

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 13	Amendment No. (req. for Amendments *)
Proposed Rule Change by NASDAQ OMX PHLX LLC. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). Relating to Fidelity Bonds				
Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.				
First Name *	Angela	Last Name *	Dunn	
Title *	Associate General Counsel			
E-mail *	angela.dunn@nasdaqomx.com			
Telephone *	(215) 496-5692	Fax		
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.				
Date	01/26/2012			
By	Angela Saccomandi Dunn	Associate General Counsel		
	(Name *)	(Title *)		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		Angela Dunn, angela.dunn@phlx.com		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend Exchange Rule 705, entitled “Members Must Carry,” to create new requirements regarding fidelity bonds and also rename the Rule “Fidelity Bonds.”

The Exchange intends for this Rule to become operative on April 2, 2012.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Exchange’s Rules is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on August 19, 2011. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Assistant General Counsel, at (215) 496-5692.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to eliminate the current Rule 705 entitled “Members Must Carry.” The Exchange proposes to rename Exchange Rule 705 “Fidelity Bonds” and adopt a new Rule 705 in substantially the same form as a rule at the Financial Industry Regulatory Authority, Inc. (“FINRA”).³

Currently, Exchange Rule 705 requires each member organization that is a partnership and is doing business with the public and each member organization that is a corporation to carry fidelity bonds covering its general partners and employees or covering its officers and employees in such form and in such amounts as the Exchange may require. The Rule does not apply to member organizations that are partnerships or corporations which are members of another exchange, which has comparable rules and regulations to which such member organizations are subject and with which they comply.

The Exchange proposes to adopt language similar to a FINRA Rule which would provide members and member organizations with more specific guidelines with respect to fidelity bonds and better reflect current industry practices.⁴ The purpose of a fidelity bond is to protect a member or member organization against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member or member organization's capital.

³ See FINRA Rule 4360 “Fidelity Bonds.”

⁴ See Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR-FINRA-2010-059) (a rule change to adopt a rule of the National Association of Securities Dealers, Inc. (“NASD”) as part of the consolidation of the FINRA rulebook).

The new proposed text would require each member and member organization that is required to join the Securities Investor Protection Corporation (“SIPC”) to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member or member organization's net capital requirement, with certain exceptions. Proposed Rule 705 would require members and member organizations to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability. Members or member organizations may apply for this level of coverage with any product that meets these requirements, including the Securities Dealer Blanket Bond (“SDBB”) or a properly endorsed Financial Institution Form 14 Bond (“Form 14”). Most fidelity bonds contain a definition of the term “loss” (or “single loss”), for purposes of the bond, which generally includes all covered losses resulting from any one act or a series of related acts. A payment by an insurer for covered losses attributed to a “single loss” does not reduce a member or member organization's coverage amount for losses attributed to other, separate acts. A fidelity bond with an aggregate limit of liability caps a member or member organization's coverage during the bond period at a certain amount if a loss (or losses) meets this aggregate threshold. The Exchange believes that per loss coverage without an aggregate limit of liability provides member and member organizations with the most beneficial coverage since the bond amount cannot be exhausted by one or more covered losses, so it will be available for future losses during the bond period.

Under the proposed Rule, a member or member organization's fidelity bond must provide against loss and have Insuring Agreements covering at least the following: fidelity, on premises, in transit, forgery and alteration, securities and counterfeit currency. The Rule requires that coverage for all Insuring Agreements be equal to 100 percent of

the member or member organization's minimum required bond coverage. Members and member organizations may elect to carry additional, optional Insuring Agreements not required by the proposed Rule for an amount less than 100 percent of the minimum required bond coverage. The proposed Rule would require that a member or member organization's fidelity bond include a cancellation rider providing that the insurer will use its best efforts to promptly notify the Exchange in the event the bond is cancelled, terminated or "substantially modified."

The Exchange is proposing to add supplementary material to the proposed Rule text that would require members or member organizations that do not qualify for a bond with per loss coverage without an aggregate limit of liability to secure alternative coverage. Specifically, a member or member organization that does not qualify for blanket fidelity bond coverage as required by Rule 705(a)(3) would be required to maintain substantially similar fidelity bond coverage in compliance with all other provisions of the proposed Rule, provided that the member or member organization maintains written correspondence from two insurance providers stating that the member or member organization does not qualify for the coverage required by proposed Rule 705(a)(3). The member or member organization would be required to retain such correspondence for the period specified by Rule 17a-4(b)(4) of the Act.

Minimum Coverage

Proposed Rule 705 would require each member or member organization to maintain, at a minimum, fidelity bond coverage for any person associated with the member or member organization, except directors or trustees of a member or member organization who are not performing acts within the scope of the usual duties of an officer or

employee. Proposed Rule 705 would require a member or member organization with a net capital requirement that is less than \$250,000 to maintain minimum coverage of the greater of 120 percent of the firm's required net capital under Rule 15c3-1 of the Act or \$100,000. Members or member organizations with a net capital requirement of at least \$250,000 would use a table in the rule to determine their minimum fidelity bond coverage requirement. Under the proposed Rule, the entire amount of a member or member organization's minimum required coverage must be available for covered losses and may not be eroded by the costs an insurer may incur if it chooses to defend a claim. Specifically, any defense costs for covered losses must be in addition to a member or member organization's minimum coverage requirements. A member or member organization may include defense costs as part of its fidelity bond coverage, but only to the extent that it does not reduce a member or member organization's minimum required coverage under the proposed Rule.

Deductible

Proposed Rule 705 would provide for an allowable deductible amount of up to 25 percent of the fidelity bond coverage purchased by a member or member organization. Any deductible amount elected by the member or member organization that is greater than 10 percent of the coverage purchased by the member or member organization⁵ would be deducted from the member or member organization's net worth in the calculation of its net capital for purposes of Rule 15c3-1 of the Act.⁶ If the member or member organization is a subsidiary of another Exchange member or member

⁵ The Exchange notes that a member or member organization may elect, subject to availability, a deductible of less than 10 percent of the coverage purchased.

⁶ Such deduction would be based on net worth on coverage purchased by the member or member organization.

organization, this amount may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

Annual Review

The proposed Rule would require a member or member organization (including a member or member organization that signs a multi-year insurance policy), annually as of the yearly anniversary date of the issuance of the fidelity bond, to review the adequacy of its fidelity bond coverage and make any required adjustments to its coverage, as set forth in the proposed Rule. Under proposed Rule 705(d), a member or member organization's highest net capital requirement during the preceding 12-month period, based on the applicable method of computing net capital (dollar minimum, aggregate indebtedness or alternative standard), would be used as the basis for determining the member or member organization's minimum required fidelity bond coverage for the succeeding 12-month period. The "preceding 12-month period" includes the 12-month period that ends 60 days before the yearly anniversary date of a member or member organization's fidelity bond. This would give a member or member organization time to determine its required fidelity bond coverage by the anniversary date of the bond.

Rule 705 would allow a member or member organization that has only been in business for one year and elected the aggregate indebtedness ratio for calculating its net capital requirement to use, solely for the purpose of determining the adequacy of its fidelity bond coverage for its second year, the 15 to 1 ratio of aggregate indebtedness to net capital in lieu of the 8 to 1 ratio (required for broker-dealers in their first year of business) to calculate its net capital requirement. Notwithstanding the above, such

member or member organization would not be permitted to carry less minimum fidelity bond coverage in its second year than it carried in its first year.

A member or member organization would be required to immediately advise the Exchange in writing if its fidelity bond is cancelled, terminated or substantially modified.⁷

Exemptions

Proposed Rule 705 would exempt from the fidelity bond requirements members or member organizations in good standing with another national securities exchange or FINRA that maintain a fidelity bond subject to the requirements of such exchange that are equal to or greater than the requirements set forth in the proposed rule.⁸ Additionally, the Rule would exempt from the fidelity bond requirements any firm that acts solely as a Registered Options Trader (“ROT”)⁹, Specialist¹⁰ or Floor Broker and does not conduct business with the public.

⁷ See Proposed Rule 705(e).

⁸ In general, the notification provisions of the corresponding exchange rules (*i.e.*, cancellation rider and notification upon cancellation, termination or substantial modification of the bond) require notification to the respective exchange rather than to the Exchange or FINRA. Accordingly, the practical effect for a member or member organization that avails itself of the proposed exemption is that such member or member organization must maintain a fidelity bond subject to the same or greater requirements as in proposed Rule 705; however, such member or member organization would be exempt from the requirement that the Exchange be notified of changes to the bond and would alternatively comply with the notification provisions of the respective exchange or FINRA.

⁹ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received

The Exchange intends for this Rule to become operative on April 2, 2012.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is 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 Exchange believes that its proposed amendment to Exchange Rule 705 provides specificity to the Rule. The proposed amendment to the Rule requires members and member organizations to continue to carry fidelity bonds, but also provides additional specificity regarding the amount of coverage. This Rule will update and clarify the requirements governing fidelity bonds consistent with industry practice.

4. 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 not necessary or appropriate in furtherance of the purposes of the Act.

permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

¹⁰ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange does not believe this filing is controversial because the Exchange's proposed rule is substantially similar to a FINRA rule.¹⁵ The proposed rule provides increased specificity to the requirement to carry a fidelity bond and serves to protect investors.

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. Furthermore, a proposed rule

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ See Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR-FINRA-2010-059).

change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on a rule by FINRA.¹⁸

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Proposed Rule Text.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ See Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR-FINRA-2010-059) (a rule change to adopt a rule of the National Association of Securities Dealers, Inc. (“NASD”) as part of the consolidation of the FINRA rulebook). The proposed Rule is substantially similar to a FINRA Rule. The Exchange would not allow members and member organizations to request an exemption from certain requirements of the Rule similar to FINRA which has procedures for requesting exemption. The Exchange would only permit the exemptions in proposed Rule 705(f).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2012-13)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Fidelity Bonds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on January 26, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend Exchange Rule 705, entitled "Members Must Carry," to create new requirements regarding fidelity bonds and also rename the Rule "Fidelity Bonds."

The Exchange intends for this Rule to become operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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 Exchange 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 purpose of the proposed rule change is to eliminate the current Rule 705 entitled “Members Must Carry.” The Exchange proposes to rename Exchange Rule 705 “Fidelity Bonds” and adopt a new Rule 705 in substantially the same form as a rule at the Financial Industry Regulatory Authority, Inc. (“FINRA”).³

Currently, Exchange Rule 705 requires each member organization that is a partnership and is doing business with the public and each member organization that is a corporation to carry fidelity bonds covering its general partners and employees or covering its officers and employees in such form and in such amounts as the Exchange may require. The Rule does not apply to member organizations that are partnerships or corporations which are members of another exchange, which has comparable rules and regulations to which such member organizations are subject and with which they comply.

The Exchange proposes to adopt language similar to a FINRA Rule which would provide members and member organizations with more specific guidelines with respect

³ See FINRA Rule 4360 “Fidelity Bonds.”

to fidelity bonds and better reflect current industry practices.⁴ The purpose of a fidelity bond is to protect a member or member organization against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member or member organization's capital.

The new proposed text would require each member and member organization that is required to join the Securities Investor Protection Corporation (“SIPC”) to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member or member organization's net capital requirement, with certain exceptions. Proposed Rule 705 would require members and member organizations to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability. Members or member organizations may apply for this level of coverage with any product that meets these requirements, including the Securities Dealer Blanket Bond (“SDBB”) or a properly endorsed Financial Institution Form 14 Bond (“Form 14”). Most fidelity bonds contain a definition of the term “loss” (or “single loss”), for purposes of the bond, which generally includes all covered losses resulting from any one act or a series of related acts. A payment by an insurer for covered losses attributed to a “single loss” does not reduce a member or member organization's coverage amount for losses attributed to other, separate acts. A fidelity bond with an aggregate limit of liability caps a member or member organization's coverage during the bond period at a certain amount if a loss (or losses) meets this aggregate threshold. The Exchange believes that per loss coverage without an aggregate limit of liability provides member and member organizations with

⁴ See Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR-FINRA-2010-059) (a rule change to adopt a rule of the National Association of Securities Dealers, Inc. (“NASD”) as part of the consolidation of the FINRA rulebook).

the most beneficial coverage since the bond amount cannot be exhausted by one or more covered losses, so it will be available for future losses during the bond period.

Under the proposed Rule, a member or member organization's fidelity bond must provide against loss and have Insuring Agreements covering at least the following: fidelity, on premises, in transit, forgery and alteration, securities and counterfeit currency. The Rule requires that coverage for all Insuring Agreements be equal to 100 percent of the member or member organization's minimum required bond coverage. Members and member organizations may elect to carry additional, optional Insuring Agreements not required by the proposed Rule for an amount less than 100 percent of the minimum required bond coverage. The proposed Rule would require that a member or member organization's fidelity bond include a cancellation rider providing that the insurer will use its best efforts to promptly notify the Exchange in the event the bond is cancelled, terminated or "substantially modified."

The Exchange is proposing to add supplementary material to the proposed Rule text that would require members or member organizations that do not qualify for a bond with per loss coverage without an aggregate limit of liability to secure alternative coverage. Specifically, a member or member organization that does not qualify for blanket fidelity bond coverage as required by Rule 705(a)(3) would be required to maintain substantially similar fidelity bond coverage in compliance with all other provisions of the proposed Rule, provided that the member or member organization maintains written correspondence from two insurance providers stating that the member or member organization does not qualify for the coverage required by proposed Rule 705(a)(3). The

member or member organization would be required to retain such correspondence for the period specified by Rule 17a-4(b)(4) of the Act.

Minimum Coverage

Proposed Rule 705 would require each member or member organization to maintain, at a minimum, fidelity bond coverage for any person associated with the member or member organization, except directors or trustees of a member or member organization who are not performing acts within the scope of the usual duties of an officer or employee. Proposed Rule 705 would require a member or member organization with a net capital requirement that is less than \$250,000 to maintain minimum coverage of the greater of 120 percent of the firm's required net capital under Rule 15c3-1 of the Act or \$100,000. Members or member organizations with a net capital requirement of at least \$250,000 would use a table in the rule to determine their minimum fidelity bond coverage requirement. Under the proposed Rule, the entire amount of a member or member organization's minimum required coverage must be available for covered losses and may not be eroded by the costs an insurer may incur if it chooses to defend a claim. Specifically, any defense costs for covered losses must be in addition to a member or member organization's minimum coverage requirements. A member or member organization may include defense costs as part of its fidelity bond coverage, but only to the extent that it does not reduce a member or member organization's minimum required coverage under the proposed Rule.

Deductible

Proposed Rule 705 would provide for an allowable deductible amount of up to 25 percent of the fidelity bond coverage purchased by a member or member organization.

Any deductible amount elected by the member or member organization that is greater than 10 percent of the coverage purchased by the member or member organization⁵ would be deducted from the member or member organization's net worth in the calculation of its net capital for purposes of Rule 15c3-1 of the Act.⁶ If the member or member organization is a subsidiary of another Exchange member or member organization, this amount may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

Annual Review

The proposed Rule would require a member or member organization (including a member or member organization that signs a multi-year insurance policy), annually as of the yearly anniversary date of the issuance of the fidelity bond, to review the adequacy of its fidelity bond coverage and make any required adjustments to its coverage, as set forth in the proposed Rule. Under proposed Rule 705(d), a member or member organization's highest net capital requirement during the preceding 12-month period, based on the applicable method of computing net capital (dollar minimum, aggregate indebtedness or alternative standard), would be used as the basis for determining the member or member organization's minimum required fidelity bond coverage for the succeeding 12-month period. The "preceding 12-month period" includes the 12-month period that ends 60 days before the yearly anniversary date of a member or member organization's fidelity bond. This would give a member or member organization time to determine its required fidelity bond coverage by the anniversary date of the bond.

⁵ The Exchange notes that a member or member organization may elect, subject to availability, a deductible of less than 10 percent of the coverage purchased.

⁶ Such deduction would be based on net worth on coverage purchased by the member or member organization.

Rule 705 would allow a member or member organization that has only been in business for one year and elected the aggregate indebtedness ratio for calculating its net capital requirement to use, solely for the purpose of determining the adequacy of its fidelity bond coverage for its second year, the 15 to 1 ratio of aggregate indebtedness to net capital in lieu of the 8 to 1 ratio (required for broker-dealers in their first year of business) to calculate its net capital requirement. Notwithstanding the above, such member or member organization would not be permitted to carry less minimum fidelity bond coverage in its second year than it carried in its first year.

A member or member organization would be required to immediately advise the Exchange in writing if its fidelity bond is cancelled, terminated or substantially modified.⁷

Exemptions

Proposed Rule 705 would exempt from the fidelity bond requirements members or member organizations in good standing with another national securities exchange or FINRA that maintain a fidelity bond subject to the requirements of such exchange that are equal to or greater than the requirements set forth in the proposed rule.⁸ Additionally,

⁷ See Proposed Rule 705(e).

⁸ In general, the notification provisions of the corresponding exchange rules (*i.e.*, cancellation rider and notification upon cancellation, termination or substantial modification of the bond) require notification to the respective exchange rather than to the Exchange or FINRA. Accordingly, the practical effect for a member or member organization that avails itself of the proposed exemption is that such member or member organization must maintain a fidelity bond subject to the same or greater requirements as in proposed Rule 705; however, such member or member organization would be exempt from the requirement that the Exchange be notified of changes to the bond and would alternatively comply with the notification provisions of the respective exchange or FINRA.

the Rule would exempt from the fidelity bond requirements any firm that acts solely as a Registered Options Trader (“ROT”)⁹, Specialist¹⁰ or Floor Broker and does not conduct business with the public.

The Exchange intends for this Rule to become operative on April 2, 2012.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is 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 Exchange believes that its proposed amendment to Exchange Rule 705 provides specificity to the Rule. The proposed amendment to the Rule requires members and member organizations to continue to carry fidelity bonds, but also provides

⁹ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

¹⁰ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

additional specificity regarding the amount of coverage. This Rule will update and clarify the requirements governing fidelity bonds consistent with industry practice.

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 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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-13 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2012-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2012-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

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RULES OF THE EXCHANGE

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Rule 705. [Members Must Carry] Fidelity Bonds

[Each member organization that is a partnership and is doing business with the public and each member organization that is a corporation shall carry fidelity bonds covering its general partners and employees or covering its officers and employees in such form and in such amounts as the Exchange may require. Unless the Business Conduct Committee directs otherwise, the provisions of this Rule shall not apply to member organizations that are partnerships or corporations which are members of another exchange, which has comparable rules and regulations to which such member organizations are subject and with which they comply.]

(a) General Provision

(1) Each member and member organization required to join the Securities Investor Protection Corporation shall maintain blanket fidelity bond coverage which provides against loss and has Insuring Agreements covering at least the following:

- (A) Fidelity;
- (B) On Premises;
- (C) In Transit;
- (D) Forgery and Alteration;
- (E) Securities; and
- (F) Counterfeit Currency.

(2) The fidelity bond must include a cancellation rider providing that the insurance carrier will use its best efforts to promptly notify the Exchange in the event the bond is cancelled, terminated or substantially modified.

(3) A member or member organization's fidelity bond must provide for per loss coverage without an aggregate limit of liability.

(b) Minimum Required Coverage

(1) A member or member organization with a net capital requirement of less than \$250,000 must maintain minimum fidelity bond coverage for all Insuring Agreements required by paragraph (a) of this Rule of the greater of (A) 120% of the member or member organization's required net capital under SEC rule 15c3-1 or (B) \$100,000. A member or member organization with a net capital requirement of \$250,000 or more must maintain minimum fidelity bond coverage for all

Insuring Agreements required by paragraph (a) of this Rule in accordance with the following table:

<u>Net Capital Requirement under SEA Rule 15c3-1</u>	<u>Minimum Coverage</u>
<u>250,000 – 300,000</u>	<u>600,000</u>
<u>300,001 – 500,000</u>	<u>700,000</u>
<u>500,001 – 1,000,000</u>	<u>800,000</u>
<u>1,000,001 – 2,000,000</u>	<u>1,000,000</u>
<u>2,000,001 – 3,000,000</u>	<u>1,500,000</u>
<u>3,000,001 – 4,000,000</u>	<u>2,000,000</u>
<u>4,000,001 – 6,000,000</u>	<u>3,000,000</u>
<u>6,000,001 – 12,000,000</u>	<u>4,000,000</u>
<u>12,000,001 and above</u>	<u>5,000,000</u>

(2) At a minimum, a member or member organization must maintain fidelity bond coverage for any person associated with the member or member organization, except directors or trustees who are not performing acts within the scope of the usual duties of an officer or employee.

(3) Any defense costs for covered losses must be in addition to the minimum coverage requirements as set forth in paragraph (b)(1) of this Rule.

(c) Deductible Provision

A provision may be included in a fidelity bond to provide for a deductible of up to 25% of the coverage purchased by a member or member organization. Any deductible amount elected by the member or member organization that is greater than 10% of the coverage purchased by the member or member organization must be deducted from the member or member organization's net worth in the calculation of its net capital for purposes of SEC rule 15c3-1. If the member or member organization is a subsidiary of another Exchange member, or member organization this amount may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

(d) Annual Review of Coverage

(1) A member or member organization, including a member or member organization that signs a multi-year insurance policy, shall, annually as of the yearly anniversary date of the issuance of the fidelity bond, review the adequacy of its coverage and make any required adjustments, as set forth in paragraphs (d)(2) and (d)(3) of this Rule.

(2) A member or member organization's highest net capital requirement during the preceding 12-month period, based on the applicable method of computing net capital (dollar minimum, aggregate indebtedness or alternative standard), shall be used as the basis for determining the member's or member organization's required minimum fidelity bond coverage for the succeeding 12-month period. For the purpose of this paragraph, the "preceding 12-month period" shall include the 12-month period that ends 60 days before the yearly anniversary date of a member's or member organization's fidelity bond.

(3) A member or member organizations that has only been in business for one year and elected the aggregate indebtedness ratio for calculating its net capital requirement may use, solely for the purpose of determining the adequacy of its fidelity bond coverage for its second year, the 15 to 1 ratio of aggregate indebtedness to net capital in lieu of the 8 to 1 ratio (required for broker-dealers in their first year of business) to calculate its net capital requirement. Notwithstanding the above, such member or member organization shall not carry less minimum bonding coverage in its second year than it carried in its first year.

(e) Notification of Change

A member or member organization shall immediately advise the Exchange in writing if its fidelity bond is cancelled, terminated or substantially modified.

(f) Exemptions

(1) The requirements of this Rule shall not apply to:

(A) member or member organizations that maintain a fidelity bond as required by another national securities exchange or FINRA, registered with the SEC under Section 6 of the Exchange Act, provided that the member or member organization is in good standing with such national securities exchange and the fidelity bond requirements of such exchange are equal to or greater than the requirements of this Rule; and

(B) member or member organizations whose business is solely that of a Registered Options Trader, Specialist or Floor Broker who does not conduct business with the public.

••• Supplementary Material: -----

.01 Definitions. For purposes of this Rule, the term "substantially modified" shall mean any change in the type or amount of fidelity bonding coverage, or in the exclusions to which the bond

is subject, or any other change in the bond such that it no longer complies with the requirements of this Rule.

.02 Alternative Coverage. A member or member organization that does not qualify for blanket fidelity bond coverage as required by paragraph (a)(3) of this Rule shall maintain substantially similar fidelity bond coverage in compliance with all other provisions of this Rule, provided that the member or member organization maintains written correspondence from two insurance providers stating that the member or member organization does not qualify for the coverage required by paragraph (a)(3) of this Rule. The member or member organization must retain such correspondence for the period specified by SEC rule 17a-4(b)(4).

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