

required to be submitted prior to the exercise cut-off time by members and member organizations wishing to exercise an option that would not have been automatically exercised had the exercise-by-exception procedure been in effect, or not exercise an option that would have been automatically exercised had the exercise-by-exception procedure been in effect. The applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the last sale price in the primary market for underlying security. OCC rules may require submission of an affirmative exercise notice even in circumstances where Contrary Exercise Advice is not required.]

[Members and member organizations which maintain proprietary or public customer positions in expiring options shall take necessary steps to ensure that final exercise decisions are properly indicated to the Exchange on behalf of such positions. Member organizations who have accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member firm shall take necessary steps to ensure that such decisions are properly indicated. Member organizations may establish a processing cut-off time prior to the Exchange's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from customers.]

(d) Waiver of Ex-by-Ex Procedure. If OCC has waived the Ex-by-Ex procedure for an options class, members and member organizations must either:

- (i) submit to the Exchange, a CEA, in a manner specified by the Exchange, within the time limits specified in paragraph (c) above if the holder intends to exercise the option, or*
- (ii) take no action and allow the option to expire without being exercised.*

The applicable underlying security price in such instances will be as described in OCC Rule 805(j). In cases where the Ex-by-Ex procedure has been waived, OCC rules require that members and member organizations wishing to exercise such options must submit an affirmative Exercise Notice to OCC, whether or not a CEA has been filed with the Exchange.

(e) Indicating Final Exercise Decisions. An Exchange member organization that has accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member organization shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such member organization may establish a processing cut-off time

prior to the Exchange's exercise cut-off time at which it no longer will accept final exercise decisions in expiring options from options holders for whom it indicates final exercise decisions. Each member or member organization that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are timely indicated to such broker-dealer.

(f) Exceptions to Submitting a CEA; Recordkeeping. Members and member organizations may [effect or amend] receive and submit final exercise decisions after the exercise cut-off time (but prior to expiration) without having submitted a CEA under the following circumstances:

- (i) in order to remedy mistakes made in good faith[.];*
- (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange option transactions[.]; or*
- (iii) where exceptional circumstances have restricted an [customer's or member's] option holder's ability to inform [the respective] a member organization of [such] a decision[s] [regarding exercise, or a member organization's ability to receive such decision[s] by the cut-off time[)]. The burden of establishing [an] any of the above exceptions for a proprietary or customer account of a member or member organization rests solely on the member or member organization seeking to rely on such exceptions.*

In the event a member or member organization does not timely submit a CEA [Contrary Exercise Advice] in accordance with the requirements of this rule or does not timely submit a CEA [Contrary Exercise Advice] for a final exercise decision pursuant to an exception in the paragraph above, the responsible member or member organization shall set forth in a written memorandum the surrounding circumstances and shall file a copy of the memorandum with the Exchange's Market Surveillance Department no later than 12:00 noon (EST) on the business day following the expiration. Such memorandum must additionally include the time when such final exercise decision was made or, in the case of a customer, was received, and shall be subject to the recordkeeping requirements of SEC Rules 17a-3(a)(6) and 17a-4(b).

(g) Modifying the Time for Close of Trading in Options. In the event the Exchange provides advance notice on or before 5:30 p.m. (EST) on the business

day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, 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 on that day instead of the 5:30 p.m. (EST) deadline found in Rule 1042 (c). However, members and member organizations may deliver a CEA or Advice Cancel to the Exchange within 2 hours 28 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. (EST) deadline found in Rule 1042(c) for: (i) customer accounts; and, (ii) non-customer accounts where such member firm employs an electronic submission procedure with an electronic time stamp (with fixed procedures to ensure security of the time stamp) to indicate the time of receipt of exercise instructions.

For non-customer accounts, members and member organizations that do not employ an electronic submission procedure with a time stamp for the submission of exercise instructions are required to deliver a CEA or Advice Cancel within 1 hour and 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (EST) deadline found in Rule 1042(c).

(h) Extending or Reducing the Cut-Off Time for Exercise Decisions.

(i) The Exchange may establish extended cut-off times for a decision to exercise or not exercise an expiring option and for the submission of CEAs on a case-by-case basis due to an unusual circumstance.

(ii) The Exchange, with at least one (1) business day prior advance notice, by 12:00 noon (EST) on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of CEAs on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a CEA be before the close of trading.

Commentary

.01 For purposes of this Rule 1042, the terms "customer account" and "non-customer account" have the same meaning as in OCC By-Laws Articles I(C)(28) and I(N)(2), respectively.

.02 Reporting final exercise decisions contemplated by this rule does not serve to substitute as the effective "exercise notice" to OCC for