

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.⁶

The Primary Specialist determines whether a security will trade on or off the Phlx's PACE system.⁷ If the Primary Specialist determines that the security will trade on PACE, then all Competing Specialists must trade that security on PACE.⁸ 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.⁹ 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.¹⁰ 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).¹¹

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.¹²

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.¹³ 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.¹⁴ 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

⁶ 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.

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

⁸ 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.

⁹ 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.

¹⁰ 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).

¹¹ 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.

¹² 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."

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

¹⁴ 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.