

Corporate & Financial Weekly Digest

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IRS Proposes New Definition of 'Publicly Traded' Property for Purposes of Determining the Issue Price of a Debt Instrument

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On January 6, the Internal Revenue Service released proposed rules (REG-131947-10) under U.S. Treasury Department regulation 1.1273-2 that simplify and clarify when property is considered to be “publicly traded” for purposes of determining the issue price of a publicly traded debt instrument and the fair market value of publicly traded property received in exchange for a debt instrument.

The proposed rules would provide that if information about the sales price of a debt instrument (or information sufficient to calculate the sales price) appears in a medium (e.g., the Financial Industry Regulatory Authority’s Trade Reporting and Compliance Engine database) that is made available to persons who regularly purchase or sell debt instruments, such debt instruments would be considered publicly traded. The proposed rules also would provide that property is considered to be publicly traded if a firm price quote to buy or sell the property is available or an indicative price quote is provided by a dealer, a broker or a pricing service.

Property listed on an exchange would continue to be “publicly traded,” but the current list of foreign exchanges would be replaced and expanded to include any securities exchange that is officially recognized, sanctioned, regulated or supervised by a governmental authority of the foreign country.

The proposed rules would presume that the fair market value of property is its trading price, sales price or quoted price, whichever is applicable.

Click [here](#) for a copy of the proposed rules.

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