

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2006 - 076

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
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Pilot ☐	Extension of Time Period for Commission Action ☐
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☐ No Action	☐ No Action
☐ No Action	☐ No Action
☐ No Action	☐ No Action

Description

Provide a brief description of the proposed rule change (limit 250 characters).

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)

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Jeffrey S. Last Name: Davis
Title: Senior Associate General Counsel
E-mail: Jeffrey.Davis@nasdaq.com
Telephone: (301) 978-8484 Fax: (301) 978-8472

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date: 06/15/2006

By: Edward S. Knight

(Name)

Executive Vice President and General Counsel

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S. Knight



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), is filing with the Securities and Exchange Commission ("Commission") 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).

Proposed new language is underlined; proposed deletions are in brackets.³

3350 Short Sales

(a) – (b) No Change.

(c) (1) – (9) No Change.

(10) Sales of securities included in the Nasdaq 100 Index.

(d) – (k) No Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic NASD Manual found at www.nasd.com. Prior to the date when The NASDAQ Stock Market LLC ("NASDAQ LLC") commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

2. Procedures of the Self-Regulatory Organization

The Board of Directors of Nasdaq approved the proposed rule change at its meeting on June 25, 2004, and the Board of Governors of the NASD reviewed the proposal at its meeting on August 6, 2004. The staff of Nasdaq has provided an opportunity for the staff of NASD Regulation, Inc. to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. No other action by the NASD is necessary for the filing of the rule change. Nasdaq will make the proposed rule change effective immediately.

Questions regarding this rule filing may be directed to Jeffrey S Davis, Associate General Counsel, The Nasdaq Stock Market, Inc. at (301) 978-8484 (telephone) or (301) 978-8472 (fax).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

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.

The NASDAQ 100 Index. 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. 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. 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, 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.

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. 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. 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. Given the highly liquid nature of securities listed in the Nasdaq 100 Index, the proposed exemption poses no risk to investors.

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. 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. The results also show that bid-test rules had little-to-no affect on market quality or trading behavior for Nasdaq pilot stocks. 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. 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.

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. 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. The proposed exemption is designed to help to alleviate these issues.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ in general and with Section 15A(b)(6) of the Act,⁵ 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

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

market and a national market system, and, in general, to protect investors and the public interest.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Nasdaq requests that this proposal be approved on an accelerated basis. Nasdaq continues to assert 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. Moreover, these are highly active and liquid securities that do not present any of the risks commonly understood as the underpinning for short sale regulation.

Nasdaq is aware that certain markets that do not impose a price-based short sale regulation continue to use the existence of a short sale regulation as a competitive weapon to attract short sales to their respective markets. As Nasdaq stated in its *Petition for Commission Action Regarding the Trading of Nasdaq-Listed Securities*, dated April 13, 2003, it is untenable that the flow of orders and the level of investor protection an

order receives should be determined by the lack of equal regulation. Nasdaq would like to eliminate that disparity with respect to this group of securities as quickly as possible.

8. Proposed Rule Change Based on rules of Another Self-Regulatory Organization or of the Commission
Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

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

June __, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by 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 __, 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 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.

3350 Short Sales

(a) – (b) No Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(c) (1) – (9) No Change.

(10) Sales of securities included in the Nasdaq 100 Index.

(d) – (k) No Change.

* * * * *

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

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. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

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.

The NASDAQ 100 Index. 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. 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. 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, 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.

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. 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. 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. Given the highly liquid nature of securities listed in the Nasdaq 100 Index, the proposed exemption poses no risk to investors.

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. 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. The results also show that bid-test rules had little-to-no affect on market quality or trading behavior for Nasdaq pilot stocks. 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. 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.

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. 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. 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. .

³ 15 U.S.C. 78o-3.

⁴ 15 U.S.C. 78o-3(b)(5).

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:

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

⁵ 17 CFR 200.30-3(a)(12).