any, guidance relating to the tax consequences of various actions on financial instruments other than stock or debt such as options or financial derivatives.

The Proposal does not address uncertainties in substantive law. Thus, in its current form, the Proposal's information reporting requirement could be viewed as forcing issuers to make determinations that go beyond what is supported under the substantive law. This could be particularly troubling given the application of penalty standards to issuer reporting under the Proposal.

Nevertheless, regardless of whether tax positions are presented by an issuer in the alternative, not presented at all, or disclosed by the issuer as uncertain, custodians, other record keepers and ultimately taxpayers are essentially forced to take a position regarding the tax treatment of a corporate action event. This is because the corporate action must be reflected or "booked" in the records relating to holders' securities positions and it is not practical to leave such positions open or unresolved due to complexities raised in a tax opinion.

One comment here is that the Proposal should address the difficulty in reconciling the Proposal's mandatory basis effect reporting requirement for issuers and the correct

information requirement applicable to information returns with the uncertainties of the related substantive tax law, particularly given the proposed penalty risk to issuers. This could be done by making it clear that in the cases where the issuer cannot give a more likely than not tax opinion relating to a corporate action event, an issuer could be treated as correctly reporting a corporate action's quantitative effect on basis under a "best efforts" standard. As a related matter, we recommend that issuers should indicate—based on some specified standard—in issuer action reports to holders and the Internal Revenue Service whether the lower best efforts standard was used. This approach could facilitate alternative reporting by holders in certain cases or further scrutiny of certain actions by the Internal Revenue Service. Examples of similar consistency/exception concepts are currently set forth in Internal Revenue Code Section 385(c) and Internal Revenue Service regulations regarding various rules relating to original issue discount.

2. Reporting of foreign corporate actions

The Proposal provides that a security issued by a foreign entity is subject to cost basis reporting if the security otherwise meets the applicable requirements.

U.S. taxpayers currently hold a range of securities issued by foreign entities. Some are held in the form of American Depositary Receipts (ADRs). Others are held directly, having been purchased on various non-U.S. stock or securities exchanges that exist throughout the world. Direct purchase may occur by U.S. taxpayers even though non-U.S. exchanges typically have a variety of exchange or local law restrictions that may limit the purchase of securities by U.S. investors.

It is the exception to the rule for issuer press releases and offering materials concerning foreign entity corporate action events to include any U.S. tax information regarding the tax consequences of the corporate action, particularly for securities traded on non-U.S. exchanges. Translation, local country conventions and issuer access can make it extremely difficult for custodians, other intermediaries and holders to obtain information needed to independently assess the U.S. tax consequences of such corporate action events. Moreover, the application of U.S. tax law concepts to securities issued by and corporate action events occurring under foreign entity laws can be unclear. This additional layer of uncertainty is added to the already existing uncertainty under basic substantive federal income tax law regarding certain corporate actions discussed in the preceding section.

As is the case with securities with uncertain or alternative tax treatment, custodians, other intermediaries and holders are nevertheless generally forced by their accounting systems to make a determination and book the tax consequences of foreign entity corporate actions.

One comment is that there may be jurisdictional limitations on the ability to require foreign entities to comply with the issuer actions information reporting requirement of the proposal. The nominee chain approach discussed under this aspect of the Proposal may be severely strained due to both limitations on access to facts and the possible greater uncertainties under U.S. federal income tax substantive law relating to certain foreign entity corporate actions. As discussed in the preceding section, we recommend that a

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best efforts standard for reporting and penalty purposes be applied here in certain cases, along with similar rules for addressing alternate holder treatment and notification of uncertainties to the Internal Revenue Service.

3. Reporting the consequences of corporate actions on options and derivative financial instruments

The Proposal includes an expansive definition of securities subject to cost basis reporting that includes market traded options and certain other specified derivative financial instruments (collectively “derivative securities”). Issuers of securities are subject to issuer action information reporting.

Derivative securities derive their values by reference to identified external measures such as the spot price of a commodity, foreign currency or stock, a specified index, or some other item. One broad subclassification of derivative securities is “equity derivatives” that derive their values by reference to stocks (or groups or indices of stocks). The referenced stocks are often referred to as the “underlying.”

The value of equity derivatives are affected by (or react to) corporate actions relating to the underlying. Thus, issuers and holders of equity derivatives must track and adjust for corporate action events relating to the underlying in order to assess the post corporate action values of such derivatives. Certain key aspects of corporate actions may not be known until the action is completed or sometime thereafter. This is a recurring concern in the timely processing of corporate actions. Because corporate actions have a secondary effect on the related equity derivatives, there is essentially a two-step (or possibly multi-step) process that creates an additional delay. Brokers and holders of options may have practical difficulties in fully matching and tracking the impact of corporate actions on equity derivatives.

There may be comparable but less obvious considerations relating to the effect on other derivative securities of events affecting the value of other referenced measures.

One specific comment here relates to the need under the issuer action reporting requirements for additional clarity and consideration of the two-step nature of actions on the underlying in the case of any derivative securities subject to such reporting requirements. Additional time to comply with such reporting requirements would seem appropriate. For example, consider a derivatives dealer that issues options linked to the value of XYZ stock. Assume that such stock undergoes a corporate action. The derivatives dealer must wait to obtain information from XYZ regarding the corporate action in order to assess the impact (if any) on the option. The starting of the clock for the dealer’s obligation to report the affect of the underlying corporate action on the option should take into account when the dealer receives its information. Also, the precise affect of corporate actions on the basis of derivative securities may in many cases be unclear. This issue was discussed in section one of our letter where we recommended a best efforts standard and a consistency requirement with a disclosed exception for holders.

4. Tracking lot related basis of securities disposed

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The Proposal modifies by applying on an account-by-account basis but retains the first-in, first-out (FIFO), specific ID and average cost basis rules of Internal Revenue Code Section 1012.

Brokers and other intermediaries subject to cost basis reporting under the Proposal will use the rules of Section 1012 as modified to determine the cost basis of the lots deemed sold for reporting purposes. The cost basis applicable to a specific disposition of securities will depend on whether the taxpayer/beneficial owner of the securities has used FIFO or specific ID or in the case of mutual fund shares has used one of the permitted averaging methods specified in the applicable regulations. Although the determination of method selected is made by the taxpayer, it will be the broker or other intermediary that prepares the cost basis information return. Without an indication of which method was used, it will be necessary and could be cumbersome for both taxpayers and the IRS to reconcile the cost basis information reported with the actual tax lot purchases made and to verify the correctness of such information. Moreover, it could be unclear whether the broker has complied with the taxpayer's instructions to use FIFO, specific ID or averaging (if applicable).

One comment is that the Proposal should require a designation by the information report preparer regarding the cost basis determination method used in preparing cost basis reports.

5. Concerns regarding identifying and reconciling in the case of mismatching

The Internal Revenue Service routinely issues notices to taxpayers under a so-called matching system when the existing Form 1099 information it receives does not match information reported on individual tax returns. The determination of adjusted basis can be complex. Moreover, as indicated in the last section, different methods of determining basis may apply (FIFO, specific ID or averaging). Thus, it may be possible that a greater frequency of mismatching errors could occur relating to cost basis reporting.

In addition, what happens if a taxpayer disagrees with the cost basis information reported on a Form 1099? For example, what if there is an error on a Form 1099 received concerning adjustments to basis due to the failure to properly account for a corporate action relating to a security?

One comment is that the Proposal may necessitate changes to Schedule D to permit taxpayers to reconcile to cost basis related Form 1099 while still allowing them to make appropriate adjustments to cost basis of securities.

GainsKeeper and the CCH Capital Changes Reporter have years of experience providing cost basis tracking services and corporate action information and we would be pleased to discuss our perspectives and insights with you. We look forward to working with you to help achieve your tax administration goals. Thank you for your consideration of our comments. We would appreciate the opportunity to discuss these issues with you or your staffs at your convenience.

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Sincerely,

Stevie D. Conlon
Wolters Kluwer Financial Services