

restitution. Restitution would be calculated by multiplying the number of contracts that should have been allocated to the price-improving registered options trader by the number of underlying shares represented by each contract, which would then be multiplied by half of the spread between the option's bid and offer at the time the order was executed.

If more than one registered options trader and/or the specialist has disseminated or caused to be disseminated the same price improving quote, priority would be established for the registered options traders in the order in which the quotes were announced loudly and audibly to the trading crowd. If, however, the sequence in which the disseminated quotes were made cannot be reasonably determined, priority would be afforded to the price improving registered options traders and/or specialist as a group. Exchange Rule 950(d), Commentary .06 and Exchange Rule 950(n), Commentary .03 govern allocations of contracts when more than one registered options trader and/or the specialist has disseminated the same price improving quote and time priority cannot be established.

However, pursuant to the proposed rule change, the price improving registered options traders' quote would retain priority until one of the following occurs: (i) Auto-Ex execution depleted the disseminated size; (ii) an amount equal to the minimum quote size has been allocated; (iii) the registered options trader withdraws the quote; (iv) the quote is matched or improved by the specialist's automated quotation system quote, provided specialists using an Exchange-approved proprietary automated quotation updating system have not programmed the system to immediately match or improve the price improving registered options trader's quote; (v) the quote is improved by another registered options trader; or (vi) the market is improved by an order placed on the limit order display book. With respect to subparagraph (iv) above, the Exchange represents that it will monitor the use of proprietary automated quotation updating systems through the review of complaints from members in the trading crowd as well as observations of Floor Officials and Exchange personnel to determine if the system has been programmed to immediately match or improve the price improving registered options trader's quote.

The Exchange notes that Exchange rules regarding customer priority and parity would continue to apply to the allocation of trades pursuant to the proposed rule change. Exchange Rule

111, Commentary .07 provides that a registered options trader, when establishing or increasing a position, may not retain priority over or have parity with an off-Floor order. Thus, only registered options traders closing or decreasing a position may be on parity with a customer order.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.¹² Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act¹³ in that it is designed to facilitate transactions in securities; 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions 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.

The Commission believes that the proposed rule change, by permitting registered options traders to use an EE Device at the trading post to input their own quotes for dissemination as the best bid or offer and then providing price improving registered options traders with an allocation of the next Auto-Ex execution, should help to encourage competitive quoting. In addition, the Commission believes that providing a method for specialists to input their own price improving quotes separate from the autoquote, and then routing the next otherwise Auto-Ex eligible order to the AODB for allocation to the specialist, should provide an additional incentive for specialists to quote competitively. The Commission believes that the proposal is an important first step towards achieving compliance with the Order's directive to substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively.

The Commission notes that the proposal requires the specialist to use best efforts to ensure that a price

improving registered options trader receives his allocation. The Commission believes that imposition of a fine, under the Exchange's Minor Rule Violation Plan, on a specialist who fails to use best efforts to ensure that the next Auto-Ex execution is appropriately allocated, as well as the requirement that such specialist pay restitution to the injured registered options trader, should provide sufficient safeguards to help ensure that the manual allocation to the appropriate registered options trader occurs.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.¹⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2002-09) and Amendments No. 1 through 11 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-28073 Filed 11-6-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48733; File No. SR-BSE-2003-16]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans

October 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 15, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

¹² 15 U.S.C. 78f(b). 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).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.