

those cases where Members do not employ an electronic submission procedure for the submission of exercise instructions, CEAs for non-customer accounts must be submitted to the Exchange by 5:30 p.m. ET. The different CEA submission deadlines are set forth in proposed ISE Rule 1100(c) and Supplemental Material .03.

Although most firms have electronic submission procedures, the Exchange is concerned that those firms that manually submit CEAs could have an opportunity to improperly extend the 5:30 p.m. ET deadline for options holders to submit their exercise instructions. This concern on the part of the Exchange is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

Accordingly, in the case of non-customer accounts, the Exchange proposes to limit the 6:30 p.m. ET deadline for submitting CEAs to those Members that have an electronic submission procedure for option holders to communicate their decisions whether to exercise or not exercise an option. In connection with the use of an electronic submission procedure by Members, the Exchange proposes the addition of new Supplemental Material .04 to ISE Rule 1100 to require Members employing electronic submissions to establish procedures to secure time stamps in connection with their electronic systems.

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 OCC if they want to exercise, regardless of whether the option is in or out-of-the-money. Currently, when OCC suspends its Ex-by-Ex procedure for an option class, ISE Rule 1100(g)(5) requires the submission of a CEA. Thus, when 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 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.

The Exchange proposes 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 suspended, submission of CEAs to the Exchange 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 cut-off times as an exception to amended ISE Rule 1100(c) to address situations where the Exchange has advance prior knowledge or warning of a modified trading session at expiration, or in the case of "unusual circumstances."

Specifically, proposed ISE Rule 1100(g) would apply 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 cut-off times by 5:30 p.m. ET 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. ET, then the Exchange would, with prior notice by 5:30 ET on the Wednesday before Thanksgiving, be able to establish the cut-off time for option holders to decide whether to exercise or not exercise expiring options to 1 hour 28 minutes after the close of trading. With respect to the submission of CEAs by Members, the cut-off time would be 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the Member employs an electronic procedure with time stamp for the submission of exercise instructions. Members 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 ISE Rule 1100(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 ISE Rule 1100(h)(1) would permit the Exchange to extend the cut-off time periods for options holders to decide whether to exercise or not exercise expiring options, as well as, for Members to submit CEAs due to unusual circumstances. Situations that may arise that are deemed to be "unusual circumstances" are set forth in proposed ISE Rule 1100(h)(1). 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 ISE Rule 1100(h)(2) would permit the Exchange, with one (1) business day prior advance notice by 12 noon ET, to establish a cut-off time for option holders to decide whether to exercise or not exercise expiring options as well as for Members to submit CEAs. The reduced cut-off time under this new paragraph for both exercise decisions and CEA submissions 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. Proposed ISE Rule 1100(h)(2) provides that 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 new product will receive regulatory approval 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 its proposed rule change, as amended, is consistent with section 6(b) of the Act in general<sup>13</sup> and furthers the objectives of section 6(b)(5) in particular,<sup>14</sup> because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.

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

The Exchange believes that the proposed rule change, as amended, does

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).