

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.

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.¹

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*.²

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 customer³ 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.⁴ 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,⁵ 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.

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.

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:

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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?

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

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

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

Contact Information

Name:

Firm:

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.