

brokers, or dealers.<sup>33</sup> The Commission notes that such rules governing the routing of orders by Linkage Handlers should help ISE comply with its responsibility under the Plan.<sup>34</sup>

The Commission recognizes that technical or systems issues may occur, and believes that new ISE Rule 1904, in allowing ISE to cancel or release orders affected by technical or systems issues, should provide a reasonably efficient means for ISE to handle such orders, and appears reasonably designed to permit ISE to maintain fair and orderly markets.<sup>35</sup>

The Commission also believes that allowing the Exchange to resolve error positions through the use of error accounts maintained by each Linkage Handler pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act.<sup>36</sup> The Commission notes that the rule establishes criteria for determining which positions are error positions to which the rule applies, and the procedures for the handling of such positions. In particular, the Commission notes that Proposed ISE Rule 1905 only applies to error positions that result from the Linkage Handler's routing service, and that such positions shall be liquidated by the Linkage Handler, as applicable, as soon as practicable.<sup>37</sup> In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

The Commission is also concerned about the potential for misuse of confidential and proprietary

information. The Commission notes that Linkage Handlers will be required to establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error positions, and (2) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions.<sup>38</sup> The Commission believes that these requirements should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of ISE, its Linkage Handlers, or any third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that each Linkage Handler would be required to make and keep records associated with the liquidation of error positions<sup>39</sup> and ISE would be required to make and keep records to document all determinations to treat positions as error positions under this Rule.<sup>40</sup>

Finally, the Commission notes that the proposed procedures for routing orders, canceling orders and the handling of error positions are similar to procedures the Commission has approved for other exchanges.<sup>41</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-ISE-2013-18) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-09625 Filed 4-23-13; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>33</sup> See ISE Rule 1905(c)(i).

<sup>34</sup> See ISE Rule 1905(c)(ii).

<sup>40</sup> See ISE Rule 1905(d). The Commission notes that the Exchange will transition options classes from the current process to the new proposed process using Linkage Handlers over a period of time and will notify its members via information circular as products are transitioned.

<sup>41</sup> See, e.g., Securities Exchange Act Release Nos. 68583 (January 4, 2013), 78 FR 2302 (January 10, 2013) (SR-C2-2012-038); 68584 (January 4, 2013), 78 FR 2304 (January 10, 2013) (SR-CBOE-2012-109); 68585 (January 4, 2013), 78 FR 2308 (January 10, 2013) (SR-CBOE-2012-108); and 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR-CBOE-2009-040).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69397; File No. SR-NYSEArca-2013-18]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Fourteen Series of the iShares Trust Under NYSE Arca Equities Rule 8.600

April 18, 2013.

#### I. Introduction

On February 14, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 list and trade shares ("Shares") of fourteen series of the iShares Trust ("Trust"). The proposed rule change was published for comment in the *Federal Register* on March 6, 2013.<sup>3</sup> The Commission received no comments on the proposal. On April 2, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the iShares Australian Dollar Cash Rate Fund; iShares British Pound Cash Rate Fund; iShares Canadian Dollar Cash Rate

<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. 69008 (February 28, 2013), 78 FR 14600 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange clarified that the variable rate demand notes that may be purchased by the Funds (as defined herein) would be backed by a letter of credit from a highly rated bank or financial institution that meets certain credit standards and that the Funds would purchase such variable rate demand notes with hard one or seven-day put options. In addition, the Exchange clarified that the net asset value ("NAV") for the iShares New Zealand Dollar Cash Rate Fund would be determined on each business day as of the value date roll-over in New Zealand, which would ordinarily be 7:00 a.m., New Zealand time (which would be 1:00 p.m., 2:00 p.m., or 3:00 p.m. Eastern Time or "E.T." the prior day, depending on daylight savings time). The Exchange further clarified that fair value determinations would be made in accordance with the requirements of the Investment Company Act of 1940 ("1940 Act"). Finally, the Exchange made a number of technical changes to the proposed rule change. Because the changes made by the Exchange in Amendment No. 1 do not materially alter the substance of the proposed rule change and do not raise any novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

<sup>33</sup> See proposed ISE Rule 1903(c).

<sup>34</sup> See *supra* note 4.

<sup>35</sup> The Commission notes that ISE states that it believes that allowing the Exchange to cancel or release orders under such circumstances would allow the Exchange to maintain fair and orderly markets, and that new ISE Rule 1905 is designed ensure full trade certainty for market participants and avoid disrupting the clearance and settlement process. See Notice, 78 FR at 16737. The Commission also notes that ISE states that a decision to cancel or release orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against another exchange pursuant to ISE Rule 1905. See 17 CFR 242.611(b). See also Notice, 78 FR at 16735 n.21.

<sup>36</sup> The Commission notes that ISE states that it believes that it is reasonable and appropriate to address routing errors through the error account of a Linkage Handler in the manner proposed because, among other reasons, the Linkage Handler is the executing broker associated with such transactions. See Notice, 78 FR at 16736.

<sup>37</sup> See ISE Rule 1905(c).

Fund; iShares Chinese Offshore Renminbi Cash Rate Fund; iShares Euro Cash Rate Fund; iShares Japanese Yen Cash Rate Fund; iShares Mexican Peso Cash Rate Fund; iShares New Zealand Dollar Cash Rate Fund; iShares Norwegian Krone Cash Rate Fund; iShares Singapore Dollar Cash Rate Fund; iShares Swedish Krona Cash Rate Fund; iShares Swiss Franc Cash Rate Fund; iShares Thai Offshore Baht Cash Rate Fund; and iShares Turkish Lira Cash Rate Fund (each, a “Fund” and, collectively, the “Funds”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by iShares Trust, a statutory trust organized under the laws of Delaware and registered with the Securities and Exchange Commission as an open-end management investment company.<sup>5</sup>

The investment adviser to the Funds will be BlackRock Fund Advisors (“Investment Adviser”), an indirect wholly-owned subsidiary of BlackRock, Inc. BlackRock Investments, LLC, an affiliate of the Investment Adviser, will serve as the distributor for the Funds. State Street Bank and Trust Company will serve as the administrator, custodian, and transfer agent for each Fund. According to the Exchange, the Investment Adviser is affiliated with multiple broker-dealers and has implemented a “fire wall” with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds’ portfolio.<sup>6</sup>

#### Summary of the Funds

Each Fund generally will seek to provide its shareholders a daily return that reflects: (i) The increase or decrease in the exchange rate of the foreign currency identified in its name (“FX Base Currency”) against the United States dollar; and (ii) the yield of the FX

Base Currency, minus the Fund’s fees and expenses. “Yield” refers to the yield an investor would expect to receive if they invested in an overnight or similar cash or cash equivalent investment denominated in the FX Base Currency. Each Fund also will seek to preserve liquidity, and maintain stability of principal and preserve capital, as measured in the FX Base Currency.

According to the Registration Statement, each Fund will be an actively managed exchange-traded fund that will seek to achieve its investment objective by investing, under normal circumstances,<sup>7</sup> substantially all of its assets in short-term securities denominated in United States dollars and a matching notional amount of spot foreign exchange contracts (generally required to be settled within two business days) to purchase the FX Base Currency (against delivery of the United States dollar). Under normal circumstances, there will be a 1:1 ratio between the fixed income securities and spot contracts. The strategy of combining investments in short-term fixed income securities and spot foreign exchange contracts is designed to provide financial exposure substantially similar to a purchase of the FX Base Currency, reflecting: (i) The increase or decrease in the exchange rate of the FX Base Currency against the United States dollar; and (ii) the yield of the FX Base Currency, minus the Fund’s fees and expenses.

According to the Registration Statement, each Fund will invest in United States dollar denominated short-term debt securities of varying maturities and spot foreign exchange contracts in order to seek to replicate the daily return of the FX Base Currency. The short-term debt securities held by the each Fund generally will consist of high quality debt obligations and may include, but are not limited to, obligations issued by the U.S. government and its agencies and instrumentalities, U.S. municipal variable rate demand notes,<sup>8</sup> U.S.

<sup>7</sup> The term “under normal circumstances” includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>8</sup> According to the Exchange, variable rate demand obligations (also referred to as variable rate demand notes) are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest

corporate and commercial debt instruments,<sup>9</sup> and bank notes and similar demand deposits. Each Fund’s assets also may be invested in short-term debt instruments and bank notes and similar demand deposits denominated in the FX Base Currency from time to time when the Investment Adviser believes these debt securities may help the Fund achieve its investment objective. All short-term debt securities acquired by each Fund will be rated investment grade by at least one nationally recognized statistical rating organization (“NRSRO”) or, if unrated, deemed by the Investment Adviser to be of equivalent quality.<sup>10</sup> Each Fund may also invest its assets in money market funds (including funds that are managed by the Investment Adviser or one of its affiliates), cash, and cash equivalents. All money market securities acquired by each Fund will be rated investment grade. The Funds do not intend to invest in any unrated money market securities. However, a Fund may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Investment Adviser to be of comparable quality.

According to the Registration Statement, each Fund generally will maintain a weighted average portfolio maturity of between 1 and 30 days and generally will be limited to investments with remaining maturities of 60 days or less. The Funds will not purchase any security with a remaining maturity of more than 397 calendar days.

According to the Registration Statement, generally, each spot foreign exchange contract entered into by each Fund will require such Fund to

upon a short notice period not to exceed seven days.

<sup>9</sup> Each 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.

<sup>10</sup> According to the Investment Adviser, the Investment Adviser may determine that unrated securities are of “equivalent quality” based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by an NRSRO when rating similar securities and issuers. In making such a determination, the Investment Adviser may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Investment Adviser.

<sup>5</sup> The Trust is registered under the 1940 Act. On August 9, 2012, the Trust filed with the Commission a post-effective amendment to Form N-1A under the Securities Act of 1933 and the 1940 Act relating to the Funds (File Nos. 333-92935 and 811-09729) (“Registration Statement”). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601).

<sup>6</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Investment Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, adviser, or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

purchase from a foreign exchange dealer selected by the Investment Adviser, at a specified purchase price expressed in United States dollars, a specified amount of the FX Base Currency. Each Fund will enter into spot foreign exchange contracts only in the FX Base Currency and mainly for the purpose of taking long positions in the FX Base Currency. Because the spot foreign exchange contracts entered into by each Fund will be spot transactions and typically settle within two business days, in order to maintain exposure to the FX Base Currency, each Fund will continuously enter into new spot foreign exchange contracts by entering into two simultaneous trades.<sup>11</sup> The Funds will not enter into forward foreign exchange contracts. Each Fund is classified as “non-diversified.”<sup>12</sup>

#### Other Investments

In addition to the principal investments described above, each Fund will invest in other short-term instruments, including other money market instruments, on an ongoing basis to provide liquidity or for other reasons. While each Fund may invest in money market instruments as part of its principal investment strategies, the Investment Adviser expects that, under normal circumstances, each Fund also intends to invest in money market securities in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, or to provide collateral.<sup>13</sup> All money market

securities acquired by the Funds will be rated investment grade. The Funds do not intend to invest in any unrated money market securities. However, a Fund may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Investment Adviser to be of comparable quality.

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. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund’s net assets are held in illiquid securities.

A Fund may not concentrate its investments (*i.e.*, invest 25% or more of its total assets in the securities of a particular industry or industry group), provided that this restriction does not limit a Fund’s: (i) Investments in its FX Base Currency; (ii) investments in securities of other investment companies; (iii) investments in securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities, certificates of deposit, and bankers’ acceptances; (iv) investments in repurchase agreements collateralized by U.S. government securities; or (v) investments in U.S. municipal securities.

Each Fund intends to qualify as a regulated investment company under Subchapter M of Subtitle A, Chapter 1, of the Internal Revenue Code. The Funds will not invest in any non-U.S. registered equity securities and will not invest in options contracts, futures contracts, or swap agreements. Each Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a–7 of the 1940 Act; repurchase agreements backed by U.S. government securities; money market mutual funds; commercial paper; U.S. municipal variable rate demand notes; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

Additional information regarding the individual Funds (including additional details regarding the underlying FX Base Currencies and descriptions of the relevant FX Base Currency spot markets), investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, dissemination of key values, including NAV, and distributions, among other information, are included in the Notice and Registration Statement, as applicable.<sup>14</sup>

#### III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>15</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares of each Fund will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>18</sup> which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services, and quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. In addition, intra-day, closing, and settlement prices or other

<sup>11</sup> According to the Exchange, a Fund will maintain exposure to its FX Base Currency by entering into two simultaneous trades that result in the same open net long position of the FX Base Currency with the settlement date extended by one business day. The first trade will be an offsetting transaction to the original position (which is the long foreign exchange contract that such Fund has entered into on the previous day) for the same notional amount and same settlement date. This offsetting transaction may cause a Fund to realize a gain or loss on the transaction. The second trade will be for the same notional amount as the original position with the settlement date extended by one business day. Where there is an interest rate differential in the overnight “risk free” rate between the FX Base Currency and the United States dollar, there will be a difference in price between the two trades of the simultaneous transaction. This difference represents the difference in benchmark overnight interest rates between the two currencies in the position (*i.e.*, one day of “carry” or “cost of carry”).

<sup>12</sup> According to the Exchange, each Fund will be “non-diversified” under the 1940 Act and may invest more of its assets in fewer issuers than “diversified” funds. The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5(b)(1)).

<sup>13</sup> For the Funds’ purposes, money market securities include: short-term, high-quality obligations issued or guaranteed by the U.S.

<sup>14</sup> See Notice and Registration Statement, *supra* notes 3 and 5, respectively.

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> In approving this 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>17</sup> 17 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

values of the debt securities, fixed income instruments, and other investments held by the Funds are also generally readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Foreign currency exchange rates are generally readily available from on-line information services such as Bloomberg or Reuters. Each Fund's Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.<sup>19</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for each Fund's calculation of NAV at the end of the business day.<sup>20</sup> The NAV for each Fund normally will be determined once daily Monday through Friday, generally as of the regularly scheduled close of business of the New York Stock Exchange ("NYSE") (normally 4:00 p.m. E.T.), on each day that the NYSE is open for trading. The Web site for the Funds will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. In addition, a basket composition file, which will include the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening

<sup>19</sup> According to the Exchange, several major market data vendors display and/or make widely available PIVs published on the CTA or other data feeds. The PIV will be based on the current value of the securities, spot foreign exchange contracts, and/or cash required to be deposited in exchange for Fund Shares. The Exchange notes that the PIV will not necessarily reflect the precise composition of the current portfolio of securities held by a Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the PIV should not be viewed as a "real-time" update of each Fund's NAV, which is computed only once a day. The PIV will be generally determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities and other instruments held by the Funds.

<sup>20</sup> On a daily basis, the Funds will disclose for each portfolio security and other financial instruments the following information: ticker symbol (if applicable); name of securities and financial instruments; number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the securities and financial instruments in the portfolio.

of the NYSE via the National Securities Clearing Corporation.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>21</sup> and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Funds' portfolios. The Investment Adviser has implemented a "fire wall" with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to each Fund's portfolio.<sup>22</sup> The Commission

<sup>21</sup> These reasons may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>22</sup> See note 6, *supra* and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Investment Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the

also notes that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange,<sup>23</sup> will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in aggregations equal to or greater than the relevant Fund's Minimum Subscription Size (and that Shares are not individually redeemable); (b) NYSE

investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above

<sup>23</sup> The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

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.