

Notice to Members

APRIL 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading
Training

KEY TOPICS

Short Interest
Rule 3360

GUIDANCE

Short Interest Reporting Requirements

SEC Approves Amendments to the Short Interest Reporting Requirements; **Effective Date: July 3, 2006**

Executive Summary

On February 3, 2006, the Securities and Exchange Commission (SEC) approved amendments to Rule 3360 relating to the short interest reporting requirements.¹ The amendments expand the short interest reporting requirements to over-the-counter (OTC) equity securities. The short interest reporting requirements, as amended, are set forth in Attachment A of this *Notice*. The amended short interest reporting requirements become effective on July 3, 2006.

Questions/Further Information

Questions regarding 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 positions² in all customer³ 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.⁴ Short interest reports must be made as of the settlement date designated by NASD. Currently, the designated settlement date is the 15th of the month, or the preceding settlement date if the 15th is a non-settlement date. Reports must be received by NASD no later than the second business day after the reporting settlement date. After review by NASD, the short interest data is consolidated by security and disseminated to the public, generally on the eighth business day after the reporting settlement date.

On February 3, 2006, the SEC approved amendments to Rule 3360 that expand the short interest reporting requirements to OTC equity securities. For purposes of the amended short interest reporting requirements, OTC equity securities are defined as any equity security that is not listed on The NASDAQ Stock Market or a national securities exchange.⁵ Currently, members are required to maintain and report to NASD short positions in NASDAQ securities. Further, members must report to NASD short positions in listed securities that are not otherwise reported to another SRO. Accordingly, the amended short interest reporting requirements will require that members maintain and report to NASD all short positions in NASDAQ securities and OTC equity securities. If members have short positions in listed securities that are not otherwise reported to another SRO, those short positions should be reported to NASD as well.

In recognition of the technological and system changes that may be required to implement the new requirements, the implementation date for the amended short interest reporting requirements will be July 3, 2006.

Endnotes

- 1 See Securities Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006) (File No. SR-NASD-2005-112).
- 2 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, with limited exceptions. 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."
- 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 a self-regulatory organization. See *Notice to Members (NTM) 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 *NTM 03-08* (January 2003).
- 5 For purposes of the short interest reporting requirements, OTC options and non-standard equity derivative products (e.g., equity swaps, contracts for differences, etc.) are not included within the definition of OTC equity securities.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in OTC Equity Securities, securities included in The Nasdaq Stock Market, and in each other security listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to NASD in such a manner as may be prescribed by NASD. [For the purposes of this rule, the term "customer" includes a broker/dealer.] Reports shall be made as of the close of the settlement date designated by NASD. Reports shall be received by NASD no later than the second business day after the reporting settlement date designated by NASD.

(b) For purposes of this Rule[,]:

(1) "short" positions to be reported are those resulting from "short sales" as that 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 adopted under the Act[.];

(2) the term "customer" includes a broker-dealer; and

(3) the term "OTC Equity Securities" shall mean any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.