

equity options.<sup>20</sup> These commenters stated that while it might be appropriate for Amex to have the ability to *extend* the delivery time when Amex extends its closing time there might be an adverse effect on customers if the Exchange had the ability to *reduce* the decision making time frame when Amex announces a closing time prior to the regular close of trade. Specifically, the commenters expressed concerns over the manner in which Amex would notify members of the shortened period and how firms, in turn, would notify customers.

In response to these comments, Amex revised its proposed rule to state that in the event the Exchange provides advanced notice on or before 5:30 p.m. (EST) on the business day immediately prior to the last business day before the expiration date that a modified time for the close of trading in equity options will occur on such last business day before expiration, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading instead of 5:30 p.m. (EST). In addition, members and member organizations will have 2 hours 28 minutes following the close of trading to deliver a CEA or Advice Cancel to the Exchange for customer accounts, and non-customer accounts of member firms that employ electronic submission procedures with time stamps that record the time of submission of the exercise instructions. The Exchange represented that this proposed amendment would ensure that at least one day's prior notice is provided by 5:30 p.m. (EST) before the Exchange establishes an earlier cut-off time.<sup>21</sup>

Two commenters supported the proposal to provide the Exchange with the authority to extend the cut off times due to unusual circumstances, but believed that it would be inappropriate for the Exchange to use this authority to reduce the time frames.<sup>22</sup> Indeed, all four commenters urged the Exchange to define the term "unusual circumstances" and explain the conditions to which this provision would apply.<sup>23</sup> Three of these commenters requested that the Exchange outline how this provision would operate in terms of the time frame involved in informing members of the change in cut-off times and how it

would be implemented,<sup>24</sup> and two of the commenters believed that this provision should be limited to force majeure-type of events.<sup>25</sup>

The Exchange responded by revising paragraph (h) of Amex Rule 980. Proposed Amex Rule 980(h)(1) would provide the Exchange with the ability to *extend* cut-off times by which an options holder must decide whether to exercise an expiring option and by which a member must submit a CEA or Advice Cancel to the Exchange. The Exchange may make decisions to extend cut-off times on a case-by-case basis due to unusual circumstances. In proposed Commentary .03, Amex defined "unusual circumstances" for purposes of paragraph (h)(1) as including, but 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 to *reduce* the cut-off times by which an options holder must decide whether to exercise an expiring option and by which members must submit CEAs and Advice Cancels to the Exchange, but only if the Exchange provides notice to members by 12 p.m. (EST) on the day prior to the day with the reduced cut-off time. The Exchange may decide to reduce the cut-off times on a case-by-case basis due to unusual circumstances, provided, however, that under no circumstances may the cut-off times be before the close of trading. For purposes of paragraph (h)(2), Amex proposed to define "unusual circumstances" as including, but not limited to, significant news announcements concerning the underlying security of an option contract that is scheduled to be released after the close of trading on the business day immediately prior to expiration.

Finally, one commenter stated that the meaning of "customer" should be clarified.<sup>26</sup> Amex proposed in Commentary .01 that, for purposes of Amex Rule 980, the terms "customer account" and "non-customer account" have the same meaning as defined in OCC By-Laws Article I(C)(25) and Article I(N)(2), respectively.

#### IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,<sup>28</sup> 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the Commission finds that Amex's proposal, as amended, is designed to simplify and clarify the process by which members and member firms accept exercise decisions from options holders and submit such decisions to the Exchange. For example, during instances when OCC has waived its Ex-by-Ex procedure for a particular options class, the Commission finds Amex's proposal to require the submission of a CEA only if the options holder wants to exercise the option contract to be less cumbersome and confusing for options holders and members.

Amex also proposed to extend the time by which CEAs and Advice Cancels must be delivered to the Exchange to 6:30 p.m. (EST). Options holders, however, must still decide whether to exercise or not exercise an expiring option by 5:30 p.m. The Commission believes that this new deadline should provide members with additional time to process the exercise decisions of options holders while maintaining the goal of the rule to prevent individuals from taking improper advantage of late-breaking news.

In the Original Proposal, Amex proposed that the 6:30 (EST) deadline apply only to public customer accounts. Several commenters noted that limiting the extension of the submission deadline to only public customers would create operational burdens. The Commission notes that Amex addressed these concerns by extending the use of the 6:30 p.m. (EST) deadline to all accounts. However, members that wish to submit CEAs and Advice Cancels of

<sup>20</sup> See Goldman Sachs Letter, Morgan Stanley Letter, and Subcommittee Letter.

<sup>21</sup> See Amendment No. 2, *supra* note 6.

<sup>22</sup> See Morgan Stanley Letter and Pershing Letter.

<sup>23</sup> See Goldman Sachs Letter, Morgan Stanley Letter, Subcommittee Letter, and Pershing Letter.

<sup>24</sup> See Morgan Stanley Letter, Subcommittee Letter, and Pershing Letter.

<sup>25</sup> See Goldman Sachs Letter and Morgan Stanley Letter.

<sup>26</sup> See Subcommittee Letter.

<sup>27</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78f(b)(5).