

SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is making technical amendments to the rule by which applications for exemptive relief under section 36 of the Securities and Exchange Act of 1934 (“Exchange Act”) may be submitted electronically. The amendments are intended only to clarify and update references to an SEC Web site address and to eliminate certain formatting requirements.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Linda Stamp Sundberg, Senior Special Counsel, at (202) 551-5550, Office of the Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending § 240.0-12(b) to update references to an SEC Web site address to be used in submitting applications for exemptive relief under section 36 of the Exchange Act and to eliminate certain formatting requirements.

I. Certain Findings

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required when an agency, for good cause, finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹ The Commission is making technical changes to update the instructions and method for submitting a petition. The Commission finds that because the amendment is technical in nature and is being made solely to reflect the changes in way a person would submit and the Commission would receive a petition, publishing the amendment for comment is unnecessary.²

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.³ For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good

cause for these technical amendments to take effect on July 22, 2011.

II. Consideration of Competitive Effects of Amendment

Section 3(f) of the Exchange Act,⁴ provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.⁵

Because these procedural amendments are technical in nature, and do not impose any additional requirements beyond those already required, we do not anticipate that the amendments would have a significant effect on efficiency, competition, or capital formation, and we do not anticipate that any competitive advantages or disadvantages would be created.

III. Statutory Authority and Text of Amendment

We are adopting these technical amendments pursuant to the authority set forth in the Exchange Act and particularly Sections 23(a) and 36(a) (15 U.S.C. 78w(a), and 78mm(a), respectively).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq., 18 U.S.C.

⁴ 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78w(a)(2).

1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

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■ 2. Section 240.0-12 is amended by revising paragraph (b) to read as follows:

§ 240.0-12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

* * * * *

(b) An applicant may submit a request electronically. The electronic mailbox to use for these applications is described on the Commission’s Web site at <http://www.sec.gov> in the “Exchange Act Exemptive Applications” section. In the event the electronic mailbox is revised in the future, applicants can find the appropriate mailbox by accessing the “Electronic Mailboxes at the Commission” section.

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Dated: July 19, 2011.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-18513 Filed 7-21-11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9530]

RIN 1545-BH56

Guidance Under Section 956 for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document describes a correction to final and temporary regulations (TD 9530) that were published in the **Federal Register** on Friday, June 24, 2011, regarding the determination of basis in certain United States property acquired by a controlled foreign corporation in certain nonrecognition transactions that are intended to repatriate earnings and profits of the controlled foreign corporation without U.S. income taxation.

DATES: This correction is effective on July 22, 2011, and is applicable beginning June 24, 2011.

FOR FURTHER INFORMATION CONTACT: Kristine A. Crabtree, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

¹ 5 U.S.C. 553(b).

² For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act (“RFA”) or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of RFA analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

³ See 5 U.S.C. 553(d)(3).

Background

The final and temporary regulations that are the subject of this correction are under section 956 of the Internal Revenue Code.

Need for Correction

As published at (76 FR 36993), final and temporary regulations (TD 9530) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9530) which were the subject of FR Doc. 2011-15741 is corrected as follows:

On page 36995, column 3, in the signature block, line 5, the name “Emily S. Mahon” is corrected to read “Emily S. McMahon”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel, Procedure and Administration.

[FR Doc. 2011-18469 Filed 7-21-11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9538]

RIN 1545-BK14

Modifications of Certain Derivative Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that address when a transfer or assignment of certain derivative contracts does not result in an exchange to the nonassigning counterparty for purposes of § 1.1001-1(a). The text of these temporary regulations also serves as the text of the proposed regulations (REG-109006-11) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 22, 2011.

Applicability Date: For the date of applicability, see § 1.1001-4T(d).

FOR FURTHER INFORMATION CONTACT: Andrea M. Hoffenson, (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1001 of the Internal Revenue Code (Code) provides rules for the computation and recognition of gain or loss from a sale or other disposition of property. For purposes of section 1001, § 1.1001-1(a) of the Income Tax Regulations generally provides that gain or loss is realized upon an exchange of property for other property differing materially either in kind or in extent. As a general matter, the assignment of a notional principal contract is treated as a taxable disposition to a nonassigning counterparty if the resulting contract differs materially either in kind or in extent. See *Cottage Savings Association v. Commissioner*, 499 U.S. 554, 566 (1991) [1991-2 CB 34, 38] (“Under [the Court’s] interpretation of [section] 1001(a), an exchange of property gives rise to a realization event so long as the exchanged properties are ‘materially different’—that is, so long as they embody legally distinct entitlements.”). Section 1.1001-4(a) provides, however, that the substitution of a new party on a notional principal contract is not treated as a deemed exchange of the contract by the nonassigning party for purposes of § 1.1001-1(a) if two conditions are satisfied: the assignment is between dealers in notional principal contracts and the terms of the contract permit the substitution.

Many notional principal contracts permit assignment of the contract only with the consent of the nonassigning counterparty. There has been some uncertainty as to whether a contract that requires the consent of the nonassigning counterparty as a condition to assignment will satisfy the second requirement of § 1.1001-4(a) as described in the previous paragraph. In addition, commenters have suggested that the scope of § 1.1001-4 is too narrow because it only applies to notional principal contracts. The need to amend § 1.1001-4 has been increased by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (124 Stat 1376 (2010)) (Dodd-Frank), which in some cases will necessitate the movement of entire books of derivative contracts. In particular, there is a concern that the assignment of derivative contracts may create a taxable event for the nonassigning counterparties to the assigned contracts.

The IRS and the Treasury Department agree that § 1.1001-4 should be amended and expanded to include derivative contracts other than notional principal contracts. These temporary regulations replace the current, final regulations of § 1.1001-4.

Explanation of Provisions

These temporary regulations provide that there is no exchange to the nonassigning counterparty for purposes of § 1.1001-1(a) solely because a dealer in securities or a clearinghouse transfers or assigns a derivative contract to another dealer in securities or clearinghouse, provided that the transfer or assignment is permitted by the terms of the contract. The derivative contracts to which these regulations apply are those described in section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F). In addition, these temporary regulations provide that transfers or assignments are permitted by the terms of the contract when consent of the nonassigning counterparty is required as well as those transfers or assignments that do not require consent. If consideration passes between the assignor and assignee in connection with the transfer or assignment, the consideration will not affect the treatment of the nonassigning counterparty for purposes of § 1.1001-4. If any consideration is paid to or received by the nonassigning counterparty, however, the payment or receipt of the consideration is analyzed under the general principles of section 1001 to determine its effect on the nonassigning counterparty. In addition, any changes to the terms of the contract are analyzed under the general principles of section 1001 to determine whether there has been a sale or disposition of the contract by the parties.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Andrea M. Hoffenson, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.