

The Phlx proposes to amend Phlx Rule 1042 to eliminate the requirement that a CEA be submitted if the option holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, the proposed rule change indicates that when Ex-by-Ex procedures have been waived by OCC, submission of instructions to exercise (CEAs) are only required when the options holder wants to exercise the option contract. If an options holder takes no action, the option will expire without being exercised.⁷

Currently, Phlx Rule 1042 provides that option holders have until 5:30 p.m. (EST) on the business day immediately prior to the expiration date⁸ to decide whether to exercise an expiring option. The Exchange proposes in Phlx Rule 1042(c) to extend the cut-off time for members and member organizations to deliver CEAs to the Exchange to 6:30 p.m. (EST) for customer accounts. The cut-off time would also be extended to 6:30 p.m. (EST) for non-customer accounts⁹ provided that such submission was done electronically, with an electronic time stamp to record receipt of the exercise instruction by 5:30 p.m. (EST).¹⁰ The Exchange believes that this rule change is required because members or member organizations may sometimes find it difficult to deliver CEAs in compliance with the 5:30 p.m. (EST) cut-off time when the determination of final settlement prices are sometimes delayed as members and member organizations are confirming exercise instructions with their customers. Because of such logistical problems, members and member organizations must often process and immediately submit customer CEAs to the Exchange upon receiving instructions from customers in order to meet the existing 5:30 p.m. (EST) cut-off time. Accordingly, to allow

sufficient time to process CEAs for customer accounts, the Exchange proposes to extend the cut-off time to 6:30 p.m. (EST) for members and member organizations to deliver CEAs for customer accounts to the Exchange and to deliver CEAs for non-customer accounts to the Exchange, as long as the submissions are done electronically (which includes, but is not limited to, e-mail), and the member or member organization received the CEAs by 5:30 p.m. (EST) as evidenced by a time-stamp. The Exchange believes that it is appropriate to extend the cut-off time for member and member organization submission of these CEAs, and any cancellation thereof, to the Exchange as all decisions to exercise (or not exercise) must still be made by 5:30 p.m. (EST) in accordance with Phlx Rule 1042.

To address unusual circumstances, the Exchange proposes in Rule 1042 (h) that it have the ability to establish different cut-off times for the option holder to make a decision to exercise or not exercise expiring options and for members and member organizations to submit CEAs. Proposed Phlx Rule 1042(h)(i) would permit the Exchange to extend the cut-off time for option holders to decide whether to exercise expiring options, as well as for members and member organizations to submit CEAs because of unusual circumstances. Unusual circumstances would include, for example, increased market volatility and significant order imbalances. Proposed Phlx Rule 1042(h)(ii) would likewise allow the Exchange to reduce the cut-off time for option holders to decide whether to exercise options as well as for members and member organizations to submit CEAs because of unusual circumstances that include a significant news announcement regarding the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.¹¹ For example, a decision on whether a particular merger will be approved or whether a 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 will maintain a level playing field between persons holding long and short positions in expiring options.

In addition, proposed Phlx Rule 1042(g) provides customers and members and member organizations

with added flexibility in connection with the delivery of CEAs or Advice Cancels if the Exchange announces a modified time for the close of trading in equity options prior to expiration. The Exchange proposes that, if the Exchange establishes a modified time for the close of trading in equity options on the day when expiration will occur and properly notifies its members about the modification, option holders would have 1 hour 28 minutes after the announced close of trading to make a final decision to exercise or not exercise an expiring option. The proposal would also give members and member organizations 2 hours 28 minutes after the close of trading to deliver CEAs for customer accounts and for non-customer accounts, as long as the submission were done electronically with an electronic time-stamp. However, members and member organizations that do not employ an electronic submission procedure for non-customer accounts would have to submit their CEAs within 1 hour 28 minutes following the close of trading.

Proposed Phlx Rule 1042 (e) provides that if a member organization has accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member organization, it must 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 after which it will not accept exercise decisions or other processing procedures.

The Exchange also proposes new Commentaries to Phlx Rule 1042. First, new Commentary .01 clarifies that for purposes of Phlx Rule 1042, the definitions of "customer" and "non-customer" in OCC's By-Laws are applicable. Second, new Commentary .03 clarifies that cut-off times for the submission of a CEA may be extended or reduced because of "unusual circumstances" and provides examples of such circumstances. Third, new Commentary .04 clarifies that the deadline for submission of CEAs for non-customer accounts will be 6:30 p.m. (EST) where they are submitted electronically with a timestamp indicating receipt of exercise instructions on or before 5:30 p.m. (EST), and will be 5:30 p.m. (EST) if submission is manual. Fourth, new Commentary .05 requires member and member organizations that employ an electronic submission method to adopt specific written procedures for the electronic submission of CEAs. Finally, new Commentary .08 provides that

⁷ Phlx Rule 1042, as amended, indicates that, unless waived by OCC, expiring options are subject to the Ex-by-Ex procedure found in OCC Rule 805, as noted above.

⁸ The "expiration date" of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such option. See Phlx Rule 1000(b)21. See also OCC By-Laws Article (I)(E)(16).

⁹ A "non-customer account" in respect of any person carrying an account with a broker or dealer generally means a person that is not a customer of a broker of dealer as defined in Rules 8c-1 and 15c-2-1 under the Act. See OCC By-Laws Article I(N)(2).

¹⁰ The use of an electronic time stamp requires establishment by members and member organizations of a fixed procedure to ensure that the electronic time stamp for the exercise instruction decision is secure. The time to submit CEAs for non-customer accounts, where a time stamp is not used as part of an electronic submission procedure, remains at 5:30 p.m. (EST).

¹¹ The Exchange would provide notice prior to reducing the cut-off time period. See proposed Phlx Rule 1042(h)(ii).