

# Notice to Members

AUGUST 2004

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registered Representatives  
Systems  
Trading

## KEY TOPICS

ACT Short Sale Reporting Requirements  
IM-6130  
Rule 6130(d)(6)  
Short Sales

## GUIDANCE

### ACT Short Sale Reporting Requirements

Operative Date of Short Sale ACT Reporting Requirements for OTCBB and Other Non-NASDAQ OTC Equity Securities Extended to **September 24, 2004**

#### Executive Summary

NASD is delaying the operative date of IM-6130 (Trade Reporting of Short Sales) for Over-the-Counter Bulletin Board (OTCBB) and other non-NASDAQ over-the-counter (OTC) equity securities until **September 24, 2004**. IM-6130 was filed for immediate effectiveness with the SEC in May 2004 with an operative date of July 26, 2004.<sup>1</sup> New IM-6130 clarifies that, as currently required by Rule 6130 (Trade Report Input), a "short sale" or "short sale exempt" indicator, as applicable, is required in all short sale transactions reported to the Automated Confirmation Transaction Service (ACT), including (1) NASDAQ National Market (NNM) securities; (2) NASDAQ SmallCap Market (SmallCap) securities; (3) other OTC transactions in exchange-listed securities; (4) OTCBB securities; and (5) other non-NASDAQ OTC equity securities. NASD understands that some members and their vendors need to make significant technological changes to their systems for OTCBB and other non-NASDAQ OTC equity securities to comply with these requirements; therefore, in consultation with SEC staff, NASD is extending the operative date for OTCBB and other non-NASDAQ OTC equity securities to provide members with additional time to make such changes.

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## Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Jeffrey S. Davis, Office of General Counsel, NASDAQ, at (202) 912-3035; the Legal Section, Market Regulation, NASD, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8071.

## Discussion

As further detailed in *Notice to Members 04-40*, NASD, through its subsidiary, The Nasdaq Stock Market, Inc. (NASDAQ), filed for immediate effectiveness with the SEC proposed interpretive material to Rule 6130 clarifying that a "short sale" or "short sale exempt" indicator, as applicable, is required in all short sale transactions reported to ACT, including transactions in NNM, SmallCap, exchange-listed, OTCBB, and other non-NASDAQ OTC equity securities.

Although IM-6130 became effective immediately upon filing, the operative date of these requirements was July 26, 2004 to provide members with additional time to educate staff and re-program their systems, if necessary. NASD understands that some members and their vendors need to make significant technological changes to their systems with respect to OTCBB and other non-NASDAQ OTC equity securities to comply with the requirements and therefore, in consultation with SEC staff, NASD is delaying the operative date of these provisions until **September 24, 2004**. NASD believes that delaying the operative date of these requirements will provide members the additional time necessary to make changes to their systems regarding OTCBB and other non-NASDAQ OTC equity securities.

## Endnotes

- 1 See Securities Exchange Act Release No. 49833 (June 8, 2004), 69 FR 116 (June 17, 2004); see also *Notice to Members 04-40* (May 2004).

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