

submissions to exercise or not exercise expiring options.

The OCC on occasion will suspend the use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted or if accurate price data is unavailable for the determination of closing prices. When this occurs and there is no automatic exercise, all options contract holders must send an exercise notice to the OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. Currently, when the OCC suspends its Ex-by-Ex procedure for an option class, Amex rule 980 requires the submission of a CEA. Thus, when the OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price the OCC did not feel comfortable using). Option holders then must determine whether a CEA needs to be submitted to the Exchange evidencing the intention to exercise or not exercise.

In the Amex's view, the options exchanges have long viewed this process as cumbersome and confusing to option holders. Therefore, the Amex proposes to amend Amex rule 980(d) to eliminate the requirement that a CEA be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when the Ex-by-Ex procedure has been waived, submission of instructions to the Exchange to exercise will be required only when the options holder wants to exercise the option contract.

The proposed rule change would also permit the Exchange to establish different exercise cut-off time as an exception to amended Amex Rule 980(c) to address situations where the Exchange has advanced prior knowledge or warning of a modified trading session at expiration, or in the case of "unusual circumstances."

Specifically, proposed Amex rule 980(g) would be applicable when a different or modified close of trading is announced due to a market-wide event. In such cases, the Exchange would have forewarning of the event and would be required to provide notice of a change in exercise cut-off time by 5:30 p.m. (NY time) on the business day prior to the last trading day before expiration. For example, if the day after Thanksgiving is the last trading day prior to expiration with a close of trading of 1 p.m. (NY time), then the Exchange would, with prior notice up to the Wednesday before Thanksgiving, be able to reduce the cut-off time of the decision to exercise or not exercise expiring options to 1 hour

28 minutes after the close of trading. With respect to the submission of a CEA by members and member organizations, the cut-off time would be reduced to 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the member firm employs an electronic procedure with time stamp for the submission of exercise instructions. Member firms that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 28 minutes after the close of trading for its non-customer accounts. Accordingly, the normal exercise cut-off time would not apply and, similar to amended Amex Rule 980(c), the deadline for submitting CEAs to the Exchange for non-customer accounts would depend on the use of an electronic submission procedure for the submission of exercise instructions.

Proposed Amex rule 980(h)(1) would permit the Exchange to extend the cut-off time period for the decision to exercise or not exercise expiring options, as well as the submission of a CEA due to unusual circumstances. Situations that may arise that are deemed to be "unusual circumstances" are set forth in revised Commentary .03. An "unusual circumstance" for purposes of proposed paragraph (h)(1) includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

Proposed Amex Rule 980(h)(2) would permit the Exchange with one (1) business day prior advance notice by 12 noon (NY time) to establish a reduced cut-off time for the decision to exercise or not exercise expiring options as well as the submission of the CEA. The reduced cut-off time under this new paragraph for both the decision to exercise or not exercise and the submission of the CEA may not occur before the close of trading. The primary purpose of this proposed paragraph (h)(2) is to permit the Exchange to reduce cut-off times because of an "unusual circumstance," such as a significant news event occurring after the close. Revised Commentary .03 to Amex Rule 980 provides that for purposes of subparagraph (h)(2), an "unusual circumstance" is a significant news announcement concerning the underlying security of an option contract that is scheduled to be released after the close on the last trading day

prior to expiration. For example, a decision on whether a particular merger will be approved or whether a "blockbuster" new product will receive regulatory approval that occurs after the close of trading would justify a reduced cut-off time so that persons holding short positions are not prejudiced by being unable to close out their positions. The Exchange believes that this would maintain a level playing field between persons holding long and short positions in expiring options.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>16</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

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

The Exchange received four comment letters<sup>17</sup> regarding the original proposal and Amendment No. 1. The Exchange believes that it has responded to the comments and concerns raised in these comment letters as reflected in Amendment Nos. 2 and 3.

## II. 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 Exchange 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.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See *supra* note.