

Trade Adjustment Assistance (TAA). The denial notice was signed on February 12, 2004 and published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Tippins, Inc., Pittsburgh, Pennsylvania engaged in the refurbishing of steel and aluminum rolling mill machinery was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's domestic customers. The Department conducted a survey of domestic entities to which the subject firm submitted bids in 2001, 2002, and 2003. The survey revealed that none of these companies awarded contracts to foreign sources during the relevant period. The subject firm did not increase its reliance on imports during the relevant period, nor did they shift production to a foreign source.

The petitioner alleges that in recent years all of Tippins' competitors became foreign firms and thus, any jobs Tippins lost should be considered as a loss to foreign competition.

Upon the initial investigation, the subject firm provided a list of lost bids during the relevant time period. As established in the initial investigation, the majority of these bids were for contracts on work to be done abroad. The loss of such bids could not therefore be attributed to imports and is irrelevant in this investigation. The subject firm also provided a major lost bid with a domestic contractor. It was revealed upon the contact with this entity, that the contract was awarded to another domestic firm.

## Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of

Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of May, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-54,081]

#### The Toro Company, Oxford, MS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at The Toro Company, Oxford, Mississippi. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-54,081; The Toro Company Oxford, Mississippi (May 7, 2004)

Signed at Washington, DC, this 13th day of May, 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49719; File No. SR-Amex-2004-16]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Funds of the Vanguard Stock Index Funds

May 17, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 25, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change (the "Amex filing") as described in Items I and II below, which Items have been prepared by the Exchange. On April 22, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade under Amex Rules 1000A *et seq.* a class of shares, known as VIPER Shares, of certain index funds that are series of the Vanguard World Funds. The funds seek to track the following indices compiled by Morgan Stanley Capital International Inc. (MSCI®) ("MSCI")<sup>4</sup>: the MSCI U.S. Investable Market Energy Index, the MSCI U.S. Investable Market Industrials Index and the MSCI U.S. Investable Market Telecommunications Services Index.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Amex Rules 1000A *et seq.* provide standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act") as well as the Act. Index Fund Shares are defined in Amex Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to

<sup>3</sup> See letter from Marija Willen, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 21, 2004 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety.

<sup>4</sup> "MSCI®" is a service mark of Morgan Stanley & Co. Incorporated.

<sup>1</sup> 15 U.S.C 78s(b)(1)

<sup>2</sup> 17 CFR 240.19b-4.



provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

The Exchange proposes to list and trade under Amex Rules 1000A *et seq.* the following three securities issued by funds (each a "Vanguard Index Fund" or "Fund") that would be separate investment portfolios of the Vanguard World Funds ("Trust"):<sup>5</sup>

(a) Vanguard Energy VIPERs, a share class of Vanguard Energy Index Fund, which would seek to track the Morgan Stanley Capital International (MSCI®) ("MSCI") U.S. Investable Market Energy Index;

(b) Vanguard Industrials VIPERs, a share class of Vanguard Industrials Index Fund, which would seek to track the MSCI U.S. Investable Market Industrials Index; and

(c) Vanguard Telecommunications Services VIPERs, a share class of Vanguard Telecommunications Services Index Fund, which would seek to track the MSCI U.S. Investable Market Telecommunications Services Index.

For descriptions of the underlying indices for the Funds, *see* "Target Indices—Key Characteristics," below as well as Exhibits A to C to the Amex filing, which are available at the principal office of the Amex and at the Commission. Exhibits A to C include index descriptions, component selection criteria, index maintenance and issue changes, top components of each index, and portfolio composition and characteristics. The index on which a particular Fund would be based is referred to as a "Target Index," and the securities included in such index are referred to as "Component Securities." The Vanguard Group, Inc. ("Adviser" or "Vanguard") would be the investment adviser to each Fund.<sup>6</sup> The Adviser

would be registered under the Investment Advisers Act of 1940.

While the Adviser would manage each Fund, the Trust's Board of Trustees ("Board") would have overall responsibility for the Funds' operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the 1940 Act. Pursuant to Rule 10A-3 of the Act,<sup>7</sup> and Section 3 of the Sarbanes-Oxley Act of 2002,<sup>8</sup> the Exchange will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.<sup>9</sup>

Vanguard Marketing Corporation ("Distributor"), a wholly-owned subsidiary of Vanguard and a broker-dealer registered under the Act, would be the principal underwriter and distributor of VIPER Shares of the Funds.

According to the Amex, Vanguard Index Participation Equity Receipts, or "VIPER" shares ("VIPER Shares"), are a class of exchange-traded securities that represent an interest in the portfolio of stocks held by a particular Fund. In addition to VIPER Shares, the Funds would offer classes of shares that are not exchange-traded, which are referred to as "Conventional Shares."<sup>10</sup>

VIPER Shares would be registered in book-entry form only and the Funds would not issue individual share certificates. The Depository Trust Company ("DTC") or its nominee would be the record or registered owner of all outstanding VIPER Shares. Beneficial ownership of VIPER Shares would be shown on the records of the DTC or DTC Participants.

**Target Indices and Investment Objectives.** As noted in the Application, each Fund seeks to track, as closely as possible, the performance of its Target Index and it is expected that, in the future, the Funds would have a tracking error of less than five percentage points per annum.<sup>11</sup> When practicable, the

Funds would use the replication method of indexing—in which each stock found in the Target Index would be held in about the same proportion as represented in the index itself—as their primary strategy. However, according to the Amex, the Adviser has represented that the Funds would sample their Target Indices—by holding stocks that, in the aggregate, would be intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield—"regulatory constraints or other considerations were to prevent them from replicating the indices. In particular, because the Funds would not at present be able to replicate their Target Indices and still comply with Internal Revenue Code ("IRC") diversification standards applicable to regulated investment companies, the Funds would use sampling to modify their exposure to certain stocks in order to maintain compliance with IRC diversification standards.<sup>12</sup>

According to the Amex, the Application states that each Fund will invest at least 90% of its assets in the component securities of its respective Target Index.<sup>13</sup>

or for any other reason determined in good faith by the Board. In every such instance, the substitute index would measure the same general market as the current index. Fund shareholders would be notified in the event that a Fund's current index were to be replaced and investors holding their shares through a broker or other intermediary would receive the notification from their intermediary.

<sup>12</sup> In order for a Fund to qualify for tax treatment as a regulated investment company, it would have to meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851 (b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

<sup>13</sup> According to the Amex, to the extent that a Fund were to invest in instruments other than common stocks included in its Target Index, it would invest no more than 10% of its assets in those other instruments. Such instruments could include stock and index futures, options on stocks and futures, convertible securities, swap agreements, cash investments, forward foreign currency investments, foreign currency exchange contracts, shares of other investment companies (within the limits permitted by Section 12(d)(1) of the 1940 Act), stocks about to be added to the Target Index, and any other instrument not inconsistent with the Fund's investment policies as

<sup>5</sup> The Trust has other funds that issue VIPER Shares. According to the Amex, those issues of VIPER Shares met the requirements of Amex Rule 1000A, Commentary .02, for listing pursuant to Rule 19b-4(e) of the Act.

<sup>6</sup> The Commission granted Vanguard's Application for an Order under Sections 6(c) and 17(b) of the 1940 Act, for the purpose of exempting the Funds referenced herein and other related entities from various provisions of the 1940 Act and rules thereunder (File No. 812-12912) ("Application") in an order dated December 30, 2003 (Release No. IC-26317) ("Exemptive Order"). A summary of the Application appears in Release No. IC-26282 (December 2, 2003), 68 FR 68430 (December 8, 2003). The December 30, 2003 order amends a prior order granted by the Commission in December 2000 to Vanguard Index Funds, *et al.* See Release Nos. IC-24680 (October 6, 2000), 65 FR 61005 (October 13, 2000) (notice); and IC-24789 (December 12, 2000), 65 FR 79439 (December 19, 2000) (order) (File No. 812-12094). Information in this filing regarding the Funds is based on material in the Application and in the Funds' registration statement.

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> See Section 3 of Pub. L. 107-204, 116 Stat. 745 (2002).

<sup>9</sup> Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ann E. Leddy, Special Counsel, Division, Commission, on May 17, 2004.

<sup>10</sup> As described in the Application, the Vanguard Index Funds' organizational documents would permit the Vanguard Index Funds to issue shares of different classes. Each of the Funds also would offer one class of Conventional Shares, known as Admiral Shares.

<sup>11</sup> According to the Amex, the prospectuses for the Funds disclose that each Fund would reserve the right to substitute a different index for the Target Index the Fund currently tracks. Substitution would be able to occur if the current index were to be discontinued, the Fund's license with the sponsor of the current index were to be terminated,



According to the Amex, the Funds have been advised by MSCI that on or before the first day of trading of each Fund, the value of its Target Index would be updated intra-day as individual Component Securities change in price. These intra-day values of the Target Indices are and would be disseminated at regular intervals (every 15 seconds) throughout the trading day by organizations authorized by MSCI. In addition, these organizations would disseminate values for each Target Index once each trading day, based on closing prices in the relevant exchange market.

According to the Amex, the daily closing index value and the percentage change in the daily closing index value for the Target Indices are publicly available on the MSCI Web site at <http://www.msci.com>. Data—including weights, index shares, closing prices and corporate actions—regarding each Target Index is available to MSCI subscribers through various methods of delivery. MSCI index data may be delivered to subscribers directly from MSCI on a daily or monthly basis via electronic delivery methods. MSCI subscribers also may receive index data on a monthly or quarterly basis in print format via express mail. Several independent data vendors package and disseminate MSCI data in various value-added formats (including vendors displaying both securities and index levels, such as FAME, FactSet, Datastream and RIMES, and vendors displaying index levels only, such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters and Telekurs).

**Target Indices—Key Characteristics.** *General.* The Target Indices would be subsets of the MSCI U.S. Investable Market 2500 Index, which represents the investable universe of companies in the U.S. equity market. The MSCI U.S. Investable Market 2500 Index is a free float adjusted market capitalization weighted index that targets for inclusion 2,500 companies and represents, as of June 30, 2003, approximately 98% of the capitalization of the U.S. equity market. The U.S. Equity Market consists of U.S. domiciled companies traded on the New York Stock Exchange, Inc. ("NYSE"), Amex, Nasdaq National Market System ("Nasdaq") or Nasdaq Small Cap Market. The subsets are created by grouping the constituents into their respective Global Industry Classification Standard (GICS®) industry sector code.

described in detail in its registration statement, which the Adviser believes would help the Fund to track the performance of its Target Index.

According to the Amex, the Target Indices would meet all of the eligibility requirements for index components set out in Amex Rule 1000A and in particular, those requirements of Amex Rule 1000A, Commentary .02, with the exception of the weighting standards set out in (a)(3) of that commentary, and the VIPER Funds therefore would not be eligible for approval for listing and trading pursuant to Rule 19b-4(e) under the Act.<sup>14</sup> As further described below, a significant portion of the weight of all three of these indices would be accounted for by stocks with substantial market capitalization and trading volume, which, together with the other characteristics of the indices and the Funds, would ensure that a minimum level of liquidity would exist for each VIPER Fund, reducing the potential for manipulation of the indices' component securities and allowing for the maintenance of fair and orderly markets.

**MSCI U.S. Investable Market Energy Index.** The MSCI U.S. Investable Market Energy Index represents the Energy companies of the MSCI U.S. Investable Market 2500 Index as classified in accordance with the Global Industry Classification Standard (GICS®). The MSCI U.S. Investable Market Energy Index is a free float adjusted market capitalization weighted index. As of December 31, 2003, the index contained 113 constituents with a total market capitalization of \$698,253,890,350. Each of the individual components of the index had a market capitalization over \$75,000,000 with an average market capitalization of \$6,234,409,735. All constituents had a monthly trading volume during each of the last six months of at least 250,000 shares. The five highest weighted stocks—which represent 65.04% of index weight—had an average daily dollar volume in excess of \$50,000,000 during the past two months. Additional detail on the MSCI U.S. Investable Market Energy Index can be found in Exhibit A to the Amex filing, which is available at the principal office of the Amex and at the Commission.

**MSCI U.S. Investable Market Industrials Index.** The MSCI U.S. Investable Market Industrials Index represents the Industrial companies of the MSCI U.S. Investable Market 2500

Index as classified in accordance with the Global Industry Classification Standard (GICS®). The MSCI U.S. Investable Market Industrials Index is a free float adjusted market capitalization weighted index. As of December 31, 2003, the index contained 314 constituents with a total market capitalization of \$1,259,470,832,295. Each of the individual components of the index had a market capitalization over \$75,000,000 with an average market capitalization of \$4,011,053,606. Approximately 99.68% of the weight of the index is represented by the constituents that had a monthly trading volume during each of the last six months of at least 250,000 shares. The five highest weighted stocks—which represent 40.53% of index weight—had an average daily dollar volume in excess of \$150,000,000 during the past two months. Additional detail on the MSCI U.S. Investable Market Industrials Services Index can be found in Exhibit B to the Amex filing, which is available at the principal office of the Amex and at the Commission.

**MSCI U.S. Investable Market Telecommunications Services Index.** The MSCI U.S. Investable Market Telecommunications Services Index represents the Telecommunications Service companies of the MSCI U.S. Investable Market 2500 Index as classified in accordance with the Global Industry Classification Standard (GICS®). The MSCI U.S. Investable Market Telecommunications Services Index is a free float adjusted market capitalization weighted index. As of December 31, 2003, the index contained 41 constituents with a total market capitalization of \$367,750,455,980. Each of the individual components of the index had a market capitalization over \$75,000,000 with an average market capitalization of \$8,969,523,317. Approximately 99.95% of weight of the index is represented by the constituents that had a monthly trading volume during each of the last six months of at least 250,000 shares. The five highest weighted stocks—which represent 76.33% of index weight—had an average daily dollar volume in excess of \$130,000,000 during the past two months. Additional detail on the MSCI U.S. Investable Market Telecommunications Services Index can be found in Exhibit C to the Amex filing, which is available at the principal office of the Amex and at the Commission.

**Availability of Information about VIPER Shares.** Vanguard's Web site, which is and will be publicly accessible at no charge, would contain the following information for each Fund's

<sup>14</sup> According to the Amex, the MSCI U.S. Investable Market Industrials Index at this time meets all of the standards of Amex Rule 1000A, Commentary .02. It is included in this filing because, based on the time required for preparation for listing, it is possible that the index may not satisfy the standard relating to the most heavily weighted stock component on the date of listing (the heavily weighted component stock in the index currently constitutes approximately 26% of the index).



VIPER Shares: (a) The prior business day's closing net asset value ("NAV"), the mid-point of the bid-asked spread at the time that the Fund's NAV is calculated ("Bid-Asked Price"),<sup>15</sup> and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; (c) its Prospectus and two most recent reports to shareholders; and (d) other quantitative information such as daily trading volume. The Product Description for each Fund would inform investors that the Adviser's Web site has information about the premiums and discounts at which the Fund's VIPER Shares have traded.<sup>16</sup>

The Amex would disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to the Intraday Indicative Value (as defined and discussed below under "Dissemination of Intraday Indicative Value"), recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit. The Exchange would make available on its Web site daily trading volume, closing price, the NAV and final dividend amounts to be paid for each Fund. The closing prices of the Deposit Securities (as defined below) are readily available from, as applicable, exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

<sup>15</sup> According to the Application, because the NAV for all share classes of all Vanguard funds is calculated as of the close of the NYSE (usually 4 pm), but the market for VIPER Shares and other ETFs does not close until 4:15 pm, the closing market price is not measured at the same time as NAV. This difference in timing could lead to discrepancies between performance based on NAV and performance based on market price that give investors an inaccurate picture of the correlation between the two figures. To remedy this problem, the Funds compare performance of a Fund's VIPER Shares based on NAV to performance of the VIPER Shares based on the mid-point of the bid-asked spread at the time NAV is calculated. By calculating market-based and NAV-based performance at the same time, the two performance figures will be comparable, and any differences will be attributable to market forces rather than timing differences.

<sup>16</sup> See "Prospectus Delivery" below regarding the Product Description. The Exemptive Order granted relief from Section 24(d) of the 1940 Act, which relief permits dealers to sell VIPER Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933.

Beneficial owners of VIPER Shares ("Beneficial Owners") would receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They would receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents would be provided to Beneficial Owners by their brokers, while others would be provided by the Fund through the brokers.

*Creation and Redemption of VIPER Shares.* Each Fund would issue and redeem VIPER Shares only in aggregations of 100,000 ("Creation Units").<sup>17</sup> Purchasers of Creation Units would be able to separate the Units into individual VIPER Shares. The number of VIPER Shares in a Creation Unit would not change except in the event of a stock split or similar revaluation. According to the Amex, the initial value of a VIPER Share for each of the three Funds is expected to be \$50.

*Creation.* Persons purchasing Creation Units from a Fund would be required to make an in-kind deposit of a basket of securities ("Deposit Securities") consisting of stocks selected by the Adviser from among the stocks contained in the issuing fund's portfolio, together with an amount of cash specified by the Adviser ("Balancing Amount"), plus the applicable transaction fee ("Transaction Fee"). The Deposit Securities and the Balancing Amount collectively would be referred to as the "Creation Deposit." The Balancing Amount would be a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit it is used to purchase. The Balancing Amount would be an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.<sup>18</sup> The Transaction Fee would be a fee imposed by the Funds on investors purchasing

<sup>17</sup> The Funds would offer all current and future holders of Conventional Shares, except those holding Conventional Shares through a 401(k) or other participant-directed employer-sponsored retirement plan, the opportunity to convert such shares into VIPER shares of equivalent value ("Conversion Privilege"). The Conversion Privilege would be a "one-way" transaction only. Holders of Conventional Shares would be able to convert those shares into VIPER shares, but Beneficial Owners of VIPER Shares would not be permitted to convert those shares into Conventional Shares.

<sup>18</sup> If the market value of the Deposit Securities were to be greater than the NAV of a Creation Unit, then the Balancing Amount would be a negative number, in which case the Balancing Amount would be paid by the Fund to the purchaser, rather than vice-versa.

(or redeeming—see "Redemption" below) Creation Units. The purpose of the Transaction Fee would be to protect the existing shareholders of the Funds from the dilutive effect of the transaction costs (primarily custodial costs) that the Funds incur when investors purchase (or redeem) Creation Units.<sup>19</sup>

The Adviser would make available through the DTC or the Distributor on each business day, prior to the opening of trading on the Exchange, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund.<sup>20</sup> The Adviser also would make available on a daily basis information about the previous day's Balancing Amount.

The Adviser currently contemplates that Creation Units would be created principally in kind, but the Funds reserve the option to permit or require the substitution of an amount of cash—i.e., a "cash in lieu" amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, may not be eligible for transfer, or may not be eligible for trading by an Authorized Participant (as defined below) or the investor for which an Authorized Participant is acting.<sup>21</sup> Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit would be expected to be immaterial, and in any event the Adviser represents that it would adjust the relevant Transaction Fee to ensure that the Fund collects the extra expense from the purchaser.

Orders to create or redeem VIPER Shares would be required to be placed through an Authorized Participant, which would be either (1) a broker-dealer or other participant in the continuous net settlement system of the

<sup>19</sup> If a Fund were to permit a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser would be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

<sup>20</sup> In accordance with Vanguard's Code of Ethics and Insider Trading Policy, personnel of the Adviser with knowledge about the composition of a Creation Deposit would be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

<sup>21</sup> According to the Application, in certain instances, a Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Adviser might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases. The registration statement states that the Funds have no current intention of issuing Creation Units for cash.



National Securities Clearing Corporation or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.

As noted above, on each business day, each Fund would make available a list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount effective as of the previous business day. As noted below in "Dissemination of Intraday Indicative Value," the Exchange would disseminate through the facilities of the CTA, at regular intervals (currently anticipated to be 15 second intervals) during the Exchange's regular trading hours, the Intraday Indicative Value on a per VIPER Share basis. The Funds would not be involved in, or responsible for, the calculation or dissemination of any such amount and would make no warranty as to its accuracy.

**Redemption.** VIPER Shares in Creation Unit-size aggregations would be redeemable on any day on which the NYSE is open in exchange for a basket of securities ("Redemption Securities"). As it does for Deposit Securities, the Adviser would make available to Authorized Participants on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases would be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.<sup>22</sup> Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit would either receive from or pay to the Fund a cash amount equal to the difference. (In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount would be equal to the Balancing Amount described above in the creation process.) The redeeming investor also would be required to pay to the Fund a Transaction Fee to cover transaction costs.<sup>23</sup>

<sup>22</sup> There may be circumstances, however, where the Deposit and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund's Target Index at the close of today's trading session, today's prescribed Deposit Securities might include ABC but not XYZ, while today's prescribed Redemption Securities might include XYZ but not ABC. According to the Application, having the flexibility to prescribe different baskets for creation and redemption promotes efficient portfolio management and lowers the Fund's brokerage costs, and thus is in the best interests of the Fund's shareholders.

<sup>23</sup> Redemptions in which cash is substituted for one or more Redemption Securities would be

A Fund would have the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the VIPER Shares tendered for redemption.<sup>24</sup> The Adviser currently contemplates that Creation Units of each Fund would be redeemed principally in kind, except in certain circumstances. A Fund would be able to make redemptions partly or wholly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor if the Fund determines, in its discretion, that such alternative is warranted due to unusual circumstances. This could happen if the redeeming investor is unable, by law or policy, to own a particular Redemption Security. The Adviser represents that it would adjust the Transaction Fee imposed on a redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

**Dividends.** Dividends from net investment income would be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Capital gains distributions, if any, would generally occur in December.

The final dividend amount for the VIPER Shares of each Fund, which would be made available on <http://www.amextrader.com>, would be the amount of dividends to be paid by a Fund to holders of its VIPER Shares for the appropriate period (usually annually). The final dividend amount would also be disseminated by the Funds to Bloomberg and other sources.

According to the Amex, the Funds intend to make available to Beneficial Owners of VIPER Shares the DTC book-entry dividend reinvestment service. Without this service, Beneficial Owners would have to take their distributions in cash. Information about the dividend reinvestment service would appear in

assessed an appropriate Transaction Fee to offset the transaction cost to the fund of selling those particular Redemption Securities. *See supra* note .

<sup>24</sup> In the event an Authorized Participant has submitted a redemption request in good order and is unable to transfer all or part of a Creation Unit-size aggregation for redemption, a Fund would nonetheless be able to accept the redemption request in reliance on the Authorized Participant's undertaking to deliver the missing VIPER Shares as soon as possible, which undertaking shall be secured by the Authorized Participant's delivery and maintenance of collateral. The Authorized Participant Agreement would permit the Fund to buy the missing VIPER Shares at any time and would subject the Authorized Participant to liability for any shortfall between the cost to the Fund of purchasing the VIPER Shares and the value of the collateral.

each Fund's prospectus and in its Product Description.<sup>25</sup>

The cash proceeds of dividends and capital gain distributions payable to all Beneficial Owners participating in DTC's reinvestment service would be used to purchase additional VIPER Shares for such Beneficial Owners. These additional shares would be purchased on the secondary market. Some DTC Participants would be able to elect not to utilize the dividend reinvestment service. Beneficial Owners who hold VIPER Shares through these DTC Participants may not be able to reinvest their dividends and distributions. These Beneficial Owners would receive their dividends and distributions in cash. The prospectus for VIPER Shares and the Product Description would disclose this fact.

**Criteria for Initial and Continued Listing.** Shares would be subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. A minimum of 100,000 VIPER Shares would be required to be outstanding for each Fund at the start of trading. This minimum number of Shares required to be outstanding at the start of trading would be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The initial price of a VIPER Share for each Fund would be approximately \$50 per share.

The Exchange believes that the proposed minimum number of VIPER Shares outstanding at the start of trading is sufficient to provide market liquidity.

**Original and Annual Listing Fees.** The Amex original listing fee applicable to the listing of the Index Fund Shares would be \$5,000 for each Fund. In addition, the annual listing fee applicable to the VIPER Funds under Section 141 of the Amex Company Guide ("Company Guide") would be based upon the year-end aggregate number of outstanding VIPER Shares in all Vanguard funds listed on the Exchange.

**Stop and Stop Limit Orders.** Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund

<sup>25</sup> *See supra* note 16, and below, "Prospectus Delivery."



Shares, including VIPER Shares, as eligible for this treatment.<sup>26</sup>

*Amex Rule 190.* Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including VIPER Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

*Prospectus Delivery.* The Exchange, in an Information Circular to Exchange members and member organizations, would inform members and member organizations, prior to commencement of trading, of the prospectus and Product Description delivery requirements that apply to the Funds. The Exemptive Order granted relief from Section 24(d) of the 1940 Act, which relief permits dealers to sell VIPER Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Any Product Description used in reliance on the Section 24(d) exemptive order would comply with all representations made therein and all conditions thereto.

*Trading Halts.* In addition to other factors that may be relevant, the Exchange would be able to consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including VIPER Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>27</sup> In addition, trading in VIPER Shares would be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

*Suitability.* Prior to commencement of trading, the Exchange would issue an Information Circular informing members and member organizations of the characteristics of the Funds' VIPER Shares and of applicable Exchange rules, as well as of the requirements of

Amex Rule 411 (Duty to Know and Approve Customers).

*Purchases and Redemptions in Creation Unit Size.* In the Information Circular referenced above, members and member organizations would be informed that procedures for purchases and redemptions of VIPER Shares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that VIPER Shares would not be individually redeemable but would be redeemable only in Creation Unit size aggregations or multiples thereof.

*Surveillance.* The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the VIPER Shares. Specifically, the Amex would rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Act. In addition, the Exchange and MSCI also have a general policy prohibiting the distribution of material, non-public information by its employees. Because MSCI is a broker-dealer that maintains the Target Indices, it is imperative that a functional separation exist, such as a firewall between the trading desk of the broker-dealer and the research persons responsible for maintaining the Target Indices. MSCI has represented that such a firewall exists.

*Hours of Trading/Minimum Price Variation.* The Funds would trade on the Exchange until 4:15 pm (New York time) each business day. Shares of each fund would trade with a minimum price variation of \$.01.

*Dissemination of Intraday Indicative Value.* In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem VIPER Shares, as noted above, the Exchange would disseminate through the facilities of the CTA: (i) continuously throughout the trading day, through the facilities of the consolidated tape, the market value of a VIPER Share,<sup>28</sup> and (ii) every 15 seconds throughout the trading day, separately from the consolidated tape, a calculation of the estimated NAV (also known as the Intraday Indicative Value or "IIV")<sup>29</sup> of a VIPER Share as calculated by a third party calculator

("IIV Calculator") (that is currently expected to be the Amex). Comparing these two figures would help an investor to determine whether, and to what extent, VIPER Shares may be selling at a premium or a discount to NAV.

The IIV Calculator would calculate the IIV of a VIPER Share as follows: First, it would establish the market value of a Creation Deposit based on the previous night's closing price of each Deposit Security plus the previous night's Balancing Amount. Then, throughout the day at 15-second intervals, it would recalculate the market value of a Creation Deposit based on the then-current market price of each Deposit Security plus the previous night's Balancing Amount.

The IIV may not reflect the value of all securities included in the applicable Target Index. In addition, the IIV would not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IIV on a per VIPER Share basis disseminated during Amex trading hours should not be viewed as a real time update of the net asset value of a particular Fund, which would be calculated only once a day. The IIV that would be disseminated by the Amex at the start of the trading day is expected to be generally close to the most recently calculated Fund net asset value on a per VIPER Share basis. It is possible that the value of the portfolio of securities held by a Fund may diverge from the value of the Deposit Securities during any trading day. If there were to be such a divergence, the IIV would not precisely reflect the value of the Fund portfolio. However, during the trading day, the IIV of a Fund's VIPER Shares would be expected to closely approximate the value per VIPER Share of the portfolio of securities for each Fund except under unusual circumstances (e.g., in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Adviser).

The Exchange believes that dissemination of the IIV based on the Deposit Securities would provide additional information regarding each Fund that would not otherwise be available to the public and would be useful to professionals and investors in connection with VIPER Shares trading on the Exchange or the creation or redemption of VIPER Shares. The IIV would also include the applicable estimated cash component for each Fund.

<sup>26</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR-Amex-90-31), regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

<sup>27</sup> See Amex Rule 918C.

<sup>28</sup> The consolidated tape would show the market price of VIPER Shares only; it would not show the price (i.e., the NAV) of Conventional Shares.

<sup>29</sup> The Application refers to the IIV as the "estimated NAV." The IIV is also referred to by other issuers as an "Underlying Trading Value," "Indicative Optimized Portfolio Value (IOPV)," and "Intraday Value" in various places such as the prospectus and marketing materials for different exchange-traded funds.



## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act,<sup>30</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>31</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 mechanisms 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 does not believe that the proposed rule change, as amended, will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange did not receive any written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-16 on the subject line.

#### *Paper comments:*

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-16 and should be submitted on or before June 14, 2004.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>32</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>33</sup> and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.<sup>34</sup>

The Commission believes that the new VIPER Shares will provide investors with an additional investment choice. The Commission believes that the Amex's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell single

securities at negotiated prices throughout the business day that generally track the price and yield performance of the respective underlying Target Indices.<sup>35</sup>

Furthermore, the proposed rule change raises no issues that have not been previously considered by the Commission in connection with earlier filings for Index Fund Shares pursuant to Rule 19b-4 under the Act.<sup>36</sup> The VIPER Shares to be issued by the Vanguard Index Funds are similar in structure and operation to exchange-traded index fund shares that the Commission has previously approved for listing and trading on national exchanges under Section 19(b)(2) of the Act.<sup>37</sup> In particular, with respect to each of the following key issues, the Commission believes that the VIPER Shares satisfy established standards.

### *A. Fund Characteristics*

Similar to other previously-approved, exchange-listed index fund shares, the Commission believes that the proposed VIPER Shares will provide investors with an alternative to trading a broad range of securities on an individual basis and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable Target Index. The estimated cost of individual VIPER Shares, approximately \$50, should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, unlike the case with standard open-end investment companies specializing in such stocks, investors will be able to trade each of the VIPER Shares continuously throughout the business day in secondary market transactions at negotiated prices.<sup>38</sup> Accordingly, the proposed Funds will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors;

<sup>32</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

<sup>35</sup> The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in VIPER Shares can redeem in Creation Unit size aggregations only. See, e.g., Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR-Amex-2001-45) ("Release No. 34-44990"). This citation was corrected by Securities Exchange Act Release No. 44990 (November 5, 2001), 66 FR 56869 (November 13, 2001) (SR-Amex-2001-45).

<sup>36</sup> 17 CFR 240.19b-4.

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> Because of the potential arbitrage opportunities, the Commission believes that VIPER Shares will not trade at a material discount or premium in relation to their NAV.

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).



and (3) reduce transaction costs for trading a portfolio of securities.

The Commission believes that each of the proposed Funds is reasonably designed to provide investors with an investment vehicle that substantially reflects in value the applicable Target Index and, in turn, the performance of: (1) The component securities comprising the MSCI U.S. Investable Market Energy Index; (2) the component securities comprising the MSCI U.S. Investable Market Industrials Index; and (3) the MSCI U.S. Investable Market Telecommunications Services Index.

The Commission notes that the MSCI U.S. Investable Market Energy Index and the MSCI U.S. Investable Market Telecommunications Services Index do not meet the weighting standards set out in Amex Rule 1000A, Commentary .02(a)(3), which require that the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The Commission notes further that, although the MSCI U.S. Investable Market Industrials Index currently meets the requirements of Amex Rule 1000A, Commentary .02, it is possible that the index may not satisfy the standard relating to the most heavily weighted stock component on the date of listing (the heavily weighted component stock in the index currently constitutes approximately 26% of the index). The Commission notes, however, that a significant portion of the weight of each of the three Target Indices is accounted for by stocks with substantial market capitalization and trading volume. Together with the other characteristics of the Target Indices and the Funds, the Commission believes that a minimum level of liquidity would exist for each VIPER Fund, reducing the potential for manipulation of the Target Indices' component securities and allowing for the maintenance of fair and orderly markets.

Moreover, the Commission finds that, although the value of the VIPER Shares will be derived from and based on the value of the securities and cash held in the Fund, VIPER Shares are not leveraged instruments. Accordingly, the level of risk involved in the purchase or sale of VIPER Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the VIPER Shares is based on a portfolio of securities. The Commission notes that each Fund will invest at least 90% of its assets in the component securities of its respective Target Index. As noted above, each Fund will use a

replication method of indexing to attempt to track its Target Index. It is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of less than five percentage points per annum. The Advisers to each Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, options, convertible securities, swaps and currency exchange contracts; however, these instruments will not constitute more than 10 percent of the Funds' assets.

While the Commission believes that the above characteristics of the Target Indices make it unlikely that the Funds could become highly concentrated with illiquid stocks, susceptible to manipulation, in the event that the Funds' characteristics change significantly from that described herein, the Commission would expect the Amex to contact Commission staff to file a proposed rule change pursuant to Rule 19b-4 of the Act. Accordingly, the level of risk involved in the purchase or sale of VIPER Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the VIPER Shares is based on a portfolio of securities.

#### *B. Disclosure*

The Commission believes that the Amex's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Funds. The Exchange will circulate an Information Circular detailing applicable prospectus and product description delivery requirements. Because the VIPER Shares have been granted relief from the prospectus delivery requirements of the 1940 Act, they will be subject to Amex Rule 1000A, which requires delivery of a product description describing the Funds. Pursuant to the rule, the delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. In addition, Rule 1000A requires that a member or member organization must deliver a prospectus to a customer upon request.

The circular also will address members' responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of the Funds. For example, the information circular will

also inform members and member organizations that VIPER Shares are not individually redeemable, but are redeemable only in Creation-Unit-size aggregations as set forth in each Fund prospectus and statement of additional information. The circular will also advise members of their obligations pursuant to Amex Rule 411 (Duty to Know and Approve Customer).

#### *C. Dissemination of Fund Information*

With respect to pricing, the Exchange will disseminate the recent NAV for each Fund on the Exchange Web site.<sup>39</sup> As indicated above, each Fund's NAV will be calculated once daily as of 4 p.m. Amex will also disseminate by means of the CTA and CQ High Speed Lines each Fund's IIV at 15-second intervals and the market value of its VIPER Shares. The Commission believes that comparing these two figures will help an investor to determine whether, and to what extent, VIPER Shares may be selling at a premium or a discount to NAV.

Amex will also make available additional information about each Fund, including shares outstanding, daily trading volume, closing price, estimated cash amount and total cash amount per Creation Unit, and final dividend amounts to be paid for each Fund.<sup>40</sup> The Commission believes that dissemination of this information will facilitate transparency with respect to the proposed VIPER Shares and diminish the risk of manipulation or unfair informational advantage.

In addition, the Commission notes that Vanguard's Web site is and will be publicly accessible at no charge, and will contain each fund's NAV as of the prior business day, the Bid-Asked Price, and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV. Additional information available to investors will include data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; the Fund's Prospectus and two most recent reports to shareholders;

<sup>39</sup> The Exchange will post additional information about each fund, including dividend amounts to be paid as well.

<sup>40</sup> The Commission believes that the closing prices of Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.



and other quantitative information such as daily trading volume.<sup>41</sup>

Based on the representations made in the Amex proposal, the Commission believes that pricing and other important information about each Fund is adequate.

#### D. Listing and Trading

The Commission finds that adequate rules and procedures exist to govern the listing and trading of VIPER Shares. VIPER Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing trading halts, responsibilities of the specialist, account opening and customer suitability requirements, and the election of stop and stop limit orders.

In addition, the Funds will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex.<sup>42</sup> As the Commission has noted previously,<sup>43</sup> the listing and delisting criteria for VIPER Shares should help to ensure that a minimum level of liquidity will exist in each of the Funds to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of VIPER Shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, a minimum of 100,000 VIPER Shares will be required to be outstanding for each Fund at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.<sup>44</sup>

#### E. Surveillance

The Commission finds that Amex has adequate surveillance procedures to monitor the trading of the proposed VIPER Shares, including concerns with specialists purchasing and redeeming Creation Units. The Amex represents that it will rely on existing surveillance procedures governing Index Fund Shares, and in addition, that the exchange and MSCI prohibit the distribution of material, non-public information by their employees that

could undermine a fair and orderly market. In addition, the Exchange and MSCI also have a general policy prohibiting the distribution of material, non-public information by their employees. Because MSCI is a broker-dealer that maintains the Target Indices, it is imperative that a functional separation exist, such as a firewall between the trading desk of the broker-dealer and the research persons responsible for maintaining the Target Indices. MSCI has represented that such a firewall exists.

#### F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>45</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposed rule change is consistent with the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares), and the Commission has previously approved similar products.<sup>46</sup> The Commission does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>47</sup> to approve the proposal on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>48</sup> that the proposed rule change (SR-Amex-2004-16), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>49</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-11652 Filed 5-21-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49722; File No. SR-Amex-2004-29]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to a Reduction in ETF Transaction Fees for Specialists and Registered Options Traders

May 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 30, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On May 13, 2004, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, has been filed by the Amex as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce transaction fees for specialists and registered options traders ("ROTs") in connection with transactions in exchange-traded fund shares ("ETFs"). The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning

<sup>41</sup> See *supra* "Availability of Information about VIPER Shares."

<sup>42</sup> See Amex Rule 1002A.

<sup>43</sup> See, e.g., Release No. 34-44990, *supra* note 35.

<sup>44</sup> This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> See, e.g., Release No. 34-44990, *supra* note 35.

<sup>47</sup> 15 U.S.C. 78s(b)(5).

<sup>48</sup> *Id.*

<sup>49</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 12, 2004 ("Amendment No. 1"). Amendment No. 1 corrects a typographical error in the proposed rule language.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).