

COMMENT LETTER

April 24, 2012

ICI Letter to IRS regarding Web Posting of Form 8937 (pdf)

By Electronic Delivery April 24, 2012 Emily S. McMahon Hon. Douglas Shulman Acting Assistant Secretary for Tax Policy Commissioner U.S. Department of the Treasury Internal Revenue Service 1500 Pennsylvania Avenue, NW 1111 Constitution Avenue NW Washington, DC 20220 Washington, DC 20224 RE: Website Posting of Form 8937 Dear Ms. McMahon and Mr. Shulman: The Investment Company Institute¹ asks the Internal Revenue Service (“IRS”) and Treasury Department to modify the regulations under section 6045B, and the corresponding instructions to Form 8937, on reporting corporate actions affecting the basis of securities. Specifically, we ask that the IRS and Treasury grant regulated investment companies (“RICs”) and other issuers of securities more flexibility in posting such information on their websites. Permitting issuers to determine the best format for relaying this information to the public, rather than requiring issuers to post a completed Form 8937, will benefit both taxpayers and the IRS. Current Reporting Requirements Section 6045B of the Internal Revenue Code, which was enacted in 2008,² requires any issuer of a specified security to send to both the IRS and all holders of the securities (or their nominees) a return describing any organizational action that affects the basis of the issuer’s securities, the quantitative effect on the basis of the securities from such action, and any other information required by the Secretary of the Treasury.³ This return must be filed no later than the earlier of 45 days after the date of the corporate action, or January 15 of the year following the calendar year during which such action occurred.⁴ The statute provides that the government may waive these requirements if the person required to make the return makes publicly available the information required under section 6045B(a)

1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.98 trillion and serve over 90 million shareholders. 2 Section 6045B was enacted as part of the Energy Improvement and Extension Act of 2008, Pub. L. No. 110-343. 3 Section 6045B(a). 4 Section 6045B(b). ICI Letter re Form 8937 April 24, 2012 Page 2 of 5 and the name, address, phone number and email address of the information contact of the issuer “in such form and manner as the Secretary determines necessary to carry out the purpose of this section.”⁵ The final regulations under section 6045B provide that an issuer must file a return that includes the following information, and any other information specified in the return form and instructions: (i) the name and taxpayer identification number of the reporting issuer; (ii) the identifiers of each security involved in the organization action, including the Committee on Uniform Security Identification Procedures (“CUSIP”) number, the

classification of the security (such as stock), account number, serial number, and ticker symbol; (iii) the name, address, e-mail address and telephone number of a contact person at the issuer; (iv) the type or nature of the organizational action; and (v) the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis.⁶ As authorized by the statute, the final regulations permit an issuer to post “the return with the required information” on its primary public web site, in a readily accessible area dedicated to this purpose.⁷ The information must be kept available for ten years.⁸ The initial draft instructions for the Form 8937, “Report of Organizational Actions Affecting Basis of Securities,” stated that an issuer is not required to file the form with the IRS if, by the due date, the issuer posts “the required information in a readily accessible format in an area of [the issuer’s] primary public website.” It thus was not clear from the regulations and the draft instructions whether issuers were required to post on their websites the actual Form 8937, or simply the information contained in the form. The final instructions for the form, however, clarified that issuers who wish to take advantage of the public reporting option must post “a completed Form 8937” on their public websites. Because the Form 8937 was not finalized until early 2012, shortly before the January 15 due date, the IRS provided transitional relief in Notice 2012-11, which permitted issuers to post on their websites either the Form 8937 or the “required information.” The Notice specified that this transitional relief was limited to reporting organizational actions occurring in 2011. Therefore, it did not apply to issuers of stock in a RIC, which were not subject to these reporting requirements until January 1, 2012.

Flexibility in Posting Corporate Actions Affecting Cost Basis

The final instructions to Form 8937 make it clear that issuers who choose the public reporting option must post a completed form on their websites to satisfy the reporting requirements. 5 Section 6045B(c). 6 Treas. Reg. § 1.6045B-1(a)(1). 7 Treas. Reg. § 1.6045B-1(a)(3) and (b)(4). 8 Id. ICI Letter re Form 8937 April 24, 2012 Page 3 of 5

The Institute believes that posting the actual form is not required by the statute, is not necessary to achieve the intended results, and, most importantly, will be confusing and useless to shareholders and others who need the information. Instead, we ask the IRS and Treasury Department to grant all issuers, including RICs, flexibility to post the required information in a format that is more accessible to the issuers’ shareholders. The purpose of section 6045B is to give holders of securities the information they need to correctly calculate the basis of those holdings. Prior to the enactment of this provision, it often was difficult for holders to determine how certain corporate actions affected basis, as there was no tax reporting requirement that issuers make this information available. Section 6045B thus requires issuers to provide this information to the IRS and their shareholders. Congress gave the IRS and Treasury Department flexibility in determining how such information may be publicly reported. Section 6045B prescribes the type of information that must be reported by issuers, but the Code does not require that it be presented in any particular way. Rather, Congress gave the IRS and Treasury Department regulatory authority to determine the best means for satisfying the purposes of section 6045B. There is no need to post the actual form itself, so long as the information required in section 6045B and the underlying regulations clearly is reported on the issuer’s public website. In fact, we believe that taxpayers will be better served by permitting issuers to determine how to present such information. The current Form 8937 requires issuers to write, in a narrative format, how corporate actions affect the basis of their securities. Rather than looking to a specific box , as with most other IRS forms, anyone looking for specific information about a basis adjustment must read through several lines of text to find the answer. Combing through multiple forms will be difficult and time consuming for taxpayers, brokers, and the IRS. Further, because the adjustments to basis are not clearly laid out on the Form 8937, this raises the likelihood that an investor, broker or vendor will not adjust the basis of securities

correctly. The persons reviewing the Forms 8937 in most cases will not be individuals with significant, if any, tax law experience. Funds instead would prefer to target their communications to the average investor or broker, who most likely will not be a tax professional. The opportunity for confusion is particularly acute in the RIC context if the corporate action involves a merger of funds. The merger may affect multiple classes, and there may be multiple mergers in a given year. It is not clear whether a RIC may file one Form 8937 for a fund with multiple classes, or whether the fund must file a separate form for each class (each of which has a separate CUSIP). Even if the former is permitted, this will result in numerous forms on a public website, which an investor, broker or vendor must click through to find the necessary information. Similar issues arise with respect to returns of capital. A return of capital may affect each class differently. If a fund declares dividends daily and pays monthly, as many bond funds do, the return of capital adjustment also will vary depending on when the investor bought into a fund. This information is not easily conveyed on the Form 8937 in its current format. ICI Letter re Form 8937 April 24, 2012

Page 4 of 5 The attached mock-up of a fund company's public website dedicated to issuer reporting demonstrates the large amount of data that must be reported for corporate actions of RICs.⁹ This mock-up illustrates just one way in which a RIC could present the information required by section 6045B without posting the actual Form 8937. If the fund company was required to post a completed Form 8937 for each fund merger, as currently mandated, a shareholder would have to read through multiple forms to obtain the information he or she needs to calculate basis. This would be time- consuming and confusing, particularly for the average investor. Also, this mock-up represents the data from only one year; multiply this number by ten (because issuers must keep the information available for ten years), and the number of completed forms that must be available on the public website will cause additional confusion. Because the relevant information can be posted on the issuer's website in more user-friendly formats, the completed forms are not necessary. The purpose of section 6045B is to communicate information about the effect of corporate actions on the securities of the issuers. There are better, more effective ways to communicate this information than posting completed forms on a public website. If an issuer wishes to provide corporate action information on its public website in an alternate format, the issuer should not be required to also post the actual Form 8937. Requiring an issuer to maintain multiple sets of data, in various formats, can compromise the integrity of that data, particularly when it must be maintained for ten years. Therefore, issuers should have the option of posting the actual completed form or the information required under section 6045B in a substitute format.¹⁰ In addition to the concerns regarding communication and confusion, there are other privacy- related reasons why issuers would prefer not to post completed forms on their websites. Issuers must include on the form the signature of the person completing the form and contact information, including the preparer tax identification number (PTIN), of any paid preparer. Posting the actual form would make all of this information available to the public at large. Any person with access to the internet could steal it.¹¹ There is no reason why the public needs this information, if the issuer has provided a contact name, number and e-mail address. In fact, funds do not want their shareholders contacting the person who signed the form or the paid tax preparer. The signer and the paid tax preparer do not have access to any client information and will not be in a position to help shareholders who have questions. Rather, shareholders should be encouraged to use only the contact information provided by the issuer, which will put the investor in contact with personnel who are properly trained and sufficiently staffed to handle these types of

⁹ The issuer names, EINs, CUSIPs and symbols have been replaced; however, the remainder of the information (including the NAVs and merger ratios) is actual data from fund mergers that occurred within one fund complex in 2011. ¹⁰ A signed Form 8937 could be made available to the IRS upon request. ¹¹ For example, a

signature on an electronic document easily can be copied and used for other purposes. ICI Letter re Form 8937 April 24, 2012 Page 5 of 5 investor questions.¹² Therefore, issuers should be allowed to omit these details from the information that is posted on their public websites. * * * The requirement that issuers must post an actual completed Form 8937 if they wish to take advantage of the public reporting exception will result in significant confusion and possibly miscommunication. There are easier ways to convey this information to investors and others, particularly when an issuer has multiple corporate actions affecting multiple securities, and issuers should have the flexibility to determine the best format for doing so. We thus ask the IRS and Treasury to provide that issuers, including RICs, may use any format on their public website, provided that all of the requisite information under section 6045B clearly is available. We appreciate your attention to this issue. If you have any questions or would like to discuss our comments further, please contact me at (202) 371-5432 or kgibian@ici.org. Sincerely, /s/ Karen L. Gibian

Karen Lau
Gibian Associate Counsel – Tax Law

Attachment cc: Lisa Zarlenga
Cameron Arterton
William Wilkins
Erik Corwin
Deborah Butler
Carlton King
Andrew Keyso, Jr.
Donna Crisalli

¹² Even though the Form 8937 includes a contact name and telephone number, providing additional names and/or phone numbers increases the likelihood that investors will not contact the proper people.

De December 31, 2011 Issuer's Statement
31, 2011 Issuer's Statement

Cost basis – fund mergers and return of capital
General Cost Basis Information
IRS regulations effective on January 2011 require broker/dealers to report cost basis on any covered shares, which are defined as shares purchased and subsequently redeemed after January 1, 2011. This does not pertain to qualified retirement plan like an IRA or a 401(k). These new rules apply to mutual fund shares beginning January 1, 2012. As a service to our direct shareholders, Fund Management included cost basis information in third-quarter 2011 statements along with instructions on how to elect a cost basis method for shareholders who choose not to use average cost, the default cost basis accounting method chosen by Fund Management. Our on-line Cost Basis Q&A provides additional information for shareholders. The IRS also requires mutual fund companies to provide additional information to assist shareholders in cost basis reporting. Specifically, for mutual funds that have participated in merger events, or those that have undergone return of capital, the IRS requires that mutual fund companies make available to shareholders an Issuer's Statement containing information about the funds involved in mergers or those that have experienced returns of capital. Cost basis and fund mergers

Fund mergers will affect the cost basis calculation for non-retirement mutual fund accounts. If you own a fund that is merged into another fund, your holding period and total cost basis normally are not affected. However, since the number of shares you have after a merger will most likely be different than the number before the merger, the average cost basis per share changes. If this is the case, when calculating gains and losses you must determine the number of shares acquired in each transaction based on the number of shares received in the merger. A table of merger-related distributions can be viewed in our website in the Featured Resources Section of the home page and merger ratios are also provided. Guidance on how to determine and allocate tax basis for merger transactions/quantitative effect on cost basis

In non-qualified accounts, as part of a tax-free merger, the cost basis of each affected shareholder's mutual fund account is carried over from the merged account to the acquiring account as part of the reorganization. While the fund mergers are nontaxable events, shareholders will need to adjust their records to take the basis of their merged fund shares and allocate that basis to the new fund shares received. See the example below:

- On April 4, 2012, Mary Jones purchases 1,000 shares of XYZ Fund. The total cost basis of these shares is \$5,000.
- On June 8, 2012, the XYZ Fund was merged into the ABC Fund.
- At the time of the merger:
 - o Mary's cost for her 1,000 shares of the XYZ Fund was \$5,000.
 - o The price per share of the XYZ Fund was \$5.00
 - o The price per share of the ABC Fund was \$10.00
 - o The merger ratio

is 0.5000 (meaning Mary would receive one half share of ABC Fund for every one share of XYZ Fund that she owned) December 31, 2011 Issuer's Statement 2 Example □ After the merger:

- o Mary owned 500 shares of the ABC Fund.
- o Mary's total cost basis for her 500 shares of ABC Fund is \$5,000.

Below is a table with fund-specific information that matches the example above. In the table entries beneath the example are actual mutual fund mergers with information you will need to calculate your cost basis. Mutual fund mergers

Issuer's name and EIN	Class CUSIP Symbol	Organizational action	Date of action	Applicable tax year	NAV	Acquiring fund Class CUSIP Symbol	NAV	Merger ratio
ABC Mutual Fund - 12-3456789 A	123456789 ABCDE	Fund merger	June 3, 2011	2011	\$5.00	ZYX Mutual Fund A 987654321 FGHIJ	\$10.50	0.050000000000
DEF Mutual Fund - 12-3456789 A B C	123456789 123456789 123456789 ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	15.37 15.20 15.34	WVU Mutual Fund - 12-3456789 A B C 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ	13.45 12.98 13.41	1.14275092937 1.17103235747 1.14392244594
GHI Mutual Fund - 12-3456789 A B C Y Z	123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	8.00 8.00 8.00 8.00	TSR Mutual Fund - 12-3456789 A B C Y Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	9.72 9.71 9.71 9.73	9.74 0.82304526749 0.82389289392 0.82389289392 0.82219938335 0.82135523614
JKL Mutual Fund - 12-3456789 A B C T Z	123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	10.98 10.98 10.98 10.98	QPO Mutual Fund - 12-3456789 A B C T Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	9.27 9.27 9.27 9.27	9.26 1.18446601942 1.18446601942 1.18446601942 1.18446601942 1.18574514039
MNO Mutual Fund - 12- 3456789 A B C T Z	123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	11.67 10.99 10.95 11.67	NML Mutual Fund - 12-3456789 A B C T Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	7.37 7.31 7.28 7.36	7.40 1.58344640434 1.50341997264 1.50412087912 1.58559782609 1.61891891892
PQR Mutual Fund - 12- 3456789 A B C Z	123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	8.07 8.05 8.00 8.16	KJI Mutual Fund - 12-3456789 A B C Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	9.72 9.71 9.71 9.74	0.83024691358 0.82904222451 0.82389289392 0.83778234086
STU Mutual Fund - 12-3456789 A B C Z	123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	15.94 15.76 15.99 15.69	HGF Mutual Fund - 12-3456789 A B C Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	19.71 18.90 19.76 19.69	0.80872653475 0.83386243386 0.80921052632 0.79685119350
VWX Mutual Fund - 12- 3456789 A B C	123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	13.67 13.45 13.69	EDC Mutual Fund - 12-3456789 A B C 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	19.71 18.90 19.76	0.69355657027 0.71164021164 0.69281376518
YZA Mutual Fund - 12-3456789 A B C	123456789 123456789 ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	7.40 7.41 7.40	BAZ Mutual Fund - 12-3456789 A B C 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	9.27 9.27 9.27	0.79827400216 0.79935275081 0.79827400216
AAB Mutual Fund - 12-3456789 A B C Z	123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	12.10 10.56 10.82 12.71	ZZA Mutual Fund - 12-3456789 A B C Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ	32.71 31.59 31.59 33.11	0.36991745644 0.33428300095 0.34251345362 0.38387194201
AAC Mutual Fund - 12- 3456789 A B C Z	123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE	Fund merger	March 11, 2011	2011	10.01 10.01 10.01 10.02	ZZB Mutual Fund - 12-3456789 A B C Z 987654321 987654321 987654321 987654321		

FGHIJ FGHIJ FGHIJ FGHIJ 9.10 9.10 9.10 9.10 1.100000000000 1.100000000000
 1.100000000000 1.10109890110 AAD Mutual Fund - 12- 3456789 A B C T Z 123456789
 123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE ABCDE Fund
 merger April 29, 2011 2011 15.01 14.99 15.01 15.02 15.08 ZZD Mutual Fund - 12-3456789
 A B C T Z 987654321 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ
 FGHIJ FGHIJ 11.92 11.83 11.98 11.92 11.91 1.25922818792 1.26711749789
 1.25292153589 1.26006711409 1.26616288833 AAE Mutual Fund - 12-3456789 A B C Z
 123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE ABCDE Fund merger
 April 29, 2011 2011 21.70 21.50 21.48 21.65 ZZE Mutual Fund - 12-3456789 A B C Z
 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ 11.92 11.83 11.98
 11.91 1.82046979866 1.81741335587 1.79298831386 1.81780016793 AAF Mutual Fund -
 12-3456789 A B C Z 123456789 123456789 123456789 123456789 ABCDE ABCDE ABCDE
 ABCDE Fund merger June 3, 2011 2011 8.39 8.42 8.40 9.07 ZZF Mutual Fund - 12-3456789
 A B C Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ 11.92 11.83
 11.98 11.91 0.70385906040 0.71174978867 0.70116861436 0.76154492024 AAG Mutual
 Fund - 12- 3456789 A B C Z 123456789 123456789 123456789 123456789 ABCDE ABCDE
 ABCDE ABCDE Fund merger June 3, 2011 2011 6.38 6.16 6.16 6.42 ZZG Mutual Fund -
 12-3456789 A B C Z 987654321 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ
 7.73 7.22 7.14 7.78 0.82535575679 0.85318559557 0.86274509804 0.82519280206 AAH
 Mutual Fund - 12- 3456789 A B C T Z 123456789 123456789 123456789 123456789
 123456789 ABCDE ABCDE ABCDE ABCDE ABCDE Fund merger June 3, 2011 2011 10.24
 10.24 10.24 10.24 10.24 ZZH Mutual Fund - 12-3456789 A B C T Z 987654321 987654321
 987654321 987654321 987654321 FGHIJ FGHIJ FGHIJ FGHIJ FGHIJ 10.46 10.46 10.46 10.46
 10.46 0.97896749522 0.97896749522 0.97896749522 0.97896749522 0.97896749522
 December 31, 2011 Issuer's Statement 4 Example Cost basis and return of
 capital/quantitative effect on cost basis Shareholders preparing their tax returns will also
 need to review their Form 1099-DIV (Dividends and Distributions) reports from the date of
 purchase to see if any of the dividends paid were classified as "return of capital" payments
 for tax purposes. Also referred to as "return of principal" payments, you start by using
 these amounts to reduce your cost basis. You are required to apply the return of capital to
 each tax lot separately and cannot choose to apply it only to your high cost basis tax lots.
 You may end up with some tax lots where the cumulative return of capital payments
 exceeds your original cost basis per share. In that case, you are required to recognize any
 excess return of capital payment for that tax lot as a capital gain. Here is an example: □ On
 February 14, 2012, Sammy Smith purchases 2,000 shares of the DEF Fund. The total cost
 basis of these shares is \$20,000. □ On March 26, 2012 the DEF Fund paid a dividend of
 \$0.10 per share, \$0.02 of which is a Return of Capital. □ Sammy earns a dividend of \$200
 on the 2,000 shares that he owned. □ The cost basis of the 2,000 shares needs to be
 reduced by the amount of the Return of Capital: □ Return of Capital = \$40.00 (2,000 x
 \$0.02) □ New Cost Basis of his 2,000 shares = \$19,960 (\$20,000.00 - \$40.00) Below is a
 table with fund-specific information that matches the example above. In the table entries
 beneath the example are actual return of capital transactions with information you will
 need to calculate your cost basis. Mutual fund return of capital2 Issuer's name and EIN
 Class CUSIP Symbol Organizational action Record date Applicable tax year Return of capital
 amount Net asset value (NAV) DEF Fund - 12-3456789 A 123456789 CREAX Return of
 capital March 26,2012 2012 \$0.020000 \$6.65 Other information you may need to know:
 Contact name: Fund Management Client Services Contact telephone: 800.555.1234 Contact
 address: P.O. Box 0000, Boston, MA 02266 Contact e-mail: contact@fundmanagement.com
 December 31, 2011 Issuer's Statement 5 1 The Reorganization will constitute a
 "reorganization" within the meaning of Section 368(a)(1) of the Internal Revenue Code (the
 Code), and the Selling Fund and the Buying Fund will each be "a party to a reorganization"

within the meaning of Section 368(b) of the Code. Under Section 354 of the Code, no gain or loss will be recognized by the shareholders of the Selling Fund upon the exchange of their Selling Fund shares for Reorganization Shares of the Buying Fund. Under Section 358 of the Code, the aggregate tax basis of Reorganization Shares that a Selling Fund shareholder receives in the Reorganization will be the same as the aggregate tax basis of the Selling Fund shares exchanged therefor. Under Section 1223(1) of the Code, a Selling Fund shareholder's holding period for the Reorganization Shares received in the Reorganization will be determined by including the shareholder's holding period for the Selling Fund shares exchanged therefor, provided the shareholder held such Selling Fund shares as capital assets. 2 That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock. Investors should consider the investment objectives, risks, charges and expenses of a mutual fund carefully before investing. For a free prospectus, which contains this and other important information about the funds, visit fundmanagement.com. The prospectus should be read carefully before investing.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.