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August 28, 2014

via email
Mary Jo White
Chairwoman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Securities and Exchange Commission, Release No. 34-72135, File No. SR-Phlx-2014-33 (May 9, 2014)

Dear Chairwoman White:

We write this letter to the Securities Exchange Commission ("SEC") on behalf of D&D Securities, Inc., PTR, Inc., and J.A.K. Securities, Inc. (collectively, the "Floor Brokers") with the purpose of urging both the SEC and the PHLX to postpone the implementation rollout of the new options floor broker management system ("FBMS") from September 1, 2014 to a later date. The NASDAQ OMX PHLX ("PHLX") notified the Floor Brokers informally in a verbal discussion just this week that the old FMBS would no longer be available as of September 1, 2014, and they would need to use the new FMBS only. The rollout of the new system cannot proceed because, due in large part to technological shortcomings of the new FBMS, it will be unfair to the Floor Brokers as PHLX members and will also lead to adverse consequences for investors.

I. Factual Background

The implementation rollout of the new options FBMS has a tortured history. PHLX received approval to implement the new FBMS, which involved technological enhancements to assist in executing orders, as early as June 1, 2013. It delayed implementing the system, however, five times – first until July 2013, then until September 2013, then until December 2013, then until March 2014, and finally, until September 1, 2014. (See Securities and Exchange Commission Release No. 34-72135 (May 9, 2014; File No. SR-Phlx-2014-33, at p. 2-3.) It is clear that there were significant technological difficulties with implementing the new FBMS, which resulted in these delays.

as they have not had the proper notice that the new FBMS, which has significant, unaddressed flaws, will be the only choice to execute trades in a few days.

2. Elimination of Open Outcry

The new FBMS has effectively eliminated the public outcry system permitted under PHLX Rule 1000(g) because the trades cannot be verbally executed using the new FBMS. Rule 1000(g) provides:

> Manner of Bidding and Offering. Bids and offers to be effective must either be entered electronically in a form and manner prescribed by the Exchange (as quotes or orders) or made by public outcry in the trading crowd (to which Rule 110 applies). All bids and offers shall be general ones and shall not be specified for acceptance by particular members.
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> Public Outcry - Pursuant to Rule 110, bids and offers must be made in an audible tone of voice. A member shall be considered "in" on a bid or offer, while he remains at the post, unless he shall distinctly and audibly say "out." A member bidding and offering in immediate and rapid succession shall be deemed "in" until he shall say "out" on either bid or offer. Once the trading crowd has provided a quote, it will remain in effect until: (A) a reasonable amount of time has passed, or (B) there is a significant change in the price of the underlying security, or (C) the market given in response to the request has been improved. In the case of a dispute, the term "significant change" will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of the recent trading in the option and, in the case of equity and index options, in the underlying security, and any other relevant factors.
>
> With respect to orders involving a Floor Broker using the Options Floor Broker Management System to execute an order pursuant to Rule 1000(f), a member must audibly say "out" before the Floor Broker submits the order into the FBMS for execution and, if the order is not executed, the member must audibly say "out" before each time the Floor Broker resubmits the order for execution.

While the public outcry system has been a long-standing tradition of the PHLX, ironically, Rule 1000(g) was first promulgated last year in connection with the PHLX's requests to enhance the functionality of the FBMS. (See SEC Release No. 34-69471, File No. SR-Phlx-2013-09 (Apr. 29, 2013).)

The new FBMS, however, has de facto eliminated the public outcry system. Under the old FBMS, an outcry trade was executed at the time that it was made (a "verbal execution"), and the Floor Broker had 90 seconds to enter the trade into the FBMS at the price at the time of the verbal execution. In contrast, a trade under the new FBMS is not executed until the time the trade is cleared in the new FBMS. There is considerable lag time involved due to the time it takes the Floor Broker to enter the information into the new FBMS, as well as a 7- to 24-second delay in the system's processing of the trade. As a result, the new FBMS is indirectly eliminating the public outcry system as no one – Floor Brokers or investors – will want to use it as the price at the time of the outcry may no longer be the price at the time of the trade. Public outcry is a long-stranding tradition of the PHLX, it is permitted under the PHLX Rules, and it is also a preferred way in which the Floor Brokers conduct their business.

Any efforts the PHLX made to preserve the outcry system with Rule 1000(g) last year are being defeated by the new FBMS, and thus, the implementation of the new FBMS should be postponed to ensure that the public outcry system is maintained.

B. Adverse Consequences to Investors

1. The Outcry System under the New FBMS Will Harm Investors

As described above, the new FBMS will de facto eliminate the public outcry system. To the extent a Floor Broker and an investor choose to continue to use the public outcry system, it could have disastrous consequences for an investor because the market may have moved from the time of the outcry until the time that the trade is entered into the new FBMS. As a result, Floor Brokers and investors alike can no longer use the outcry system.

2. Reduced Speed of the New FBMS

The new FBMS system is web based and very slow. Any delays in the former system were remedied by the fact that a floor official clocked the trade at the time of verbal execution. If a system issue caused the delay of entry and the market moved during that period, the trade was still a recognized trade as of the time designated by the floor official at verbal execution. Under the new system, there is no floor official clocking a trade at and the trades are no longer good on verbal execution. Instead, they are an actual "trade" once they are entered and cleared on the new FBMS system. This has already created problems during the pilot program. Because of the slow speed of the web based program, the market has moved before the trade has cleared the new FBMS thereby harming all participants in the trade, including the investors. An investor could execute a trade with a market maker that is within the then prevailing market but be deprived of that trade if the market moves before the new FBMS can accept the trade.

3. Increased Complexity for Multiple Leg Trades

The purported reason for implementing a new system was to assist in executing orders. The system as currently designed actually impedes the process of order execution. For example, a trade involving multiple legs and different volumes or a ratio spread, will entail up to three different operations on the new FBMS before it can be "executed." Once again, and as the Floor Brokers have already experienced, once the market moves during that period, all trade participants are damaged. This damage has been ameliorated during the pilot period since the PHLX has recognized the trades executed by open outcry. Once that is effectively eliminated by mandating use of the new but flawed FBMS system, there will be no easy remedy for an investor harmed by the limitations of this system.

These are just a few examples of the issues created by the new FBMS system. The system is otherwise incompatible with PHLX Rules and Procedures in ways that have been brought to the attention of PHLX officials but remain unaddressed.

Based on the foregoing, it is imperative that the SEC and the PHLX postpone the implementation rollout of the new FMBS until the PHLX cures its procedural deficiency by issuing an Options Trader Alert, ensures that the public outcry system can be maintained, and resolves the technological shortcomings in order to avoid being unfair to the Floor Brokers and creating adverse consequences for investors.

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cc: Joseph Cusick (via e-mail)
Elizabeth M. Murphy, Secretary
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