implementation of additional enhancements to the service in the near future, Nasdaq proposes to increase the subscription fee for the service. Specifically, Nasdaq proposes to increase the subscription fee for the ''basic'' level from $75 to $100 per month and increase the fee for the ''premium'' level from $100 to $130 per month. As previously mentioned, this increase in subscription fees will be the first such increase since the launch of the Data Package service in December 1998.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general, and with section 15A(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, use of the Data Package service is voluntary and the subscription fees will be imposed on all member firms equally based on the level of service selected. In addition, the increase in fees will help cover the costs associated with maintaining and enhancing the Data Package service.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of rule 19b–4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2003–129 and should be submitted by September 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21823 Filed 8–25–03; 8:45 am]

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[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48365; File No. SR–NYSE–98–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the New York Stock Exchange, Inc. Relating to Margin Requirements

August 19, 2003.

I. Introduction

On April 28, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and rule 19b–4 thereunder,[2] a proposal to amend NYSE rule 431, ''Margin Requirements.'' The NYSE's proposed rule change was published for comment in the **Federal Register** on August 5, 1998.[3]

The NYSE filed Amendment Nos. 1, 2, and 3 to the proposal on January 5, 1999, November 6, 2002, and May 12, 2003, respectively. In addition, on March 6, 2000, the NYSE filed an Information Memo (''Information Memo'') that sets forth the general requirements for the written risk analysis methodology that members will be required to maintain in connection with good faith securities transactions in exempt accounts. Amendment Nos. 1, 2, and 3, as well as the Information Memo, were published for comment in the **Federal Register** on July 14, 2003.[4]

The Commission received one comment regarding the proposal,[5] as initially published, and the NYSE submitted a response to that comment.[6] As described more fully below, the Commission received two additional comment letters following the publication of the 2003 Release.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Background

Section 7 of the Exchange Act[8] authorizes the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') to establish requirements for the purchase or carrying of securities on margin.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882.

[4] *See* Securities Exchange Act Release No. 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) (''2003 Release'').

[5] *See* letter from Paul Saltzman, Senior Vice President and General Counsel, The Bond Market Association (''TBMA'') and Patricia Brigantic, Vice President and Senior Associate General Counsel, TBMA, to Jonathan Katz, Secretary, Commission, dated August 26, 1998 (''TBMA I'').

[6] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 5, 1999. TBMA I supported the proposal but raised questions regarding the definition of ''exempt account'' and the treatment of accounts that currently qualify as exempt but that would not satisfy the proposal's financial threshold for exempt accounts. The NYSE answered the questions raised in TBMA I in its response. TBMA I and the NYSE's response are described more fully in the 2003 notice, *supra* note 4.

[7] *See* letter from H. Lake Wise, Executive Vice President and Chief Legal Officer, Daiwa Securities America Inc., to Jonathan Katz, Secretary, Commission, dated August 4, 2003 (''Daiwa Letter''); and letter from Paul Saltzman, Executive Vice President and General Counsel, TBMA, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003 (''TBMA II'').

[8] 12 U.S.C. 78(g).

Pursuant to this authority, the Federal Reserve Board promulgated Regulation T,[9] which sets minimum initial margin requirements. Regulation T provides that transactions in non-equity securities are subject to either ''good faith'' margin requirements [10] or the level set by the rules of a self-regulatory organization (''SRO''), whichever is higher.[11] Accordingly, the maintenance margin requirements established by the NYSE or another SRO set the minimum margin levels for non-equity securities.[12]

As described more fully below, the proposal amends NYSE rule 431 to: (1) Lower the customer maintenance margin requirements for certain non-equity securities; and (2) permit good faith margin treatment for certain non-equity securities held in ''exempt accounts,'' as defined in the proposal.

B. Reduced Customer Maintenance Margin for Non-Equity Securities Not Held in Exempt Accounts

With respect to non-equity securities that are not held in exempt accounts, the proposal: (1) Reduces the customer maintenance margin requirement for highly rated foreign sovereign debt [13] from 20% of current market value to 1% to 6% of current market value, depending on the time to maturity; (2) reduces the customer maintenance margin requirement for exempted securities other than U.S. government obligations from 15% of current market value to 7% of current market value; (3) reduces the customer maintenance margin requirement for investment grade non-equity securities [14] from 20% of current market value to 10% of current market value; and (4) establishes a customer maintenance margin requirement of 20% of current market value for all other marginable non-equity securities.[15]

C. Good Faith Margin Treatment for Certain Non-Equity Securities Held in Exempt Accounts

1. Good Faith Margin Treatment

The proposal will permit broker-dealers to effect transactions in ''exempt accounts'' without being required to collect either margin or marked to the market losses [16] on exempted securities, mortgage-related securities,[17] or major foreign sovereign debt securities.[18] However, a broker-dealer must take a capital charge for any uncollected marked to the market losses on exempt account positions in these securities.[19]

For transactions in exempt accounts involving highly rated foreign sovereign debt [20] and investment grade debt,[21] the proposal establishes margin requirements of 0.5% and 3%, respectively.[22] Although a broker-dealer is not required to collect this margin, it must take a capital charge for any uncollected margin and for any uncollected marked to the market losses.[23]

2. Limitation on Capital Charges

The proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses.[24] Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital [25] on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. The broker-dealer also must notify the NYSE that it has reached the 5% or 25% threshold.

3. Definition of Exempt Account

The proposal defines ''exempt account'' to include the accounts of certain regulated entities, including banks, savings and loans, insurance companies, and registered investment companies. In addition, the proposal defines an ''exempt account'' to include any person that has a net worth of at least $40 million and financial assets of at least $45 million and who: (1) Is an issuer of registered securities; (2) is an issuer of securities that provides the Commission with the information required under rule 12g3–2(b) under the Exchange Act;[26] (3) is a person with respect to which there is publicly available certain information required in rule 15c2–11 under the Exchange Act;[27] or (4) makes available to the broker-dealer such current information regarding the person's ownership, business, and financial condition (including a current audited statement of financial condition, statement of income, or comparable financial reports) that the broker-dealer reasonably believes to be accurate, sufficient for the purposes of performing a risk analysis in respect of the person.[28]

4. Written Risk Analysis Methodology

Under the proposal, a broker-dealer must maintain a written risk analysis methodology for managing the credit risk associated with extending good faith margin on securities transactions in exempt accounts.[29] The NYSE has prepared an Information Memo providing guidelines for the risk analysis methodology that it will distribute to members following approval of the proposal. The Information Memo states that a member's written risk analysis methodology should include the following:

- Procedures for obtaining and reviewing the appropriate customer account documentation and the customer financial information necessary to determine exempt account status for the extension of credit under the rule;
- Procedures and guidelines for the determination, review and approval of credit limits to customers and across all customers who qualify as exempt accounts under the rule;
- Procedures and guidelines for monitoring credit risk exposure to the

[9] 12 CFR 220 *et seq.*

[10] Regulation T defines ''good faith'' margin as the amount of margin that a broker-dealer would require in exercising sound credit judgment.

[11] 12 CFR 220.12(b).

[12] *See* NYSE rule 431(c).

[13] The proposal defines ''highly rated foreign sovereign debt securities'' as debt securities issued or guaranteed by the government of a foreign country, its provinces, states or cities, or a supranational entity that are assigned a rating in one of the two top rating categories by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(9).

[14] The proposal defines ''investment grade debt'' as any debt securities assigned a rating in one of the top four rating categories by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(10).

[15] The proposal defines ''other marginable non-equity securities'' to include debt securities not traded on a national securities exchange that meet certain requirements and private pass-through securities not guaranteed by a U.S. government agency that meet certain requirements. *See* NYSE rule 431(a)(16).

[16] Marked to the market losses are unrealized losses on a position in securities resulting from a decline in the position's market value.

[17] The proposal defines ''mortgage related securities'' to mean securities that fall within the definition in section 3(a)(41) of the Exchange Act. *See* NYSE rule 431(a)(12).

[18] The proposal defines ''major foreign sovereign debt securities'' as debt securities issued or guaranteed by the government of a foreign country or supranational entity that are assigned a rating in the top rating category by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(11).

[19] *See* NYSE rule 431(e)(2)(F).

[20] *See supra* note 13.

[21] *See supra* note 14.

[22] *See* NYSE rule 431(e)(2)(G).

[23] *See* NYSE rule 431(e)(2)(G).

[24] *See* NYSE rule 431(e)(2)(H).

[25] Generally, tentative net capital is a broker-dealer's net worth after deducting most illiquid assets but before making haircut deductions.

[26] 17 CFR 240.12g3–2(b).

[27] 17 CFR 240.15c2–11.

[28] *See* NYSE rule 431(a)(13).

[29] *See* NYSE rule 431(e)(2)(H).

organization relating to exempt account customers;

• Procedures and guidelines for the use of stress testing of exempt accounts in order to monitor market risk exposure from exempt accounts individually and in the aggregate; and

• Procedures providing for the regular review and testing of these risk management procedures by an independent unit such as internal audit, risk management, or other comparable group.

III. Summary of Comments

The Commission received two comment letters following the publication of the 2003 Release.[30] One commenter expressed strong support for the proposal.[31] The other commenter limited its remarks to the provisions of the proposal affecting transactions in foreign sovereign debt and expressed support for those provisions.[32] Specifically, this commenter maintained that NYSE rule 431 currently imposes high margin requirements on transactions in foreign sovereign debt, which the commenter believes have resulted in the exclusion of U.S. broker-dealers from significant segments of international bond markets. The commenter believed that the proposal would create more reasonable margin requirements for foreign sovereign debt while protecting U.S. broker-dealers and their customers from undue risk.

IV. Discussion

Section 6(c)(3)(A) of the Exchange Act[33] provides, among other things, that a national securities exchange may condition membership privileges on compliance with the exchange's own financial responsibility rules. Pursuant to this authority, the NYSE is authorized to promulgate rules governing the financial responsibility requirements of its members. In addition, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, as described above, for positions not maintained in exempt accounts, the proposal reduces the customer maintenance margin requirement for certain non-equity securities and establishes a customer maintenance margin requirement of 20% of current market value for other marginable non-equity securities. The Commission believes that these requirements are consistent with the risks of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $40 million and financial assets of at least $45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Exchange Act,[35] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[36] that the proposed rule change (SR–NYSE–98–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21822 Filed 8–25–03; 8:45 am]

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[30] *See* Daiwa letter and TBMA II, *supra* note 7. As noted above, the Commission received a comment letter from TBMA following the initial publication of the proposal. *See supra* notes 5 and 6. TBMA I and the NYSE's response are described more fully in the 2003 release, *supra* note 4.

[31] *See* TBMA II, *supra* note 7.

[32] *See* Daiwa letter, *supra* note 7.

[33] 15 U.S.C. 78f(c)(3)(A).

[34] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3535]

Commonwealth of Pennsylvania

Crawford County and the contiguous counties of Erie, Mercer, Venango and Warren in the Commonwealth of Pennsylvania; and Ashtabula and Trumbull Counties in the State of Ohio constitute a disaster area as a result of severe storms and flooding that occurred between July 21 and July 28, 2003. The storms caused serious damage to a number of homes and businesses throughout the county. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on October 14, 2003, and for economic injury until the close of business on May 13, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 353511 for