

Notice to Members

FEBRUARY 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations

KEY TOPICS

NASD Rule 3370
Short Sale Orders

INFORMATIONAL

Amendments to NASD Rule 3370, Affirmative Determination Requirements

Effective Date of Amendments to NASD Rule 3370
(Affirmative Determination Requirements) Extended
to **April 1, 2004**

Executive Summary

NASD is delaying the effective date of amendments to Rule 3370 (Prompt Receipt and Delivery of Securities—the "Affirmative Determination" Rule) approved by the SEC in November 2003,¹ until **April 1, 2004**. The amendments expand the scope of the affirmative determination requirements to include orders received from broker/dealers that are not members of NASD ("non-member broker/dealers"). The effective date of the amendments originally was February 20, 2004.² NASD understands that some members need to make significant technological changes to their systems to comply with the new requirements; therefore, NASD is extending the effective date to provide members with additional time to make such changes.

Questions/Further Information

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Associate General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8104; or Patricia M. Albrecht, Assistant General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8026.

04-08

Discussion

As further detailed in *Notice to Members 04-03*, the SEC recently approved amendments to Rule 3370 to require that, prior to accepting a short sale order from a non-member broker/dealer, a member make an affirmative determination that the member will receive delivery of the security from the non-member broker/dealer or that the member can borrow the security on behalf of the non-member broker/dealer for delivery by the settlement date. In addition, the amendments provide exemptions for certain proprietary orders of a non-member broker/dealer if those proprietary orders meet the same conditions for exemptions applicable to proprietary orders of member firms, and the following two conditions are satisfied: (1) the non-member broker/dealer must be registered with the SEC; and (2) if using the market maker exemption, the non-member broker/dealer is registered or qualified as a market maker in the securities and is selling such securities in connection with *bona fide* market making.

As approved, the effective date of the amendments was February 20, 2004; however, NASD is delaying the effective date of these provisions until April 1, 2004. NASD understands that some members will need to make significant technological changes to their systems to comply with the new requirements. NASD believes that delaying the effective date of these amendments until April 1, 2004, will provide members the additional time necessary to make changes to their systems.

Endnotes

- 1 File No. SR-NASD-2001-85; SEC Release No. 34-48788 (Nov. 14, 2003); 68 F.R. 65978 (Nov. 24, 2003).
- 2 See *Notice to Members 04-03* (January 2004).

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