



Regulatory Circular RG08-172

TO: Exchange Members

FROM: Regulatory Services Division

DATE: December 31, 2008

SUBJECT: Clarification on Regular Expiring Exercise Declaration (EED) Procedures for Noncash-Settled Equity Options

This regulatory circular clarifies the Exchange's regular procedures and cutoff times for the submission of exercise instructions to the Exchange for noncash-settled equity options under CBOE Rule 11.1.

(a) Expiring options are subject to the "Exercise by exception" ("Ex-by-ex") procedure under OCC Rule 805. "Ex-by-ex" is an administrative procedure used by the OCC in which options that are in the money by specified threshold amounts are exercised unless a clearing member submits instructions not to exercise the options. An Expiring Exercise Declaration ("EED") is a notification of a decision either: (1) to not exercise an option that would be automatically exercised under OCC's Ex-by-ex procedure, or (2) to exercise an option that would not be automatically exercised under OCC's Ex-by-ex procedure.

(b) Option holders desiring to exercise or not exercise expiring options must either: (1) take no action and allow exercise determinations to be made in accordance with OCC's Rule 805;¹ or (2) submit an EED to the Exchange by the deadline specified in paragraph (d) below.

(c) An EED is deemed submitted to the Exchange if a member or member organization: (1) submits its instructions through CBOE's Member site: <https://www.cboe.org/members/GeneralInfo/ContraryExerciseAdvice/ContraryExerciseAdvice.aspx>; (2) submits its instructions via email to exerciseadvices@cboe.com;² (3) uses OCC's electronic communications system; (4) uses the EED form of any other national securities exchange, of which the firm is a member and where the option is listed, and submits it to that exchange; or (5) uses such other method as the Exchange may prescribe.

(d) Option holders have until 4:30 p.m. Central Time ("CT") on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. At any time up to 4:30 p.m., an option holder may resubmit an EED or may cancel an EED by filing an EED cancel with the Exchange. Members and member organizations may not accept exercise instructions after 4:30 p.m.

¹ "Exercise by exception" is a procedure between OCC and its clearing members and is not intended to obviate the need for customers to communicate exercise instructions to their brokers. CBOE makes no representation as to whether a member organization may have parallel "exercise by exception" procedures for its customers.

² Please be advised that, beginning with the **February 2009 expiration**, the Exchange will no longer accept paper EED submissions. EED submissions directed to the Exchange must be made through CBOE's Member site or via e-mail. See Regulatory Circular RG08-171.

As an operational convenience, members and member organizations have until 5:30 p.m. CT to submit an EED for: (1) customer accounts and (2) non-customer accounts **if** such members or member organizations record the time of submission by options holders with a secure electronic time stamp. Members and member organizations must establish a fixed procedure to ensure that the electronic time stamps for EEDs and EED cancels are unalterable.

(e) Members and member organizations may make final decisions after 4:30 p.m. CT, but prior to expiration, without having submitted an EED: (1) in order to remedy mistakes made in good faith; (2) to take appropriate action as the result of a failure to reconcile unmatched Exchange option transactions; or (3) where exceptional circumstances have restricted an option holder's ability to inform a member organization of a decision regarding exercise, or a member organization's ability to receive an option holder's decision by the cutoff time. **The burden of establishing any of the above exceptions rests solely on the member or member organization seeking to rely on such exceptions.**

In the event a member or member organization makes a final exercise decision after the exercise cutoff time pursuant to this paragraph (e), the member or member organization shall maintain a memorandum setting forth the circumstances regarding such exception and shall file a copy of the memorandum with the Exchange in a manner and form prescribed by the Exchange no later than 11:00 a.m. CT on the first business day following the respective expiration.

A failure to comply with the provisions of Rule 11.1 or the improper submission of an exercise of an exercise instruction may result in a disciplinary action.

Questions concerning this circular can be directed to Ji Min Kim at (312) 786-7043 or Tanja Samardzija at (312) 786-7722.

(This circular replaces RG04-36)