EXHIBIT 2.3  
  
  
 FORM OF AFFILIATE AGREEMENT  
  
  
 THIS AFFILIATE AGREEMENT (this "AGREEMENT") is made and entered into as  
of November 3, 2003, by and between Quovadx, Inc., a corporation organized under  
the laws of the State of Delaware ("PARENT"), and the undersigned shareholder  
who may be deemed an affiliate ("AFFILIATE") of Rogue Wave Software, Inc., a  
Delaware corporation (the "COMPANY"). Capitalized terms used but not otherwise  
defined herein shall have the meanings ascribed to them in the Merger Agreement  
(as defined below).  
  
 RECITALS  
  
 A. Parent, Chess Acquisition Corporation, a Delaware corporation and  
wholly owned subsidiary of Parent ("PURCHASER"), and the Company concurrently  
herewith are entering into an Agreement and Plan of Merger, dated as of November  
3, 2003 (the "MERGER AGREEMENT"; capitalized terms used but not defined herein  
have the meanings ascribed to such terms in the Merger Agreement), which  
provides, among other things, for the acquisition of the Company by Parent by  
means of an exchange offer (the "OFFER") by Purchaser for all of the outstanding  
shares of common stock, par value $0.001 per share, of the Company, (the  
"COMPANY CAPITAL STOCK") and for the subsequent merger (the "MERGER") of  
Purchaser with and into the Company upon the terms and subject to the conditions  
set forth in the Merger Agreement. As a result of the Offer or the Merger,  
Affiliate will receive cash and common stock, par value $0.01 per share, of  
Parent (the "PARENT COMMON STOCK") in exchange for Company Capital Stock owned  
by Affiliate.  
  
 B. Affiliate has been advised that Affiliate may be deemed to be an  
"affiliate" of the Company, as the term "affiliate" is used for purposes of Rule  
145 of the Rules and Regulations of the Securities and Exchange Commission and  
of Opinion 16 of the Accounting Principles Board.  
  
 C. The execution and delivery of this Agreement by Affiliate is a  
material inducement to Parent to enter into the Merger Agreement.  
  
 NOW, THEREFORE, intending to be legally bound, the parties hereto agree  
as follows:  
  
 1. Acknowledgments by Affiliate. Affiliate acknowledges and understands  
that the representations, warranties and covenants by Affiliate set forth herein  
shall be relied upon by Parent, the Company and their respective affiliates,  
counsel and accounting firms, and that substantial losses and damages may be  
incurred by these persons if Affiliate's representations, warranties or  
covenants are breached. Affiliate has carefully read this Agreement and the  
Merger Agreement and has discussed the requirements of this Agreement with  
Affiliate's professional advisors, who are qualified to advise Affiliate with  
regard to such matters.  
  
 2. Beneficial Ownership of the Company Capital Stock. The Affiliate is  
the sole record and beneficial owner of the number of shares of the Company  
Capital Stock set forth next to its name on  
  
  
  
the signature page hereto (the "SHARES"). The Shares are not subject to any  
claim, lien, pledge, charge, security interest or other encumbrance or to any  
rights of first refusal of any kind. There are no options, warrants, calls,  
rights, commitments or agreements of any character, written or oral, to which  
the Affiliate is party or by which it is bound obligating the Affiliate to  
issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered,  
sold, repurchased or redeemed, any Shares or obligating the Affiliate to grant  
or enter into any such option, warrant, call, right, commitment or agreement.  
The Affiliate has the sole right to transfer such Shares. The Shares constitute  
all shares of the Company Capital Stock owned, beneficially or of record, by the  
Affiliate. The Shares are not subject to preemptive rights created by any  
agreement to which the Affiliate is party. The Affiliate has not engaged in any  
sale or other transfer of the Shares in contemplation of the Offer or the  
Merger. All shares of the Company Capital Stock and Parent Common Stock acquired  
by Affiliate subsequent to the date hereof (including shares of Parent Common  
Stock acquired in the Merger) shall be subject to the provisions of this  
Agreement as if held by Affiliate as of the date hereof.  
  
 3. Compliance with Rule 145 and the Securities Act.  
  
 (a) Affiliate has been advised that (i) the issuance of shares  
of Parent Common Stock in connection with the Offer and the Merger is expected  
to be effected pursuant to a registration statement on Form S-4 promulgated  
under the Securities Act of 1933, as amended (the "SECURITIES ACT"), and the  
resale of such shares shall be subject to restrictions set forth in Rule 145  
under the Securities Act, and (ii) Affiliate may be deemed to be an affiliate of  
the Company. Affiliate accordingly agrees not to sell, transfer or otherwise  
dispose of any Parent Common Stock issued to Affiliate in the Offer or the  
Merger unless (i) such sale, transfer or other disposition is made in conformity  
with the requirements of Rule 145(d) promulgated under the Securities Act, or  
(ii) such sale, transfer or other disposition is made pursuant to an effective  
registration statement under the Securities Act or an appropriate exemption from  
registration, or (iii) Affiliate delivers to Parent a written opinion of  
counsel, reasonably acceptable to Parent in form and substance, that such sale,  
transfer or other disposition is otherwise exempt from registration under the  
Securities Act.  
  
 (b) Execution of this Agreement shall not be considered an  
admission on Affiliate's part that he or she is an "affiliate" of the Company as  
described in the recitals to this Agreement, or as a waiver of any rights that  
Affiliate may have to object to any claim that Affiliate is such an affiliate of  
the Company on or after the date of this Agreement.  
  
 (c) Parent shall give stop transfer instructions to its  
transfer agent with respect to any Parent Common Stock received by Affiliate  
pursuant to the Merger and there shall be placed on the certificates  
representing such Common Stock, or any substitutions therefor, a legend stating  
in substance:  
  
  
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 "THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN A  
 TRANSACTION TO WHICH RULE 145 APPLIES AND MAY ONLY BE  
 TRANSFERRED IN CONFORMITY WITH RULE 145(d) OR PURSUANT TO AN  
 EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF  
 1933, AS AMENDED, OR IN ACCORDANCE WITH A WRITTEN OPINION OF  
 COUNSEL, REASONABLY ACCEPTABLE TO THE ISSUER IN FORM AND  
 SUBSTANCE, THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION  
 UNDER THE SECURITIES ACT OF 1933, AS AMENDED."  
  
The legend set forth above shall be removed (by delivery of a substitute  
certificate without such legend) and Parent shall so instruct its transfer  
agent, if Affiliate delivers to Parent (i) satisfactory written evidence that  
the shares have been sold in compliance with Rule 145 (in which case, the  
substitute certificate shall be issued in the name of the transferee), or (ii)  
an opinion of counsel, in form and substance reasonably satisfactory to Parent,  
to the effect that public sale of the shares by the holder thereof is no longer  
subject to Rule 145.  
  
 (d) Parent hereby agrees that for so long as and to the extent  
necessary to permit Affiliate to sell Parent Common Stock pursuant to Rule 145  
and, to the extent applicable, Rule 144 under the Securities Act, Parent shall  
(i) use its reasonable efforts to file on a timely basis, all reports and data  
required to be filed with the Securities and Exchange Commission by it pursuant  
to Section 13 of the Securities Exchange Act of 1934, as amended.  
  
 4. Termination. This Agreement shall be terminated and shall be of no  
further force and effect in the event of the termination of the Merger Agreement  
pursuant to Article IX of the Merger Agreement.  
  
 5. Compliance with Filing Requirements. Parent acknowledges and agrees  
that it shall prepare and file the consolidated financial statements required to  
be filed on Form 8-K with the Securities and Exchange Commission within the time  
period required pursuant to the Securities Exchange Act of 1934, as amended.  
  
 6. Miscellaneous.  
  
 (a) Waiver; Severability. No waiver by any party hereto of any  
condition or of any breach of any provision of this Agreement shall be effective  
unless in writing and signed by each party hereto. In the event that any  
provision of this Agreement, or the application of any such provision to any  
person, entity or set of circumstances, shall be determined to be invalid,  
unlawful, void or unenforceable to any extent, the remainder of this Agreement,  
and the application of such provision to persons, entities or circumstances  
other than those as to which it is determined to be invalid, unlawful, void or  
unenforceable, shall not be impaired or otherwise affected and shall continue to  
be valid and enforceable to the fullest extent permitted by law.  
  
 (b) Binding Effect and Assignment. This Agreement and all of  
the provisions hereof shall be binding upon and inure to the benefit of the  
parties hereto and their respective successors and permitted assigns, but,  
except as otherwise specifically provided herein, neither this Agreement  
  
  
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nor any of the rights, interests or obligations of the parties hereto may be  
assigned by either of the parties without prior written consent of the other  
party hereto.  
  
 (c) Amendments and Modification. This Agreement may not be  
modified, amended, altered or supplemented except upon the execution and  
delivery of a written agreement executed by the parties hereto.  
  
 (d) Injunctive Relief. Each of the parties acknowledge that  
(i) the covenants and the restrictions contained in this Agreement are  
necessary, fundamental and required for the protection of Parent and the Company  
and to preserve for Parent the benefits of the Offer and the Merger; (ii) such  
covenants relate to matters which are of a special, unique, and extraordinary  
character that gives each of such covenants a special, unique, and extraordinary  
value; and (iii) a breach of any such covenants or any other provision of this  
Agreement shall result in irreparable harm and damages to Parent and the Company  
which cannot be adequately compensated by a monetary award. Accordingly, it is  
expressly agreed that in addition to all other remedies available at law or in  
equity, Parent and the Company shall be entitled to the immediate remedy of a  
temporary restraining order, preliminary injunction, or such other form of  
injunctive or equitable relief as may be used by any court of competent  
jurisdiction to restrain or enjoin any of the parties hereto from breaching any  
such covenant or provision or to specifically enforce the provisions hereof.  
  
 (e) Governing Law. This Agreement shall be governed by and  
construed, interpreted and enforced in accordance with the internal laws of the  
State of Delaware without giving effect to any choice or conflict of law  
provision or rule (whether of the State of Delaware or any other jurisdiction)  
that would cause the application of the laws of any jurisdiction other than the  
State of Delaware.  
  
 (f) Entire Agreement. This Agreement, the Merger Agreement and  
any other agreements referred to in the Merger Agreement set forth the entire  
understanding of Affiliate and Parent relating to the subject matter hereof and  
thereof and supersede all prior agreements and understandings between Affiliate  
and Parent relating to the subject matter hereof and thereof.  
  
 (g) Further Assurances. Affiliate shall execute and/or cause  
to be delivered to Parent such instruments and other documents and shall take  
such other actions as Parent may reasonably request to effectuate the intent and  
purposes of this Agreement.  
  
 (h) Third Party Reliance. Counsel to and independent auditors  
for Parent and the Company shall be entitled to rely upon this Affiliate  
Agreement.  
  
 (i) Survival. The representations, warranties, covenants and  
other provisions contained in this Agreement shall survive the Merger.  
  
 (j) Notices. All notices and other communications pursuant to  
this Agreement shall be in writing and deemed to be sufficient if contained in a  
written instrument and shall be deemed given if delivered personally,  
telecopied, sent by nationally-recognized overnight courier or mailed  
  
  
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by registered or certified mail (return receipt requested), postage prepaid, to  
the parties at the following address (or at such other address for a party as  
shall be specified by like notice):  
  
  
 If to Parent: Quovadx, Inc.  
 0000 Xxxxx Xxxxxxx'x Xxxxx Xxxxxx  
 Xxxxx 0000  
 Xxxxxxxxx, Xxxxxxxxxx 00000  
 Facsimile: (000) 000-0000  
 Attn: Xxxxx X. Xxxxxxxx  
  
 With a copies to: Xxxxxx Xxxxxxx Xxxxxxxx & Xxxxxx  
 000 Xxxx Xxxx Xxxx  
 Xxxx Xxxx, Xxxxxxxxxx 00000  
 Facsimile: (000) 000-0000  
 Attention: Xxxxxx X. Xxxxxxxxxxxx  
 Xxxxx X. Xxxxxxxx  
  
  
 If to Affiliate: To the address for notice set forth  
 on the signature page hereof.  
  
 (k) Counterparts. This Agreement shall be executed in one or  
more counterparts, each of which shall be deemed an original, and all of which  
together shall constitute one and the same instrument.  
  
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 IN WITNESS WHEREOF, the parties have caused this Affiliate Agreement to  
be duly executed on the day and year first above written.  
  
PARENT AFFILIATE  
  
  
  
By: By:  
 ---------------------------------- ---------------------------------  
  
Name: Xxxxxx X. Xxxxxxx Affiliate's Address for Notice:  
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Title: President and Chief Executive  
 Officer -------------------------------------  
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 Shares beneficially owned:  
  
 shares of the Company Common  
 ----- Stock  
  
 shares of the Company Common  
 ----- Stock issuable upon exercise of  
 outstanding options and warrants  
  
 shares of Parent Common Stock  
 -----  
  
  
  
  
  
 [Signature Page to Affiliate Agreement]