SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54010; File No. SR-NASD-2006-076)

June 16, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to exempt all securities included in the NASDAQ 100 Index from the price test set forth in NASD Rule 3350(a).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 15, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq has submitted a proposed rule change to exempt all securities included in the NASDAQ 100 Index from the price test set forth in NASD Rule 3350(a). The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3350 Short Sales

(a) – (b) No Change.

(c) (1) – (9) No Change.

<u>(10) Sales of securities included in the Nasdaq 100 Index.</u>

(d) – (k) No Change.

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II. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

1. <u>Purpose</u>

Nasdaq is proposing to amend Rule 3350(c) to create an exemption from the short sale rule for securities included in the Nasdaq 100 Index.

<u>The NASDAQ 100 Index.</u> First introduced in 1985, the NASDAQ-100 Index was created to track the performance of the largest non-financial companies listed on The NASDAQ Stock Market. Nasdaq states that the NASDAQ-100 Index Tracking Stock, also known as "QQQ", is the most actively traded ETF and the most actively traded listed equity security in the U.S. by average daily share trading volume. As of the end of the fourth quarter of 2005, QQQ traded an average of 90.4 million shares per day. Nasdaq notes that QQQ has grown significantly since its inception: from $14.5 million in assets at the start to $20.3 billion in assets as of December 31, 2005, and from 300,000 total shares outstanding to 501.95 million at the end of the fourth quarter of 2005.

In addition to the QQQ, Nasdaq states that nearly 150 licensees have contracted with Nasdaq to use the NASDAQ-100 and other Nasdaq indices as benchmarks for the issuing and trading of their global financial products. These third-party underwritten products, such as equity-linked notes, index warrants, certificates of deposits, leveraged products and basket securities, were sold in 32 countries and amounted to $157.05 billion in underlying notional value as of December 31, 2005.[6] A total of 33 domestic and international mutual funds use this barometer index as a benchmark as well.

Nasdaq states that, as a result, the Nasdaq 100 stocks are highly liquid. For the month of April 2006, the average daily volume for that group of securities was over 880 million shares. The average daily volume of an individual Nasdaq 100 security was over 8.8 million shares and the mean daily trading value of those securities was over 3.4 million shares.

The Regulation SHO Pilot. On June 23, 2004, Commission approved new and amended short sale regulations in Regulation SHO under the Securities Exchange Act of 1934 (the “Act”). On July 28, 2004, the Commission issued an order creating a one year Pilot (“Pilot”) suspending the provisions of Rule 10a-1(a) under the Act and any short sale price test of any exchange or national securities association for short sales of certain securities. The Pilot was created pursuant to Rule 202T of Regulation SHO, which established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests. On April 20, 2006, the Commission issued an order extending the termination date of the Pilot to August 6, 2007, the date on which temporary Rule 202T expires.

The Pilot exempted a selected list of securities from short sale price test restrictions of SEC Rule 10a-1 and the rules of self regulatory organizations, including NASD Rule 3350. Nasdaq notes that, of the roughly 1000 such securities, roughly 47 percent are listed on Nasdaq and, of those, 24 currently are included in the Nasdaq 100 Index.

Rationale for Proposed Exemption. Nasdaq states that, first, the proposed exemption is consistent with the goals of short sale regulation because the stocks included in the Nasdaq 100 Index are highly liquid and not implicated by the objectives of the short sale rule. Congressional and Commission objectives included allowing relatively unrestricted short selling in an advancing market, preventing short selling at successively lower prices; and preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level. Nasdaq states that, given the highly liquid nature of securities listed in the Nasdaq 100 Index, the proposed exemption poses no risk to investors.

Nasdaq states that this conclusion is supported by the results of the Reg SHO Pilot to date. Numerous academics have used the implementation of Reg SHO as a natural experiment to study the affects of price-test exemptions on various measures of market quality and trading behavior. Nasdaq states that a recurring finding among these studies is that there is no indication that the pilot increased short-sale volume or volatility, decreased returns, or sacrificed market efficiency. Nasdaq believes that the results also show that bid-test rules had little-to-no affect on market quality or trading behavior for Nasdaq pilot stocks. Nasdaq states that this finding is consistent with the ability of short-sellers to circumvent Nasdaq's bid-test rule by routing orders to markets without short-sale restrictions.

Given the highly liquid nature of Nasdaq 100 securities and the absence of a material impact from the removal of price-based short sale restrictions on 24 of those securities, Nasdaq believes it would benefit investors to exempt the remaining stocks in the Nasdaq 100 Index. As described above, the Nasdaq 100 Index serves as the basis for billions of dollars of assets and trading in the basket of securities that make up the index. Nasdaq believes that the disparity of regulatory treatment between Nasdaq 100 securities that are included in the Pilot and those that are not is inefficient and potentially harmful to investors.

Nasdaq believes that the proposed exemption will also remove the disparity in short sale regulation that currently exists between markets. As opposed to the NASD, which has voluntarily adopted a short sale rule for Nasdaq securities, several exchanges that trade Nasdaq securities do so with no short sale regulation, encouraging market participants to route short sale orders to their markets to avoid any regulatory restriction. As a result, the level of regulatory protection an investor receives depends almost entirely on the market to which the investor's order is routed. Nasdaq believes that this disparity harms customers on all markets by forcing traders to choose between bypassing limit orders posted on Nasdaq, delaying executing those orders, or declining to execute. Nasdaq states that the proposed exemption is designed to help to alleviate these issues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[3] in general, and with Section 15A(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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[3] 15 U.S.C. 78o-3.

[4] 15 U.S.C. 78o-3(b)(5).

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

Nasdaq has requested that this proposal be approved on an accelerated basis. Nasdaq asserts that, given the current disparity between short sale regulation on Nasdaq and the lack of short sale regulation on NYSE/Arca and the National Stock Exchange, there is no basis to conclude that this proposal will generate legitimate controversy. Nasdaq also states that these are highly active and liquid securities that do not present any of the risks commonly understood as the underpinning for short sale regulation.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-076 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-076. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASD-2006-076 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris
Secretary

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[5] 17 CFR 200.30-3(a)(12).