

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Increase the Frequency of the Short Interest Reporting Requirements Under Rule 3360 from Monthly to Twice Per Month

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Andrea"/>	Last Name	<input type="text" value="Orr"/>
Title	<input type="text" value="Assistant General Counsel"/>		
E-mail	<input type="text" value="andrea.orr@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8156"/>	Fax	<input type="text" value="(202) 728-8264"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	<input type="text" value="12/04/2006"/>
By	<input type="text" value="Stephanie Dumont"/>
	(Name)
	<input type="text" value="Vice President and Associate General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to increase the frequency of the short interest reporting requirements under Rule 3360 from monthly to twice per month. No changes to the text of NASD rules are required by this proposed rule change.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on July 20, 2005, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on July 21, 2005. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

The effective date will be six (6) months following Commission approval of the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

proposed rule change.

**3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

NASD is proposing to require members to record and report short interest position information to NASD twice per month. Currently, Rule 3360, Short-Interest Reporting, requires members to maintain a record of total short positions<sup>2</sup> in all customer and proprietary firm accounts in OTC Equity Securities<sup>3</sup> and securities listed on a national securities exchange if not reported to another self-regulatory organization (“SRO”) and to regularly report such information in the manner prescribed by NASD.<sup>4</sup>

Specifically, Rule 3360 requires that members report short positions as of the close of the settlement date designated by NASD and that the data be received by NASD

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<sup>2</sup> Short positions required to be reported under Rule 3360 are those resulting from “short sales” as the term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 under the Exchange Act. See NASD Rule 3360(b)(1).

As part of the SEC’s approval of amendments to expand Rule 3360 to OTC equity securities, the SEC urged NASD to review these exceptions to short interest reporting to determine whether further rulemaking is appropriate. NASD is currently conducting such a review. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the SEC. See Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006).

<sup>3</sup> The term “OTC Equity Securities” refers to any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

<sup>4</sup> Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See Notice to Members 03-08 (January 2003).

no later than the second business day following the reporting settlement date designated by NASD. Currently, the designated settlement date is the 15<sup>th</sup> of each month, unless the 15<sup>th</sup> falls on a weekend or other non-settlement date, in which case the designated settlement date is the preceding settlement day.<sup>5</sup> The aggregate short interest data is, in turn, made publicly available. Investors and other interested parties may obtain the aggregate short interest data from NASDAQ's Web site, the OTCBB Web site, other commercial Web sites and certain newspapers.

NASD is proposing to require that members maintain and report to NASD short interest positions twice per month, such that the designated settlement dates would be the 15<sup>th</sup> (unless the 15<sup>th</sup> falls on a weekend or other non-settlement date, in which case the designated settlement date will be the preceding settlement day) and the last business day of each month. NASD will then make the short interest information publicly available twice per month. NASD believes that increasing the frequency of short interest reporting will provide additional and more timely information to public investors and other interested parties related to short selling.

In recognition of the technological and systems changes the proposed rule change may require, the effective date will be six (6) months following Commission approval of the proposed rule change.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of

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<sup>5</sup> A schedule of NASD's designated settlement dates can be found on NASD's Web site at [www.nasd.com](http://www.nasd.com).

Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide additional and more timely information related to short selling.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The proposed rule change was published for comment in NASD Notice to Members 05-63 (September 2005). Two comments were received in response to the Notice.<sup>7</sup> A copy of the Notice to Members is attached as Exhibit 2a. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

Of the two comment letters received, both were in favor of the proposed rule change. One commenter noted that minimal programming and costs would be required to implement this proposal, but recommended six months for implementation of the proposal.<sup>8</sup> The other commenter indicated that increases or decreases in short interest

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<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> Comment were received from the following: Lisa Morel-Misener of Cognos Incorporated, dated October 27, 2005 and Christopher Charles of Wulff Hansen & Co., dated November 15, 2005.

<sup>8</sup> See supra note 7, Wulff Hansen & Co. letter.

positions are significant indicators of investor sentiment.<sup>9</sup> As such, the commenter stated that timelier reporting of short interest data provides additional relevant information and more accurate indications of changes in investor outlook.<sup>10</sup>

As noted above, in recognition of technological and systems changes that may be required to implement the proposed rule change, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make any necessary changes.

**6. Extension of Time Period for Commission Action**

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>11</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>9</sup> See supra note 7, Cognos Incorporated letter.

<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

Exhibit 2a. NASD Notice to Members 05-63 (September 2005).

Exhibit 2b. Index to comments received in response to NASD Notice to Members 05-63 (September 2005).

Exhibit 2c. Comments received in response to NASD Notice to Members 05-63 (September 2005).

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2006-131)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Increase the Frequency of the Short Interest Reporting Requirements under Rule 3360

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

NASD is proposing to increase the frequency of the short interest reporting requirements under Rule 3360 from monthly to twice per month. No changes to the text of NASD rules are required by this proposed rule change.

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

1. Purpose

NASD is proposing to require members to record and report short interest position information to NASD twice per month. Currently, Rule 3360, Short-Interest Reporting, requires members to maintain a record of total short positions<sup>3</sup> in all customer and proprietary firm accounts in OTC Equity Securities<sup>4</sup> and securities listed on a national securities exchange if not reported to another self-regulatory organization (“SRO”) and to regularly report such information in the manner prescribed by NASD.<sup>5</sup>

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<sup>3</sup> Short positions required to be reported under Rule 3360 are those resulting from “short sales” as the term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 under the Exchange Act. See NASD Rule 3360(b)(1).

As part of the SEC’s approval of amendments to expand Rule 3360 to OTC equity securities, the SEC urged NASD to review these exceptions to short interest reporting to determine whether further rulemaking is appropriate. NASD is currently conducting such a review. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the SEC. See Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006).

<sup>4</sup> The term “OTC Equity Securities” refers to any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

<sup>5</sup> Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See Notice to Members 03-08 (January 2003).

Specifically, Rule 3360 requires that members report short positions as of the close of the settlement date designated by NASD and that the data be received by NASD no later than the second business day following the reporting settlement date designated by NASD. Currently, the designated settlement date is the 15<sup>th</sup> of each month, unless the 15<sup>th</sup> falls on a weekend or other non-settlement date, in which case the designated settlement date is the preceding settlement day.<sup>6</sup> The aggregate short interest data is, in turn, made publicly available. Investors and other interested parties may obtain the aggregate short interest data from NASDAQ's Web site, the OTCBB Web site, other commercial Web sites and certain newspapers.

NASD is proposing to require that members maintain and report to NASD short interest positions twice per month, such that the designated settlement dates would be the 15<sup>th</sup> (unless the 15<sup>th</sup> falls on a weekend or other non-settlement date, in which case the designated settlement date will be the preceding settlement day) and the last business day of each month. NASD will then make the short interest information publicly available twice per month. NASD believes that increasing the frequency of short interest reporting will provide additional and more timely information to public investors and other interested parties related to short selling.

In recognition of the technological and systems changes the proposed rule change may require, the effective date will be six (6) months following Commission approval of the proposed rule change.

## 2. Statutory Basis

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<sup>6</sup> A schedule of NASD's designated settlement dates can be found on NASD's Web site at [www.nasd.com](http://www.nasd.com).

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide additional and more timely information related to short selling.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The proposed rule change was published for comment in NASD Notice to Members 05-63 (September 2005). Two comments were received in response to the Notice.<sup>8</sup> A copy of the Notice to Members is attached as Exhibit 2a. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

Of the two comment letters received, both were in favor of the proposed rule change. One commenter noted that minimal programming and costs would be required to implement this proposal, but recommended six months for implementation of the proposal.<sup>9</sup> The other commenter indicated that increases or decreases in short interest

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<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> Comment were received from the following: Lisa Morel-Misener of Cognos Incorporated, dated October 27, 2005 and Christopher Charles of Wulff Hansen & Co., dated November 15, 2005.

<sup>9</sup> See supra note 8, Wulff Hansen & Co. letter.

positions are significant indicators of investor sentiment.<sup>10</sup> As such, the commenter stated that timelier reporting of short interest data provides additional relevant information and more accurate indications of changes in investor outlook.<sup>11</sup>

As noted above, in recognition of technological and systems changes that may be required to implement the proposed rule change, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make any necessary changes.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>10</sup> See supra note 8, Cognos Incorporated letter.

<sup>11</sup> Id.

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-131 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-NASD-2006-131 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris

Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

# Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

Legal & Compliance  
Operations

## KEY TOPICS

Rule 3360  
Short Interest Reporting  
Short Sales

## REQUEST FOR COMMENT

### Short Interest Reporting

NASD Seeks Comment on Increasing the Frequency of Short Interest Reporting; **Comment Period Expires November 29, 2005**

#### Executive Summary

NASD is issuing this *Notice to Members* to solicit comments from members and other interested parties on proposed changes to Rule 3360, Short Interest Reporting. Currently, Rule 3360(a) requires members to maintain a record of total short positions in all customer and proprietary firm accounts in NASDAQ securities—and listed securities if not reported to another self-regulatory organization (SRO)—and requires members to report such information to NASD on a monthly basis. NASD is seeking comment on a proposed change to Rule 3360 that would require members to record and report total short position information to NASD twice per month. NASD believes that increasing the frequency of short interest reporting requirements will provide additional and more timely information related to short selling to investors and other interested parties.

#### Action Requested

NASD encourages all interested parties to comment on this proposal.

Comments must be received by **November 29, 2005**. Members and interested persons can submit their comments using the following methods:

- ✦ **Mail** Attachment A (Request for Comment Form) along with written comments;
- ✦ **Mail** comments in hard copy to the address on the following page; or
- ✦ **Email** written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

05-63

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To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method; however, if a person wishes to submit comments using both Attachment A and one of the other methods listed above, he or she should indicate that in the submissions. Attachment A and/or comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, NW  
Washington, D.C. 20006-1506

**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web site one week after the end of the comment period.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>2</sup>

### Questions/Further Information

As noted above, hard copy comments should be mailed to Barbara Z. Sweeney. Questions concerning this *Notice* may be directed to the Legal Section, Market Regulation at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

### Background and Discussion

Currently, Rule 3360(a) requires members to maintain a record of total short positions in all customer<sup>3</sup> and proprietary firm accounts in NASDAQ securities (and listed securities if not reported to another SRO) and requires members to report such information to NASD on a monthly basis.<sup>4</sup> Rule 3360(b) provides that short positions required to be reported under the rule are those resulting from short sales as the term is defined in SEC Rule 200 of Regulation SHO,<sup>5</sup> with limited exceptions. The aggregate short interest data is, in turn, made publicly available. Investors and other interested parties can obtain short interest information from NASDAQ's Web site, other commercial Web sites, and certain newspapers.

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NASD is soliciting comment on a proposed change to Rule 3360 to require members to record and report such short position information to NASD twice per month. NASD would then make the short interest information publicly available twice per month. NASD is analyzing whether increasing the frequency of the current monthly short interest reporting requirements may provide additional pertinent information to investors and other interested parties. In particular, NASD is soliciting comment on whether disseminating short interest information on a more frequent basis would be of value to investors and other interested parties. NASD also is soliciting comment on what technology and system changes would be required to implement this proposal, as well as the burdens and costs associated with increasing the frequency of short interest reporting.

### Endnotes

1. See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
2. Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
3. Short sale positions held for other broker-dealers that fall within the definition of short position provided in Rule 3360(b) must be reported under Rule 3360(a), unless these positions already are reported to an SRO. See *Notice to Members 03-08* (January 2003).
4. Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See *Notice to Members 03-08*.
5. SEC Rule 200 of Regulation SHO provides, in part, the following: "The term 'short sale' shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."

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## ATTACHMENT A

### Request for Comment Form

We have provided below a form that members and other interested parties may use in addition to or in lieu of written comments. This form is intended to offer a convenient way to participate in the comment process, but does not cover all aspects of the proposal described in the *Notice*. We therefore encourage members and other interested parties to review the entire *Notice* and provide written comments, as necessary.

### Instructions

Comments must be received by November 29, 2005. Members and interested persons can submit their comments using the following methods:

- ◆ Mail Attachment A (Request for Comment Form) along with written comments;
- ◆ Mail comments in hard copy to the address below; or
- ◆ Email written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method; however, if a person wishes to submit comments using both Attachment A and one of the other methods listed above, he or she should indicate that in the submissions. Attachment A and/or comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, N.W.  
Washington, D.C. 20006-1506

**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web site one week after the end of the comment period.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>2</sup>

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## Proposed Change to Short Interest Reporting

NASD requests input from members and other interested parties on the proposed changes to the short interest reporting requirements described in this *Notice*.

### Increasing the Frequency of Short Interest Reporting

1. Do you support the proposal that would require members to record and report short position information to NASD twice per month?

Yes     No    See my attached written comments

2. For what purposes do you use the publicly disseminated short interest information?  
What are the benefits of more frequent short interest reporting?

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3. What technology and systems changes would be required by increasing the frequency of short interest reporting?

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4. What are the estimated burdens and costs associated with implementation of this proposal?

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5. What amount of time do you believe would be adequate for implementation of the proposal?

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**Contact Information**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Are you:     An NASD Member         An Investor         A Registered Representative

Other: \_\_\_\_\_

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**Endnotes**

1. See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
2. Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.

**Index to Comments Received in Response to NASD Notice to Members 05-63**

1. Lisa Morel-Misener, Cognos Incorporated, dated October 27, 2005.
2. Christopher Charles, Wulff Hansen & Co., dated November 15, 2005.

**Comments on NASD Notice to Members 05-63**



10/27/05

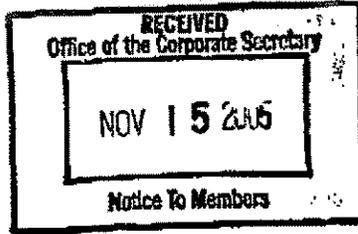
Good Afternoon,

In response to Notice to Members, 05-63 "Short Interest Reporting" we would like to express our support for the proposed change to Rule 3360 that would require members to record and report total short position information to NASD twice per month.

An increase or decrease in short interest can be a very significant indicator of investor sentiment. More timely reporting of short interest would therefore provide investors with additional relevant information upon which to base their investment decisions.

Further, we believe more timely short interest data would provide a more accurate indication of changes in investor outlook as it relates to our stock, our peers stock, and therefore on our industry as a whole. This information is valuable to us within the Investor Relations department of a public company.

Thank you and best regards,  
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### Proposed Change to Short Interest Reporting

NASD requests input from members and other interested parties on the proposed changes to the short interest reporting requirements described in this Notice.

### Increasing the Frequency of Short Interest Reporting

1. Do you support the proposal that would require members to record and report short position information to NASD twice per month?

Yes  No

See my attached written comments

*Daily would be better - data is available.*

2. For what purposes do you use the publicly disseminated short interest information? What are the benefits of more frequent short interest reporting?

*General market information and risk management.*

3. What technology and systems changes would be required by increasing the frequency of short interest reporting?

*Minimal - minor programming.*

4. What are the estimated burdens and costs associated with implementation of this proposal?

*Minimal; certainly less than the market benefits.*

5. What amount of time do you believe would be adequate for implementation of the proposal?

Six months, or -

Contact Information

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Address:

City/State/Zip:

Phone:

Email:

Are you:  An NASD Member  An Investor  A Registered Representative  
 Other:

Endnotes

1. See Notice to Members 03-73 (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
2. Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.