

Committee shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The Committee shall review the annual reports submitted both internally and externally, and take such action with respect thereto as it may deem appropriate. The Committee shall also recommend annually to the Board, independent public accountants as auditors of the Exchange and its subsidiaries.

11.8(d)–11.8(g)—No change.

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

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The Exchange represents that, in light of the recent changes mandated by the Sarbanes-Oxley Act of 2002 and at the request of Commission's Chairman William H. Donaldson,<sup>4</sup> the Exchange recently reviewed its own corporate governance structure. In doing so, the Exchange's Board of Governors felt that the Exchange's audit committee should follow many of the same requirements that it will asks its listed companies to adhere to.

Therefore, the Exchange is proposing to amend its Rule 11.8(c). The proposed rule will require that the PCX audit committee be comprised of at least three Governors. The committee shall be made up entirely of public Governors, and at least one member of the committee shall have accounting or related financial management expertise. The committee shall have the responsibility to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof. The committee shall periodically review with the independent auditors and the

internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The committee shall review the annual reports submitted both internally and externally and take such action with respect thereto as it may deem appropriate. The committee shall also recommend annually to the Board independent public accountants as auditors of the Exchange and its subsidiaries.

#### 2. Statutory Basis

The Exchange believes that the proposal furthers the objectives of Section 6(b)(5)<sup>5</sup> of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-36 and should be submitted by October 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-24503 Filed 9-26-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48515; File No. SR-Phlx-2003-10]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Remote Primary Specialists

September 22, 2003.

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> notice is hereby given that on February 26, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a policy to permit primary specialists to trade on a remote basis in limited circumstances. Specifically, Phlx proposes to amend Phlx Rules 444, 460, 517, 522 and 523, and to adopt new Phlx Rule 524. The text of the proposed rule change is set

<sup>4</sup> See Letter from William H. Donaldson, Chairman, Commission, to Philip D. DeFeo, Chairman, PCX, dated March 26, 2003.

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

<sup>6</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.

forth below. New text is italicized; deleted text is bracketed.

\* \* \* \* \*

#### **Rule 444. Wire Connections Between Exchange and Members' Offices**

Rule 444. No member or member organization shall establish or maintain any telephonic or other wire connection between his or its office and the Exchange except with the approval of the Committee. The Committee may grant or withhold such approval, and may without being obliged to assign any reason or cause for its action cause to be disconnected any such connection. *In order to facilitate communications remote specialists (whether competing or primary) shall be required to have and maintain e-mail capability acceptable to the Exchange at remote locations.*

#### **Rule 460. Procedures for Competing Specialists**

- (a) Application—No change.
- (b) Obligations—No change.
- (c) Withdrawal

If a competing specialist seeks to withdraw from acting as such in a security, it should so notify the Committee at least three business days prior to the desired effective date of such withdrawal. Withdrawal by a competing specialist bars that Competing Specialist from applying to trade [compete in] that same security as a primary or competing specialist for 90 days following the effective date of withdrawal. *If the EAES Committee determines that extraordinary circumstances exist, it may waive the 90 day period.* When the primary specialist requests to withdraw from a security, it shall be posted for reallocation by the EAES Committee. In the interim, if the EAES Committee is satisfied that a competing specialist can continue to maintain a fair and orderly market in such security, the competing specialist shall serve as the *interim* primary specialist until the security has been reallocated. Where there is more than one competing specialist in the security, [a] *an interim primary specialist* shall be selected from among the competing specialists by the EAES Committee until reallocation. *A remote specialist may be selected as an interim primary specialist only where there is no non-remote competing specialist in the security who can continue to maintain a fair and orderly market in such security as interim primary specialist.*

(d) Competing Markets in a Security—No change.

#### **Competing and Remote Specialist**

Rule 517. Rules governing the approval of trading as a competing specialist [and as a remote competing specialist] are set forth in 460, Procedures for Competing Specialists. *Rules governing the approval of trading as a remote specialist are set forth in [and] Rule 461, PACE Remote Specialist., respectively, and] Rules 460 and 461 are incorporated by reference herein. Rules 500 through 599 shall apply both to the specialist selected by the Committee following solicitation of applications under Rule 506(a) to serve as primary specialist and to any competing specialist approved under Rule 460, except that, subject to Rules 522 and 523 below, the primary specialist shall determine whether a security shall be PACE registered. Applications for allocation of competing specialist privileges pursuant to Rule 460 shall contain the information required in Rule 506(b), and competing specialist privileges may be terminated on the same basis that primary specialist privileges may be removed and reallocated.*

Rule 522. *When a Registrant (as defined in Rule 505) notifies the Exchange, the [The] Committee shall institute reallocation proceedings with respect to any security voluntarily removed from PACE by its Registrant. The original Registrant shall not be reallocated the security once another applicant, which may be a remote specialist unit, commits to trading the security on PACE. Should no applicant commit to trading the security on PACE, the Committee shall allocate the security pursuant to Rules 506 and 511; provided, however, that if the original Registrant has applied to retain the security it shall be awarded the allocation. The Committee shall not allocate the security to a remote specialist unit if, following solicitation, any non-remote specialist unit applicant (other than the original Registrant) commits to trading the security on PACE.*

Rule 523. The Committee shall institute reallocation proceedings for *primary specialist privileges* with respect to any non-PACE traded security should any applicant commit to trading that security as the *primary specialist unit* on PACE. The existing Registrant (as defined in Rule 505) shall retain *primary specialist privileges* in the security if it commits to trading the security on PACE as the *primary specialist unit*; provided, however, that the Committee may from time to time determine that, for specified periods, the existing Registrant shall not retain

*primary specialist privileges* in the security in the event an applicant commits to trade the security on PACE as the *primary specialist unit*. *A remote specialist unit may make the commitment to trade the security on PACE as a primary specialist.*

#### **Rule 524**

*A remote specialist unit may be allocated primary specialist privileges to trade any security that had previously been solicited or allocated by the Exchange but which is currently not allocated.*

\* \* \* \* \*

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

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

##### a. Background

On December 21, 2001, the Commission approved Phlx Rule 460, which was designed to establish a framework pursuant to which multiple specialists could trade on the equity trading floor of the Phlx.<sup>3</sup> Prior to the adoption of Phlx Rule 460, there was one specialist unit ("Primary Specialist") for each equity security traded on the floor. The Primary Specialist was approved by the Phlx's Equity Allocation, Evaluation and Securities Committee (the "EAES Committee")<sup>4</sup> pursuant to Phlx Rule 506(a) and Phlx Rule 511(b). Those rules generally provide for the allocation of equity securities (commonly called "books") to particular specialist units, which consist of specialists and other staff.<sup>5</sup>

Phlx Rule 460 currently provides that approved specialist units may apply to trade one or more securities as Competing Specialists. Each Competing

<sup>3</sup> See Securities Exchange Act Release No. 45183 (December 21, 2001), 67 FR 118 (January 2, 2002) (SR-Phlx-2001-97).

<sup>4</sup> See Phlx By-Law Article 10-6 and Phlx Rule 500.

<sup>5</sup> See Phlx Rule 501.

Specialist has the same affirmative and negative obligations under Phlx Rule 203 as are imposed on the Primary Specialist. There must be a Primary Specialist in a security in order for there to be Competing Specialists in that security.<sup>6</sup>

The Primary Specialist determines whether a security will trade on or off the Phlx's PACE system.<sup>7</sup> If the Primary Specialist determines that the security will trade on PACE, then all Competing Specialists must trade that security on PACE.<sup>8</sup> As stated in the proposed rule change filing to adopt Phlx Rule 460, the EAES Committee does not approve any application by a specialist to act as a Competing Specialist in any security that is not traded on the Phlx's PACE System.<sup>9</sup> The Phlx does not permit Competing Specialists to trade a security off the PACE system if the Primary Specialist has elected to remove the security from PACE. In such circumstances, Competing Specialists may no longer trade the security, whether on or off the PACE system, unless the security is reallocated to another specialist willing to place the security back on the PACE system.

On December 21, 2001, the Commission also approved Phlx Rule 461 in connection with the commencement of the Phlx's remote competing specialist program.<sup>10</sup> Pursuant to Phlx Rule 461 PACE terminals and related equipment may be provided to member organizations for trading by qualified remote Competing Specialists. In the proposed rule change filed with the Commission to adopt Phlx Rule 461, the Phlx stated that the Primary Specialist may not operate remotely. The Phlx noted, however, that it might at a future time file a proposed rule change to permit the Primary

Specialist to trade from a remote location. This filing is intended to do so, in the limited circumstances listed below.

#### b. Proposed Rule Amendments

The Phlx proposes to permit the EAES Committee to allow Primary Specialists, trading on PACE from a remote location, to trade issues that are currently traded by specialists off PACE ("non-PACE issues"). The proposal would also permit a remote specialist, acting as primary specialist, to trade issues not traded on the Phlx at all (*i.e.*, where there currently is not an assigned specialist and the issue is on the inactive-eligible list).<sup>11</sup>

Under the proposed rule change, a specialist could be approved to trade securities as a Primary Specialist from a remote location, but only in the following limited circumstances: (a) where the securities are allocated on an interim basis pending reallocation, (b) where the security is voluntarily removed from PACE by the current specialist, (c) with respect to a non-PACE traded security, if another applicant commits to trading the security on PACE, and (d) where the security that has previously been allocated or solicited is currently not allocated to any specialist (*i.e.*, securities on the inactive-eligible list). A specialist would not be permitted to "move" equity securities to trade remotely on a primary basis.

#### c. Rule Changes

*Phlx Rule 460.* Proposed Phlx Rule 460 states that a remote specialist may be selected as the interim Primary Specialist (until the security has been reallocated) only where there is not a non-remote Competing Specialist in the security that is able to maintain a fair and orderly market in the security. Phlx Rule 460 would give the EAES Committee authority to waive the 90 day reapplication bar in extraordinary circumstances in the event that a Competing Specialist withdraws from a security.<sup>12</sup>

*Phlx Rule 517.* Proposed Phlx Rule 517 has been revised to clarify that Phlx Rule 460 provides procedures for Competing Specialists and that Phlx Rule 461 provides procedures for remote specialists. It has also been

revised to clarify that a Primary Specialist's decision to trade a security on PACE is subject to the reallocation provisions of Phlx Rules 522 and 523, such that any decision by a Primary Specialist to trade a security on PACE may result in that security being reallocated to another specialist.

*Phlx Rule 522.* Phlx Rule 522 currently provides that the EAES Committee shall institute reallocation proceedings with respect to any security voluntarily removed from PACE. This rule applies when a specialist first removes a security from PACE.<sup>13</sup> The proposed rule would permit a remote specialist unit to commit to trade a security on PACE as a Primary Specialist and therefore be awarded the Primary Specialist allocation under these circumstances, unless any non-remote specialist unit applicant (other than the original Registrant) commits to trading the security on PACE. Accordingly, if there is a qualified non-remote applicant, the EAES Committee should allocate Primary Specialist privileges to such non-remote applicant.

*Phlx Rule 523.* Phlx Rule 523 currently provides that the EAES Committee shall institute reallocation proceedings for Primary Specialist privileges with respect to any non-PACE traded security should any applicant commit to trading that security as the Primary Specialist on PACE.<sup>14</sup> This rule applies where a specialist has been trading a security off PACE. Phlx Rule 523 also applies in cases where the specialist has removed the security from PACE and/or soliciting for specialist applicants to trade the security on PACE pursuant to Phlx Rule 522 did not result in a reallocation. Under the current rule, if the existing specialist commits to trading the security on PACE as the Primary Specialist, the Primary Specialist shall retain Primary Specialist privileges regardless of other applicants, except that the EAES Committee may from time to time determine that, for specified periods, the existing Primary Specialist shall not retain such privileges in the event an applicant commits to trade the security on PACE.

The proposed revisions to Phlx Rule 523 provides that a remote specialist unit may make the commitment to trade the security on PACE as a Primary

<sup>6</sup> A Phlx specialist may trade some securities on a primary basis and other securities on a competing basis, or may trade all its securities on either a primary or a competing basis.

<sup>7</sup> PACE is the electronic order routing, delivery execution and reporting system used to access the Phlx Equity Floor. See Phlx Rules 229 and 229A.

<sup>8</sup> If the Primary Specialist elects to take the security off the PACE system, the security is subject to reallocation to another specialist unit willing to trade the security on the PACE system. See Phlx Rule 520-523.

<sup>9</sup> The Phlx noted that pursuant to Phlx Rule 522 any security not traded on the PACE system may be reallocated to a specialist that is willing to trade the security on PACE. Thus, if a security is unavailable to be traded by a Competing Specialist because it is not on PACE, any specialist unit which otherwise may have applied to trade the security as a Competing Specialist may apply to trade the security as the Primary Specialist pursuant to Phlx Rule 522. Thereafter, the former Primary Specialist may apply to be a Competing Specialist. See, *supra* n.4.

<sup>10</sup> See Phlx Rule 461 and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (approving SR-Phlx-2001-98).

<sup>11</sup> The inactive-eligible list consists of securities, which qualify for listing, or unlisted trading privileges on Phlx but which are not allocated to any specialist.

<sup>12</sup> Phlx Rule 460 currently provides that "[w]ithdrawal by a competing specialist bars that Competing Specialist from applying to compete in that same security for 90 days following the effective date of withdrawal."

<sup>13</sup> In contrast, Phlx Rule 523 applies where a security has been off PACE for some time.

<sup>14</sup> When reallocation proceedings are commenced pursuant to Phlx Rule 522, the EAES Committee solicits specialist applications to take over Primary Specialist privileges in the security in question. By contrast, the EAES Committee, respecting reallocation proceedings pursuant to Phlx Rule 523, has not required a solicitation memorandum to be distributed.

Specialist. In terms of timing, the remote specialist may do so days or years after the security has been removed from PACE by the existing specialist. Thus, a remote specialist can be awarded Primary Specialist privileges in a security even if an on-floor specialist wants Primary Specialist privileges because, like securities on the inactive-eligible list, floor-based specialists have already had the opportunity to commit to trade the security on PACE.

*Phlx Rule 524.* Phlx Rule 524 would provide that a remote specialist unit may be allocated Primary Specialist privileges to trade any security that had previously been solicited or allocated by the Phlx, but is currently not allocated to any specialist. In this situation, the EAES Committee would consider any remote specialist applicant.<sup>15</sup>

*Phlx Rule 444.* Phlx Rule 444 concerns the establishment and maintenance of telephonic or other wire connections between member's offices and the Phlx. The proposed new language would add a requirement that remote specialist units, whether primary or competing, maintain e-mail capability. The purpose of this requirement is to improve communication among specialists and between specialists and the Phlx.

## 2. Statutory Basis

The Phlx believes that its proposal is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 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 Phlx believes that offering Primary Specialist the opportunity to trade from an approved remote location may result in a greater number of securities being traded on PACE (because there may be specialists willing to trade a security on PACE, but only remotely), thereby benefiting investors using the PACE system. Additionally, the Phlx believes that the establishment of an e-mail

requirement and the rule changes proposed herein are consistent with the efficient operation of the remote specialist program and will benefit investors.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Phlx did not solicit or receive written comment concerning the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 Phlx. All submissions should refer to File No. SR-Phlx-2003-10 and should be submitted by October 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-24501 Filed 9-26-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before October 29, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and

*David.Rostker@omb.eop.gov*, fax number 202-395-7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

#### **SUPPLEMENTARY INFORMATION:**

*Title:* Licenses Application.

*Nos:* 415, 415A.

*Frequency:* On Occasion.

*Description of Respondents:* Small Business Investment Companies.

*Responses:* 450.

*Annual Burden:* 14,400.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 03-24551 Filed 9-26-03; 8:45 am]

**BILLING CODE 8025-01-P**

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

<sup>15</sup> Like Phlx Rule 523, Phlx Rule 524 would not require a solicitation memo to be distributed by the EAES Committee.

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

<sup>17</sup> 15 U.S.C. 78f(b)(5).