March 2, 2009

Sent Via Email

Internal Revenue Service
CC:PA:LPD:PR (Notice 2009-17), Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044
Attention: Stephen Schaeffer, Office of Associate Chief Counsel (Procedure & Administration)

Re: Response to Notice 2009-17 – Comments on the Application of Cost Basis Reporting and Tracking by the Financial Services Industry

Dear Mr. Schaeffer:

Computer Research, Inc. (CRI) offers securities transaction processing via a service bureau and as an in-house solution for broker/dealers and banks. On behalf of our service bureau customers and ourselves, we are pleased to have this opportunity to respond to the Internal Revenue Service's (IRS) solicitation of comments regarding its Cost Basis reporting initiative. While this response is a means of offering input to the IRS on a specific set of questions, we would like to note that there are several other areas of concern which will also require addressing prior to the January 1, 2011 implementation date. Therefore we encourage the IRS to consider this initial round of responses as the beginning of a constructive industry-to-regulator dialogue that should continue throughout 2009 and well into 2010. The complexities of determining, tracking, transferring and reporting cost basis in a phased-in approach along with the IRS's desire to "ensure that broker reporting on Form 1099-B and customer reporting on Schedule D of Form 1040 are maximally consistent" require an evolving, interactive working relationship in order to fashion the best and most comprehensive solution.

Applicability of Reporting Requirements

1. How to determine who is a 'middleman' subject to the broker reporting and transfer reporting statement requirements and how to minimize duplication of reporting multiple brokers – COMMENT – The entity that effects the sale, in general, should be responsible for the reporting to the IRS provided it holds custody of the securities. Any entity that transfers an account with holdings subject to reporting should meet the transfer obligations the IRS is setting forth for cost basis. In the case where a broker effects a buy or sell transaction but does not hold custody, Delivery Versus Payment (DVP) and Receive Versus Payment (RVP) account relationships, the information provided to the custodian for trade

settlement must contain at least that information which will be required on transfers of accounts for cost basis. An issue that may arise here relates to whether the customer will have adequate information on the confirmation of trade to accept or challenge the allocated tax lot. While the custodian may be in the best position to report the 1099-B's as it can maintain and can track cost basis lots, it would be beneficial if the executing broker had knowledge of the client's selected cost basis methodology and the specific tax lot being applied against the sale so that that information can be placed on a confirmation of trade. We believe greater coordination between custodians and executing brokers will be required in the future.

2. Who, in addition to brokers, should be treated as 'applicable persons' subject to the transfer reporting requirements? COMMENT – Banks, Transfer Agents, Issuers, Issuers Counsel / Accountants, Mutual Funds, and Custodian Banks.

3. Whether the issuer's classification of an instrument (e.g. as stock or debt) should determine which effective date applies. COMMENT – Yes, we believe one point of classification will provide clarity, especially during the phase-in period from 2011 through 2013. Coupled with this, we would like IRS guidance as to how the IRS views these categories. A definitive statement on REIT's, ETFs, MIPs, QUIDs, TOPRs, RICs etc. would offer the industry a safe harbor as it seeks to classify securities already issued. As a practical matter for firms such as our service bureau, the classifying of already issued securities may have significant impact on a firms' Security Master data file, and the programs that access it. For this reason a clear set of classifications, sooner rather than later, is recommended. Should there not be definitive clarity on what is a 'share of stock' in a corporation, we would like the IRS to offer its view on whether a broker should err on the side of caution and report on more instruments in 2011 rather than risk under-reporting.

4. How to ensure that customers are adequately informed of the broker's default basis determination method and that brokers are adequately notified of a customer's election of a different acceptable method for an account. COMMENT – That can be addressed in the new accounts process with a form that discloses the broker's default basis determination method and requires an election of a method be made by the customer by checking a box on that form. This form would require a customer signature. We also believe special notice should be given for customers with multiple accounts. The customer should be informed that if he or she has multiple accounts, whether at one institution or several, they must use the same cost basis methodology across accounts and the customer's signature should be deemed confirmation of this to the broker. Given the monumental task of gathering the methodology elections from current clients, a well thought out mass customer solicitation program must be undertaken as much as 6 months prior to the January 1, 2011 effective date.

5. How to facilitate customer elections of acceptable basis determination methods, including average cost basis for an account to maximize customer flexibility and minimize broker burden. COMMENT – Again, this should be handled through the new account process. While FIFO is one method, the offering of a method that is meant to maximize or minimize the tax impact of a transaction could be offered via specific identification. It is anticipated that a large number of customers will choose specific identification with an up-front tax treatment preference, and that the brokers' systems will then allocate the appropriate tax lots to the day's transactions. This method should be clearly understood and acknowledged as an acceptable approach to specific identification by the IRS.

6. Whether and under what circumstances a customer may elect to change from the average cost basis method to the first-in first out or specific identification method and, if so, what cost bases rules and adjustments should apply. COMMENT – The customer should have the ability to elect a change in methodology, but such change may make it difficult for some cost basis systems to track tax lots. Therefore, it is recommended that a change should always be prospective so that systems can link a change to a specific date. We also recommend that a specific approval procedure for changes in methodology be established by the IRS and made available through reporting agents to all customers. We recommend that the change can only be made once a year but is not necessarily limited to the year end as this might create a substantial amount of additional work during a very busy time of year. The implications of a change in methodology become especially concerning when the average cost method is involved. Should a customer change from average cost (dividend reinvestment stocks) to FIFO or specific identification, will the broker be required to recreate tax lots using the actual price for each dividend payment or will the positions freeze with the average price? While we understand and agree that there is significant benefit to use average price in the world of fund distributions we would recommend that the IRS revisit its intent to permit average price for dividend distributions on common equities. There are competing issues that make use of average cost attractive on one hand and a disadvantage on the other. We recommend and industry – regulator review of the issues involved.

7. What it means to apply the basis determination conventions on an 'account-by-account' basis. COMMENT – It means allowing individual account owners to choose their own accounting method for cost basis. However, the issue of conforming an individual's methodology election from account to account may require internal coordination of accounts or coordination between reporting entities. As recommended in question 4 above the customer should be informed that if he or she has multiple accounts, whether at one institution or several, they must use the same cost basis methodology across accounts. If a taxpayer elects conflicting methods, it should be the sole responsibility of the taxpayer for any penalties. The broker should not be made a responsible party if it has alerted the taxpayer of his obligation via the account documentation process.

Dividend Reinvestment Plans

8. How to determine what qualifies as an "arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid" (that is, as a "dividend reinvestment plan"). COMMENT – We don't see this as an issue. There are two types that customers are most familiar with – Issuer sponsored and broker/dealer sponsored. We believe each type should qualify as this is a customer experience matter and permitting only one type of plan to be eligible for average cost would be confusing and problematic. However, as we had stated in question 6 above, we believe a review is warranted before implementing average cost for non-regulated investment company (mutual funds, etc.) dividends.

9. How to determine which stock qualifies as "acquired in connection with" a dividend reinvestment plan, for which the average cost basis method is available beginning in 2011, and to which the later effective date of 2012 for information reporting applies. COMMENT – No further comment. See #8 above.

10. Whether and to what extent the average cost basis method applies to subsequent additions to dividend reinvestment plan accounts by purchase or transfer. COMMENT – No further comment. See #8 above.

11. How to maximize the utility of the single-account election for stock acquired in connection with a dividend reinvestment plan or stock held in a regulated investment company, particularly where basis and holding period information for pre-effective date. COMMENT – No further comment. See #8 above.

Reconciliation with Customer Reporting

12. How to ensure that broker reporting on Form 1099-B and customer reporting on Schedule D of Form 1040 are maximally consistent, including whether brokers should report separately for securities subject to basis reporting or report the basis of securities that are not covered securities, for example, securities purchased by their customers prior to 2011. COMMENT – We suggest that 1099-B's be changed into or reported on forms that closely mirror Schedule D's. While a 1099-B may continue to be single transaction / tax lot in form we recommend filing them in a consolidated fashion to the IRS and distributing them to customers in a likewise manner. As there will be transactions subject to reporting and transactions not subject to reporting, we further suggest that two 1099-B form types be created – one for basis reportable items and one for non-basis reportable items. Regardless of how 1099-B reporting is ultimately treated there must be a means of identifying securities that are reportable and those that are not. Special care should be given to the approach to this as many unusual situations may arise. It will be very possible that one sale transaction will be filled with two or more underlying tax lots which some may be subject to reporting and others may not.

Further the complexities of 1099-B reporting grow rapidly when marrying stocks with options.(See question 17 below.)

13. How to ensure consistency between customers making specific identification of securities sold or transferred and broker reporting. COMMENT – The customer can make a standing methodology election under specific identification (max tax, min tax, etc.), or the customer can make specific lot identifications prior to each transaction. If the broker has a system that can permit the methodology selection under specific identification, that methodology should remain in effect until a change is requested. These elections can be made via a broker's trade input screen used by the customer. All trades done subsequent to methodology selection are treated in that tax lot allocation manner.

    The customer should rely on what the broker is reporting. Customers should have a specific time period after a transaction, perhaps 30 days, to contest the tax lot the broker has assigned to a sale trade; after that point the broker's report should be final. We would suggest that the IRS review its current time requirements for tax lot selection for specific identification to determine if any modifications or change in interpretation is required to facilitate the use of a max tax or min tax specific identification approach, particularly in light of the IRS's desire to ensure that that which a taxpayer reports on Schedule D is consistent with a broker's 1099-B reporting for the same transaction.

14. How to ensure that reconciliation is possible if broker reporting should differ from customer reporting. COMMENT – As we have suggested above the broker should have written confirmation of the taxpayer's selection of cost basis method; the customer should have until a specific date after each transaction to contest the lot selected; and there should be a final review period after year end for a customer to examine his or her trades and their tax lot allocations. With these steps in place the need for reconciliation should be minimal. In the event reconciliation is required the customer should bear the burden of reconciling the difference with the support of a service group at the broker. If there is a need to amend the reported transactions, there should be a time period for amending the 1099-B without a penalty.

15. Whether customers, after a sale, may identify or change the identification of specific stock sold and, if so, for what period of time or by what deadline. COMMENT – In general this should not be allowed. If there is a legitimate reason, then it should be treated as a cancel/rebill and the reason for the change should be captured by code or description. Permitting arbitrary changes to tax lot selections could dramatically increase work volumes if systems are not prepared for this. It may also eliminate the ability to use the trade confirmation as a means of confirming tax lot allocation. Should the IRS change its requirements for identifying tax lots under specific identification this would require ample notice for brokers to address the situation. If this is permitted, we suggest that the election be made in a very short period of time after the trade.

We view option assignments and exercises differently and believe taxpayers should be permitted to select specific lots after the fact, but not longer than 30 days.

Special Rules and Mechanical Issues

16. 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. COMMENT – The treatment of wash-sales is in conflict with the goal of #12. The different treatment of a transaction by a reporting agent and a taxpayer will be a reconciliation difference. As time advances the ability for the IRS to rely on/use for reconciliation certain cost basis data furnished by reporting entities may be compromised.

    We believe that 'identical securities' should not include options in the wash-sale of common stock unless the options are converted into the underlying securities within the 30 day period. Thus any security acquired via exercise or assignment should be treated as being identical if it comes in to the account within 30 days from the related sale. Wash sales should only include the wash-sale of identical option securities (issuer, strike price, and expiration date).

17. How to apply the rules for basis reporting of options; COMMENT – The way 1099-B is reported today, you cannot report a zero. A zero for sale proceeds must be allowed to account for options that expire. Option transactions should be shown separately when they are not married to an underlying exercise or assignment. Option transactions should be displayed in terms of short-term and long-term gains. Long term transactions may include some LEAPs and options married to underlying long term equity positions. As suggested above the 1099-B used for reporting cost basis, should be structured much more like a Schedule D, than the current 1099-B for reporting sales proceeds. We recommend that within a revamped 1099-B there be short term and long term sections. We would further suggest that options that are married to underlying securities transactions be presented with the underlying securities. Otherwise taxpayers may find numerous differences in what they attribute to the cost basis of a position and what broker is reporting. Placing the basis adjusting options with the underlying securities will answer many questions before they are ever raised.

18. Whether rules, including transition rules, are required to address the change in timing for reporting of short sales from the date the short sale is entered into to the date the short sale closes. COMMENT – Yes, there has to be some type of transition rules, and a very robust communication plan. This should be a joint effort between industry organizations and the IRS. Brokers should distribute information on transitional short sale treatment along with the 1099-B's and with year end account statements. With regard to transition rules, if the opening short sale happened prior to the implementation of the new short sale reporting, the

closing buy should not be subject to reporting on a 1099-B. The rules should treat non-reportable short sale closing purchases similar to non-reportable long buys that are also closed when you have the sale. They are not reported.

19. How to address mechanical issues relating to the computation of basis, such as adjustments for debt securities (for example, as a result of original issue discount, market discount, acquisition premium, or bond premium), gift-related adjustments, death-related adjustments, section 1043 basis rollovers, regulated investment company and real estate investment trust distributions representing return of capital, regulated investment company load adjustments, and the mark-to-market method of accounting for securities. COMMENT – How a firm addresses these cost basis allocation matters is a proprietary differentiator. Provided that a firm is accurate in its mechanics how it accomplishes the adjustments should not be disclosed. Accuracy and cost efficiency are what will distinguish reporting agents from one another as is the current case with other tax reporting. Reporting firms should not have to disclose the mechanics of 'how' they will do it.

20. What, if any, translation conventions or computation adjustments should be allowed when securities are purchased with foreign currency in an account subject to United States taxation at the time of purchase or in an account that later becomes subject to United States taxation, for example, when an owner of securities becomes a United States citizen. COMMENT - Conversion rates should be calculated at the time of purchase and time of sale. The dollars expended and the dollars received are the true cost / proceeds of the transaction. The same principal should apply for securities that are the subject of transfer – date of purchase, date of sale. We see an issue with regard to how to rely on the new citizen's data, particularly if information pertinent to cost basis tracking is not required to be reported in a formal manner in the prior country of citizenship. We can not state a position on how to handle this issue other than to say reliance on the new citizen may be problematic and the reporting agent should be immunized from liability if it does rely upon that individual and such reliance proves poorly placed.

Transfer Reporting

21. What information about the transferring person, the customer, the security transferred, and the underlying lots should be required on the transfer reporting statements. COMMENT – We would recommend providing the industry standard data that is currently being passed from broker to broker via the Automated Customer Account Transfer Service (ACATS) of the National Securities Clearing Corporation (NSCC) via its Cost Basis Reporting Service (CBRS). In addition to this information the customer's selected cost basis methodology should also be communicated and information regarding the reliability of data for foreign securities transferred. (See question 29 below.). This, however, in no way should

relieve the receiving broker from soliciting the cost basis selection information discussed in question 4 above.

22. Whether fifteen days is the proper period for furnishing transfer reporting statements, and under what circumstances a different time period, if any, should apply. COMMENT – There should be a minimum of 15 days. However, the outside time frame should take into account corporate actions and post year-end reallocations.

23. Whether the basis determination rules and customer elections governing sales of securities should apply equally to transfers of securities, for example, when a customer transfers some, but not all, holdings of a security to another broker. COMMENT – Yes, they should apply equally. We would request specific clarification that the election governing cost basis is taxpayer specific and not taxpayer account specific. (i.e. in general a taxpayer can only use one methodology excluding the treatment of mutual funds and / or DRIPs). Whether by tax payer or account, there is potential for abuse. Shifting a recently purchased lot from one account to a different account may move that security to the front of the line for sale under FIFO in the new account. With the cost basis transferred the taxpayer may effectively circumvent FIFO. Therefore, we believe for partial transfers, there should be limitations. While an account may be partially transferred, specific stocks may not. A position must be transferred in full.

24. Whether electronic transfer reporting may be appropriate and, if so, whether a common format should apply. COMMENT – Yes, electronic transfer reporting is appropriate and it should be required whenever possible. There should be a standard format based upon the ACATS approach currently in use by the NSCC. It should be mandated for all brokers and to facilitate this where there are centralized clearing houses, the IRS should encourage a new level of membership designed to facilitate cost basis transferring. Currently many institutions are not, nor have they need to be members of, these clearinghouses and expecting them to join, as full members solely for the purpose of facilitating cost basis transfers would be onerous.

25. Whether brokers and transferring parties may utilize reporting services of third-party intermediaries to meet their transfer reporting requirements. COMMENT – Yes, provided the information originates from the Broker/Dealer itself we fully support the use of facilities such as the ACATS system.

26. Whether the transferring person should communicate any information or justification to the transferee broker when no transfer reporting statement is required because the security is not a covered security. COMMENT - Yes, it should be noted in the communication. A lack of denotation would leave possible questions in the future. A clear ‘subject to’ or ‘not subject to’ would leave no questions. This would achieve comfort levels much like a ‘positive’ audit confirmation does.

27. What information about the issuer and organizational action should be required on the issuer returns and reporting statements. COMMENT - Sufficient information to determine the cost basis impact - the allocation between income and return of capital or the percentage of basis allocation between two or more entities. Of most importance here is the timing of the delivery of that information. Any timeframes such as the 45 days set forth in the new rules must be known and sufficient for the issuer and issuer's counsel / accountants to determine the allocation. We believe there needs to be a new approach that requires much more up front work in this determination by the issuer and that is why we strongly believe issuer's counsel / accountants should be a part of the group highlighted in question 2 and should respond to this current IRS solicitation.

28. How to maximize the timeliness of issuer returns and statements and promote public reporting by issuers in lieu of return filing. COMMENT - Through mandating specific times for disclosure, such as the 45 day rule, and assessing penalties for failing to do so we believe timeliness can be achieved to a great extent. (See question 36 below.)

29. 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. COMMENT - They are not subject to reporting, so the broker is forced to trust the taxpayer. As one possible mitigation approach we would recommend these securities be flagged with the statement 'not completely reliable data available.' It is possible for the IRS to also create a list of countries / institutions from which information supplied can be deemed reliable and these securities would not be flagged. To enjoy the safe harbor of the list, the customer would have to present statements / confirms from approved financial entities with the purchase cost and dates, or the foreign broker would have to certify the information the taxpayer is presenting. For those countries not deemed reliable, the taxpayer must address this with the IRS directly and the broker / custodian should not be held liable for false reporting.

30. How to coordinate broker transfer reporting with issuer corporate action reporting to avoid duplicate broker adjustments when accounts are transferred and whether a universal timing standard should apply. COMMENT – The entity holding custody at the time of the corporate action (broker, custodian, etc.) should be responsible. The custodian as of the effective date should be required to forward on any corporate action changes to cost basis for its accounts that have transferred out subsequent to an announced corporate action but prior to the action itself. This should follow the same 45 day rule as corporate actions, meaning that the broker must forward on the information as soon as it is made available by the issuer.

Broker Practices and Procedures

31. To what extent a broker should verify the reasonableness of basis information and what document retention requirements should apply. COMMENT – Verification should never be an issue for a receiving broker. The delivering broker should be accountable for transferring accurate information and responsible if it is not accurate. It is the responsibility of the broker who executes the order or physically takes in a security after 1/1/2011 to obtain the information about that security if it is subject to reporting. When there is a receipt that involves a physical certificate, the agent or issuer should be required to create a 'certification of acquisition.' This would capture the date and cost basis, and would be affixed to the certificate. This could be delivered to a broker at such time as the security is deposited into an account for sale. A document of this nature can also be used by an Executor or Administrator when distributing estate property (e.g. date of death valuation / certification).

    With regard to record retention, a set of retention rules similar to those that currently apply under Section 17 of the Securities Exchange Act of 1934 to brokers should be instituted.

32. What procedures a broker should follow if the broker derives basis and holding period information for or from customers with respect to a security that is not a covered security, including potential reporting of such information to either the customer or the Service. COMMENT –The IRS needs to decide if they want non-reportable data reported. We suggest a structure that has two types of 1099-B's being reported – those subject to cost basis and those not subject to cost basis reporting. The Broker/Dealer would report these two categories of data. We do not recommend reporting cost basis information that is not truly subject to reporting since this may give an impression of accuracy and may be unduly relied upon by the IRS. For customer experience purposes we see this differently. The customer should have all possible information available to support sale decisions. Having data available that the customer has put into a broker's system that is not subject to reporting can be helpful to the customer but it should not be confused with that which is to be relied upon by the IRS, thus it should not be reported. We believe the optimal solution is to let the customer see all available information but only report to the IRS cost basis information that is required.

33. What procedures a transferee broker should follow if the broker does not receive a transfer reporting statement. COMMENT - There should be zero tolerance for failure to report between brokers / agents. The broker should first initiate a broker to broker contact to get the information from the delivering broker. If this is not successful, the NSCC or other designated body should be notified. The client should then be advised that the information has not been received. If this failure to report transfer information occurs over a year end, the receiving broker should be permitted to amend its year end reporting for the particular customer involved and any potential fines should be assessed against the delivering broker who failed to report the transfer information.

34. What procedures a transferee broker should follow if the broker receives transfer reporting information with respect to a security that is not a covered security, or from a transferor who is not subject to the transfer reporting requirements. COMMENT – For non-covered securities, the receiving broker should book it and treat is as 'not subject to reporting.' It should be made available to the customer in the manner prescribed in question 32 but not be utilized for IRS reporting. With regard to items received from a transferor not subject to the reporting requirements we would suggest an approach similar to our response to question 29.

35. What procedures a broker should follow with respect to basis adjustments if an issuer report on a corporate action is insufficient or untimely. COMMENT – Upon the expiration of the 45 day period the broker should send an alert to its customers (with a cc: to the IRS or other appropriate regulatory body) informing them that to date no information has been made available for basis allocation. At this point the broker should also create an open tax lot(s) for the securities in question with a zero basis. If the distribution was cash then the money should be recorded as dividend income at that point. Upon receipt of the issuer information adjustments can be made to the basis of the securities and the money can be reclassified. Using this approach should help to bring pressure on the issuer. This series of events may also create the need to file an amended 1099-B. If so, the broker should not be held at fault or subject to a penalty. It should be noted that if the issuers distribute the basis information in an untimely manner going forward, the headaches which now exist for the industry and the IRS with regard to late 1099-B filings may increase exponentially as revising reported cost basis data (whether in account transfer reporting, IRS reporting or for portfolio management decision making) will have a much broader impact. As late basis reporting piles up the integrity of transferred and reported data may decline significantly as well. The IRS should also look at 'spillovers' in this context. Every security that is impacted by an after year end spillover will have been reported inaccurately for cost basis purposes to the IRS by reporting agents.

36. Under what circumstances penalties may apply to brokers or other reporting entities and when relief from penalties should be available. COMMENT – We suggest that relief from penalties be offered for a set period of time for each security classification as they are rolled out for cost basis 1099-B reporting. Thus year end 2011 reporting should include a window of relief for equity reporting shortfalls. Year end 2012 should offer relief from mutual fund reporting shortfalls, and so on. We believe transferring of basis information should also be subject to penalty abatements in 2011 as this form of reporting is new to the industry. We would expect that by 2012 transfer reporting should be a non-issue and instances of untimely or inaccurate reporting should be subject to penalties. If a broker is forced to rely upon a customer or another broker and the information given is inaccurate we believe relief should be available to the broker if it relied upon such information for its reporting obligation in good faith. If a broker fails to meet a reporting deadline as a result of a third party (issuer, other broker, etc.) we

believe the broker should be granted relief from penalties and the IRS should look to the third party for penalties.

Given the impact that an issuer's failure to distribute timely basis information can have we suggest the following: The issuer should make a payment (a small percentage of the value of the overall corporate action item) to the IRS. Should the issuer distribute the information timely the IRS would return (or keep on deposit) the payment with interest. If the issuer fails to make the information distribution timely a portion of the money on deposit would be forfeited as a penalty. Using a sliding time scale the entire amount of money could be forfeited over a period of months. A penalty of this nature would certainly work to encourage the issuers to be timely in their communications.

Conclusion

CRI appreciates the opportunity to provide its input to the IRS on this very important undertaking. We believe the more influence industry participants have up front the more practical and successful the cost basis solution can be. While providing cost basis reporting is expected to raise revenues for our country, it will also raise the quality of information and service that brokers such as those using the CRI service bureau can offer their customers. It is with this reason in mind that we are hopeful that the IRS will consider our points and look upon this letter and others on this topic as the beginning of a constructive dialogue. Working together the financial services industry and the IRS can produce a fair, timely and successful implementation of cost basis across the United States.

Yours very truly,

Martin J. Bentsen
Chief Operating Officer
Computer Research, Inc.