

Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,<sup>24</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Funds will not invest in any non-U.S registered equity securities. The Funds will not invest in options contracts, futures contracts, or swap agreements. Each Fund may hold up to 15% of its net assets in securities that are illiquid (calculated at the time of investment), including Rule 144A Securities. The aggregate value of all of a Fund's illiquid securities and Rule 144A Securities shall not exceed 15% of a Fund's total assets.

(7) All short-term debt and money market securities acquired by the Funds will be rated investment grade by at least one NRSRO or, if unrated, deemed by the Investment Adviser to be of equivalent quality. The Fund will invest only in corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a non-U.S. corporate bond must have \$200 million (or an equivalent value if denominated in a currency other than United States dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment, and a U.S. corporate bond must have \$100 million (or an equivalent value if denominated in a currency other than United States dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment. In addition, variable rate demand notes purchased by the Funds will be backed by a letter of credit provided by a highly rated bank or financial institution that meets credit standards deemed appropriate by the Investment Adviser. According to the Exchange, the Funds will purchase variable rate demand notes with hard one or seven-day put options, which will increase the liquidity profile within the Funds that hold them, since they

can be converted to cash within one or seven days.

(8) Each Fund's investments will be consistent with such Fund's investment objective and will not be used to enhance leverage.

(9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>25</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSEArca-2013-18), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69417; File No. SR-Phlx-2013-03]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rules 507 and 1014 To Establish Remote Streaming Quote Trader Organizations

April 19, 2013.

#### I. Introduction

On January 4, 2013, NASDAQ OMX PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, a proposed rule change to amend Exchange Rules 507 and 1014 to establish Remote Streaming Quote Trader Organizations. The proposed

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

rule change was published in the **Federal Register** on January 25, 2013.<sup>1</sup> On March 8, 2013, the Exchange filed an extension to extend the action date to March 25, 2013. On March 22, 2013, the Exchange filed a second extension to extend the action date to April 8, 2013. On April 8, 2013, the Exchange filed a third extension to extend the action date to April 22, 2013. On April 16, 2013, the Exchange filed Partial Amendment No. 1 to the proposal.<sup>2</sup> The Commission received no comments on the proposal. This order approves the proposal, as modified by Amendment No. 1.

#### II. Description of the Proposal

The Exchange proposes to add a new category of member organizations, called Remote Streaming Quote Trader Organizations ("RSQTOs"), to be eligible to register as Registered Options Traders ("ROT") on the Exchange. A ROT is an Exchange member located on the trading floor who trades in options for his own account.<sup>3</sup> The term ROT includes a Streaming Quote Trader ("SQT") and a Remote Streaming Quote Trader ("RSQT").

Currently, a ROT may apply to be an SQT and an RSQT.<sup>4</sup> An SQT generates and submits option quotes electronically in assigned options, while physically present on the Exchange floor.<sup>5</sup> On the other hand, an RSQT

<sup>1</sup> See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518.

<sup>2</sup> In Partial Amendment No. 1, the Exchange provided clarification for the deleted rule text in Exchange Rule 1014(b)(ii)(B), pertaining to the restriction of persons directly or indirectly affiliated with an RSQT from submitting quotations as a specialist, SQT, RSQT or non-SQT ROT in options in which such affiliated RSQT is assigned. The Exchange proposed to delete this restriction, which would allow affiliated persons with an RSQT to submit quotations in options in which the affiliated RSQT is assigned. The Exchange stated that the restriction was appropriate when the Exchange market was a traditional open outcry floor, but is no longer applicable in the current predominantly electronic trading environment. According to the Exchange, the following reasons support the removal of this restriction: (1) The prohibition was never applicable to SQTs but only to the off-floor RSQTs, and so removing the prohibition for RSQTs would treat the on and off-floor traders equally; (2) RSQTs are no longer an unknown quantity, but rather over the years have evolved into an integral and tested component of the current electronic trading system; (3) while there may have been a desire to prohibit affiliates of RSQTs from submitting competitive quotes at the beginning of the RSQT program when RSQT options assignments were instituted at the corporate level, that is no longer the case with options assignments being made at the individual RSQT level pursuant to this proposal; and (4) removal of the prohibition comports with the growth of competitive quoting to the benefit of investors. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

<sup>3</sup> See Exchange Rule 1014(b).

<sup>4</sup> See Exchange Rule 1014(b)(ii).

<sup>5</sup> See Exchange Rule 1014(b)(ii)(A).

<sup>24</sup> See 17 CFR 240.10A-3.

generates and submits option quotes electronically in assigned options while maintaining no physical presence on the Exchange floor.<sup>6</sup> An RSQT could be an Exchange member or member organization.

The Exchange proposes to add RSQTs, which would consist of member organizations only, and reclassify RSQTs as Exchange members.<sup>7</sup> The Exchange would allow a maximum of three RSQTs at any time to be affiliated with an RSQT.<sup>8</sup> Current Exchange member organizations operating as RSQTs would be deemed to be RSQTs.<sup>9</sup> The converted RSQTs would have 21 days to notify the Exchange of their affiliated RSQTs.<sup>10</sup>

Currently, the criteria that must be met in order to be eligible as a RSQT is the same as the criteria to be eligible as an SQT, with two exceptions; specifically, the RSQT must demonstrate the existence of order flow commitments, and the willingness to accept allocations as an RSQT in options overlying 400 or more securities. The Exchange proposes that all of the current RSQT application criteria (including the provisions described above) will become the application criteria for RSQTs. In addition, all of the current SQT application criteria will apply equally to SQTs and RSQTs.

As proposed by the Exchange, an RSQT must submit its application in writing in a form and format prescribed by the Exchange.<sup>11</sup> The application must include, at a minimum, the name of the application, the Exchange account number, and the name of each affiliated RSQT.<sup>12</sup> The Exchange proposes to amend the current SQT application process by including RSQTs and adding a requirement that they be affiliated with an RSQT.<sup>13</sup>

The Exchange also proposes to amend the application and assignment in options for RSQTs, RSQTs, and SQTs. The Exchange would require the name of the RSQT with whom the RSQT is affiliated, and the member organization with whom the SQT is affiliated.<sup>14</sup>

Lastly, the Exchange would allow more than one RSQT to submit a quote in assigned options. Currently, Exchange Rule 1014(b)(ii)(B) prohibits a person who is directly or indirectly affiliated with an RSQT to submit

quotes as a specialist, SQT, RSQT or non-SQT ROT in options in which the affiliated RSQT is assigned.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.<sup>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is consistent with the requirements of the Act. The proposal would reclassify RSQTs as Exchange members and create a new category of Exchange participants known as RSQTs, which would be Exchange member organizations only. The Commission finds that this classification is consistent with the requirements of the Act and would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal would also convert current Exchange member organizations operating as RSQTs into the proposed RSQTs, and allow an application process for future RSQTs. The Commission believes that the proposal is consistent with the requirements of the Act and should promote just and equitable principles of trade. Finally, the Commission believes that the proposal to allow more than one RSQT to submit a quote in assigned options is consistent with the requirements of the Act. The Exchange represented that the proposal is in response to customers' requests and that the Exchange has adequate surveillance program in place to monitor the impact of this proposal.

<sup>15</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-Phlx-2013-03), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69402; File No. SR-NASDAQ-2013-032]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Require That Listed Companies Have an Internal Audit Function

April 18, 2013.

On February 20, 2013, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require that listed companies have an internal audit function. The proposed rule change was published for comment in the **Federal Register** on March 8, 2013.<sup>3</sup> The Commission received 38 comments on the proposal.<sup>4</sup>

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 69030 (March 4, 2013), 78 FR 15075.

<sup>4</sup> See letters to Elizabeth M. Murphy, Secretary, Commission from William F. Derbyshire, dated March 5, 2013; Rainer Lenz, Ph.D., dated March 9, 2013; Raymond A. Link, Chief Financial Officer, FEI Company, dated March 11, 2013; Ann Marie Kim, dated March 12, 2013; Jeff A. Killian, Chief Financial Officer, Cascade Microtech, Inc., dated March 14, 2013; Matthew Hogan, dated March 18, 2013; Ann Rhoads, Chief Financial Officer, Zogenix, dated March 18, 2013; Daniel P.

<sup>6</sup> See Exchange Rule 1014(b)(ii)(B).

<sup>7</sup> See proposed Exchange Rule 507(a).

<sup>8</sup> See proposed Exchange Rule 507(a).

<sup>9</sup> See proposed Exchange Rule 507(a).

<sup>10</sup> See proposed Exchange Rule 507(a).

<sup>11</sup> See proposed Exchange Rule 507(a).

<sup>12</sup> See proposed Exchange Rule 507(a).

<sup>13</sup> See proposed Exchange Rule 507(b)(i).

<sup>14</sup> See proposed Exchange Rule 507(b)(i).