



## Regulatory Circular 07-008

**Date:** May 9, 2007  
**To:** ETP Holders  
**From:** James C. Yong,  
Chief Regulatory Officer  
**Re:** Change to Requirements for the Reporting of Consolidated Short Interest Positions

Attached is the Intermarket Surveillance Group ("ISG") Notice to Members 2007-01 ("Notice") issued today by the self-regulatory organizations ("SROs") acting jointly as members of ISG<sup>1</sup> concerning new requirements for the reporting of Consolidated Short Interest Positions.

The purpose of this circular is to inform Members, Member Organizations and ETP Holders of recent rule changes of certain SROs to increase the frequency of short interest reporting from monthly to twice monthly. Currently, the National Stock Exchange, Inc. ("NSX<sup>SM</sup>" or the "Exchange") does not require short interest reporting, as it is not a Designated Examining Authority for any ETP Holders. However, please note that, pursuant to Rule 4.2 of the Exchange *Furnishing of Records*, NSX may require the submission of such data if it deems that the submission of such data is needed for regulatory purposes. The Exchange will issue a subsequent regulatory circular if such a need arises, with an outline of the reporting schedule.

Questions concerning this circular should be directed to Nicole Guiffra, Assistant Vice President, Surveillance at (312) 786-8809 or the individuals of each SRO as listed on the Notice.

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<sup>1</sup> American Stock Exchange LLC (AMEX), Boston Stock Exchange, Inc. (BSE), Chicago Board Options Exchange, Inc. (CBOE), Chicago Stock Exchange, Inc. (CHX), International Securities Exchange (ISE), NASD Inc. (NASD), The NASDAQ Stock Market LLC (NASDAQ), National Stock Exchange, Inc. (NSX), New York Stock Exchange, Inc. (NYSE), NYSE Arca, Inc. (NYSE Arca) and Philadelphia Stock Exchange, Inc. (PHLX).



## NOTICE TO MEMBERS ISG 2007-01

**ATTENTION:** Chief Executive Officer, Managing Partner, Chief Operations Officer,  
Compliance Officer, Legal and Compliance Departments

**TO:** All Members and Member Organizations

**FROM:** Intermarket Surveillance Group

**DATE:** May 9, 2007

**SUBJECT:** **New Requirement for the Reporting of Consolidated Short Interest Positions to the Intermarket Surveillance Group (ISG)**<sup>1</sup>

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On March 6, 2007, the Securities and Exchange Commission (SEC) approved rule changes by the Amex, NASD, and NYSE to require Members and Member Organizations to increase the frequency of short interest reporting from monthly to twice a month.<sup>2</sup> The amended short interest reporting requirements become effective 180-days after SEC approval to give Members and Member Organizations adequate time to make any changes necessary to comply with the new requirements. In addition to the rule changes at the Amex, NASD, and NYSE, the other U.S. securities marketplace members of the ISG are also revising their short interest reporting requirements to correspond to the twice a month reporting cycle. Therefore, beginning in September 2007 all ISG SROs will require Members and Member Organizations to submit short interest information twice a month.

The Mid-Month Short Interest Report will continue to be based on short positions<sup>3</sup> held by Members on the settlement date of the 15<sup>th</sup> of each month. If the 15<sup>th</sup> falls on a weekend or another non-settlement date, the designated settlement date will be the

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<sup>1</sup> This ISG *Notice* was prepared by the following self-regulatory organizations (SROs) as members of the ISG: American Stock Exchange LLC (Amex), Boston Stock Exchange, Inc. (BSE), Chicago Board Options Exchange, Inc. (CBOE), Chicago Stock Exchange, Inc. (CHX), International Securities Exchange (ISE), NASD, Inc. (NASD), The NASDAQ Stock Market LLC (NASDAQ), National Stock Exchange, Inc. (NSX), New York Stock Exchange, Inc. (NYSE), NYSE Arca, Inc. (NYSE Arca), and Philadelphia Stock Exchange, Inc. (PHLX) (collectively ISG SROs).

<sup>2</sup> Currently, the Amex requires members to report End-of-Month Short Interest for “ETF type products.”

<sup>3</sup> Short positions to be reported are those resulting from short sales as the term is defined in SEC Rule 200 of Regulation SHO, subject to certain limited exceptions.

previous business day on which transactions settled. The End-of-Month Short Interest Report will be based on short positions held on the last business day of the month on which transactions settle. **Attachment A** outlines the revised Short Interest Reporting Schedule for September 2007 through December 2007. Additionally, Short Interest Reporting rules of certain ISG SROs are attached.

All Members and Member Organizations of the ISG SROs will continue to be required to report short positions in all securities they carry, irrespective of where the securities are listed. It is not expected that the current reporting processes or reporting systems offered by the ISG SROs will change other than having to report twice a month.<sup>4</sup>

Questions concerning short interest reporting requirements may be directed to the following individuals at each ISG SRO.

<b>SRO</b>	<b>Individual</b>	<b>Telephone Number</b>	<b>Email Address</b>
<b>Amex</b>	James Turnbull	(212) 306-1526	james.turnbull@nasd.com
<b>BSE</b>	Sharon Melanson	(617) 235-2152	sharon.melanson@bostonstock.com
<b>CBOE</b>	Pat Sizemore	(312) 786-7752	sizemore@cboe.com
<b>CHX</b>	Mike Cardin	(312) 663-2204	mcardin@chx.com
<b>ISE</b>	Ron Veith	(212) 897-8130	rveith@iseoptions.com
<b>NASD</b>	Jocelyn Mello	(240) 386-5091	
<b>NASDAQ</b>	NASDAQ OGC	(301) 978-8400	
<b>NSX</b>	Nicole Guiffra	(312) 786-8809	nicole.guiffra@nsx.com
<b>NYSE</b>	Glen Garofalo	(212) 656-2084	ggarofalo@nyse.com
<b>NYSE Arca</b>	John Chapin	(312) 442-7790	jchapin@nyse.com
<b>PHLX</b>	Joseph Cusick	(215) 496-1576	joseph.cusick@phlx.com

Technical or system questions should be directed to:

<b>Organization</b>	<b>Contact</b>	<b>Telephone Number</b>	<b>Email Address</b>
<b>Amex</b>	Helpdesk	(800) 321-NASD	nasdregfiling@nasd.com
<b>NASD</b>	Helpdesk	(800) 321-NASD	nasdregfiling@nasd.com
<b>NYSE</b>	Tom McNally or Eugene Kosoy	(212) 656-2237 (212) 656-5740	tmcnally@nyse.com ekosoy@nyse.com

<sup>4</sup> In connection with the implementation of the changes to NASDAQ symbology, certain of the ISG SROs may have changes to their reporting processes or systems.

# Short Interest Reporting Rules

## **Amex Rule:**

### **30A Periodic Reports — Short Positions**

Every member organization shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

#### **••• Commentary -----**

**.01 Short positions.**—Member organizations are required to report "short" positions, including odd lots, in each Amex-listed stock, warrant or other security treated as an equity, and in each other stock, warrant or other security treated as an equity not listed on the Exchange (and not otherwise reported to another self-regulatory organization), using such format and method as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and cover such time periods as may be designated by the Exchange.

For the purposes of this report, the term "customer" means any account other than the proprietary account of the reporting member organization.

"Short" positions to be reported are those resulting from "short sales" as that term is defined in Rule 200 of SEC Regulation SHO, but excluding positions resulting from sales specified in Securities Exchange Act Rule 10a-1(e) (1), (6), (7), (8) or (10). Also to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock, warrant or other security treated as an equity in which there is a short position. If more than one "account" has a short position in the same stock, warrant or other security treated as an equity, the combined aggregate should be reported.

**NOTE:** A member organization which does not carry customers' margin accounts and does not clear its own transactions may obtain an exemption from reporting by notifying the Exchange in writing.

<b>Adopted. March 6, 2007 (Amex-2007-05).</b>
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## **CBOE Rule:**

### **15.1. Maintenance, Retention and Furnishing of Books, Records and Other Information**

Each member shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the Rules and Regulations thereunder as though such member were a broker or dealer registered pursuant to Section 15 of such Act. No member shall refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an investigation by the Exchange.

#### **. . . Interpretations and Policies:**

**.01** The following Rules contain specific requirements with regard to the maintenance and retention of books, records and other information: Rules 3.4, 3.6, 8.9, 9.6, 9.7, 9.8, 9.10, 9.21, 9.23, 11.2, 12.12 and Chapter XV. In addition, the following Rules contain specific requirements with regard to the furnishing of information to the Exchange: Rules 3.7, 3.9, 3.17, 3.18, 3.20, 3.21, 3.23, 3.25, 4.9, 4.13, 6.49, 6.51, 6.56, 6.59, 6.71, 6.72, 7.2, 7.3, 7.6, 8.2, 8.3, 8.5, 8.10, 8.11, 9.1, 9.2, 9.3, 12.11, 13.4, 14.2 and 19.2. The foregoing list is not intended to be exhaustive and members must comply with all applicable recordkeeping and reporting requirements whether or not listed above.

Issued August 23, 1978; amended March 26, 1980; July 19, 2000, effective August 18, 2000 (99-15).

**.02** Each member organization that clears stock transactions and for which the Exchange is the Designated Examining Authority shall maintain records of short stock positions in all customer and proprietary firm accounts for securities listed on a United States registered national securities exchange or for securities whose bids and offers are reported on the automated quotation system operated by the National Association of Securities Dealers, Inc. ("NASD"). Each such member that is not required to report short interest data to another stock exchange or to the NASD as a result of being a member of such organization shall report these short stock positions to either a stock exchange or to the NASD, as the Exchange so directs. The form, manner, and time of such report shall be specified by the appropriate exchange or the NASD.

Approved January 27, 1995 (94-55).

**.03** In addition to the existing obligations under Exchange rules regarding the production of books and records, a Market-Maker in non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, shall make available to the Exchange such books, records or other information pertaining to transactions in non-U.S. currency and the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.

Amended November 2, 2006 (06-74).

**.04** In addition to the existing obligation under Exchange rules regarding the production of books and records, a Market-Maker in options on Commodity Pool Units, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable physical commodity, physical commodity options, commodity futures contracts, options on commodity futures contracts, or any other derivatives on such commodity, as may be requested by the Exchange.

Amended April 13, 2007 (07-21).

## **NASD Rule:**

### **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 listed on a 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. 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.

Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.

Amended by SR-NASD-2005-112 eff. July 3, 2006.

Amended by SR-NASD-2005-001 eff. Jan. 7, 2005.

Amended by SR-NASD-2002-178 eff. Dec. 16, 2002.

Amended by SR-NASD-94-67 eff. May 1, 1995.

Amended eff. Aug. 31, 1987.

Adopted by SR-NASD-85-34 eff. Jan. 20, 1986.

**Selected Notices to Members:** [85-77](#), [85-87](#), [86-4](#), [86-15](#), [86-61](#), [87-15](#), [95-8](#), [03-08](#).

## **NASDAQ Rule:**

### **3360. Short-Interest Reporting**

(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. Reports shall be made as of the close of the settlement date designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(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; and

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

Amended by SR-NASDAQ-2006-018 eff. July 25, 2006.  
Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## NYSE Rule

### 421. Periodic Reports

Member organizations shall submit, as required by the Exchange, periodic reports with respect to

- (1) Short positions in securities;
- (2) Customers' debit and credit balances.

Amended April 4, 1968.  
Amended October 7, 19822006.  
Amended March 6, 2007 (NYSE-2006-111).

••• *Supplementary Material:* -----

**.10Short positions.**—Member organizations for which the Exchange is the designated examining authority are required to report "short" positions, including odd lots, in each stock or warrant listed on the Exchange, and in each other stock or warrant not listed on the Exchange which is not otherwise reported to another United States securities exchange or securities association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange.

Member organizations for which the Exchange is not the designated examining authority must report "short" positions to the self-regulatory organization which is its designated examining authority ("DEA") if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of Rule 421.

The term "designated examining authority" means the self-regulatory organization which has been assigned responsibility for examining a member organization for compliance with applicable financial responsibility rules. (See Rule 17d-1 under the Securities Exchange Act of 1934 (the "Exchange Act").)

"Short" positions to be reported are those resulting from "short" sales as defined in Rule 200 of the Securities and Exchange Commission's Regulation SHO, but excluding positions resulting from sales specified in clauses (1), (6), (7), (8), and (10) of paragraph (e) of Rule 10a-1 under the Exchange Act. Also to be excluded are "short" positions carried for other member organizations reporting for themselves.

Only one report should be made for each stock or warrant in which there is a short position. If more than one "account" has a short position in the same stock or warrant, the combined aggregate should be reported.

**NOTE:** A member organization which does not carry customers' margin accounts and does not clear its own transactions may obtain an exemption from reporting by notifying the Exchange in writing.

Amended March 30, 1993. .  
Amended March 6, 2007 (NYSE-2006-111).

## September through December 2007 – Short Interest Reporting Schedule

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Report Due to Amex &amp; NYSE</u>	<u>Report Due to NASD (Exchange-Listed)</u>	<u>Report Due to NASD (NASDAQ-Listed &amp; OTC Equity)</u>	<u>Report Published by Amex &amp; NYSE</u>	<u>Report Published by NASDAQ and NASD</u>
September 11 (Tuesday)	September 14 (Friday)	September 18 - 1:00 p.m. (Tuesday)	September 18 - 1:00 p.m. (Tuesday)	September 18 - 6:00 p.m. (Tuesday)	September 20 (Thursday)	September 26 (Wednesday)
September 25 (Tuesday)	September 28 (Friday)	October 2 - 1:00 p.m. (Tuesday)	October 2 - 1:00 p.m. (Tuesday)	October 2 - 6:00 p.m. (Tuesday)	October 4 (Thursday)	October 10 (Wednesday)
October 10 (Wednesday)	October 15 (Monday)	October 17 - 1:00 p.m. (Wednesday)	October 17 - 1:00 p.m. (Wednesday)	October 17 - 6:00 p.m. (Wednesday)	October 19 (Friday)	October 25 (Thursday)
October 26 (Friday)	October 31 (Wednesday)	November 2 - 1:00 p.m. (Friday)	November 2 - 1:00 p.m. (Friday)	November 2 - 6:00 p.m. (Friday)	November 6 (Tuesday)	November 12 (Monday)
November 9 (Friday)	November 15 (Thursday)	November 19 - 1:00 p.m. (Monday)	November 19 - 1:00 p.m. (Monday)	November 19 - 6:00 p.m. (Monday)	November 21 (Wednesday)	November 28 (Wednesday)
November 27 (Tuesday)	November 30 (Friday)	December 4 - 1:00 p.m. (Tuesday)	December 4 - 1:00 p.m. (Tuesday)	December 4 - 6:00 p.m. (Tuesday)	December 6 (Thursday)	December 12 (Wednesday)
December 11 (Tuesday)	December 14 (Friday)	December 18 - 1:00 p.m. (Tuesday)	December 18 - 1:00 p.m. (Tuesday)	December 18 - 6:00 p.m. (Tuesday)	December 20 (Thursday)	December 27 (Thursday)
December 26 (Wednesday)	December 31 (Monday)	January 3, 2008 - 1:00 p.m. (Thursday)	January 3, 2008 - 1:00 p.m. (Thursday)	January 3, 2008 - 6:00 p.m. (Thursday)	January 7, 2008 (Monday)	January 11, 2008 (Friday)

All Times: Eastern Time