

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50195; File No. SR-Amex-2004-61]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of the \$72,000 Options Fee Cap

August 13, 2004.

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 August 2, 2004, the American Stock Exchange, Inc. ("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. The Amex submitted the proposed rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to eliminate the \$72,000 monthly fee cap in single option classes applicable to specialists and registered options traders ("ROTs"). The text of the proposed rule change is available at the 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 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 IV below. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to eliminate the current options fee cap of \$72,000 per month in any single option class for Exchange specialists and ROTs. This fee cap was originally adopted by the Exchange in November 2003 and implemented in December 2003.⁵

The Amex currently imposes charges for transactions in options executed on the Exchange by specialists and ROTs. Current charges for specialist and ROT transactions in equity options and index options are \$0.30 and \$0.31, respectively, per contract side. Given current transaction charges for equity and index options, specialists and ROTs to reach the fee cap would need to trade 240,000 contracts in equity options and 232,258 contracts in index options.

The fee cap was implemented by the Exchange to attract additional order flow expected to result from the financial incentives provided to Exchange specialist units and ROTs. To date, the Exchange has not experienced a significant increase in order flow. Accordingly, the Exchange proposes to eliminate the fee cap as described above.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁹ because it establishes or changes a due, fee, or other charge imposed by Amex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-Amex-2004-61 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-2004-61. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 49019 (January 5, 2004), 69 FR 2023 (January 13, 2004) (SR-Amex-2003-104).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

available for inspection and copying at the principal offices 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-2004-61 and should be submitted on or before September 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-19065 Filed 8-19-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50189; File No. SR-Amex-2004-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the American Stock Exchange LLC To List and Trade Certain Vanguard International Equity Index Funds

August 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 20, 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 and II below, which Items have been prepared by the Exchange. The Amex amended the proposed rule change first on March 9, 2004.³ The Exchange filed a second amendment to the proposal on April 22, 2004 and requested accelerated approval.⁴ The Exchange filed a third

amendment to the proposal on May 14, 2004.⁵ The Exchange filed a fourth amendment to the proposal on August 5, 2004.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to list and trade under Amex Rules 1000A *et seq.* the shares of certain index funds that are series of the Vanguard International Equity Index Fund. The funds seek to track the following regional indices compiled by Morgan Stanley Capital International Inc. (MSCI®) ⁷ ("MSCI"): MSCI Europe Index, MSCI Pacific Index, and MSCI Emerging Markets Select 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, 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 Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment

further clarified Amex's proposal, explained the indices underlying the proposed fund products, and replaced the earlier amended filing in its entirety.

⁵ See letter from Marija Willen, Associate General Counsel, Amex, to Florence Harmon, Division, Commission, dated May 13, 2004 ("Amendment No. 3"). Amendment No. 3 addressed questions arising during the course of Commission staff review.

⁶ See letter from Marija Willen, Associate General Counsel, Amex, to Florence Harmon, Division, Commission, dated August 4, 2004 ("Amendment No. 4"). Amendment No. 4 provided supplemental information regarding the indices on which the proposed listings are based, including the index maintenance methodology and characteristics. The amendment also addressed the Funds' investment objectives, availability of information about Fund Shares, and local trading restrictions that will affect the ability of the Funds to do "in-kind" creation and redemption transactions.

⁷ "MSCI®" is a service mark of Morgan Stanley & Co. Incorporated.

company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940⁸ ("1940 Act") as well as the Exchange Act.⁹ Index Fund Shares are defined in Amex Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to 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 are series of the Vanguard International Equity Index Fund ("Trust"):¹⁰

- Vanguard European VIPERs, a share class of Vanguard European Stock Index Fund, which seeks to track the MSCI Europe Index;
- Vanguard Pacific VIPERs, a share class of Vanguard Pacific Stock Index Fund, which seeks to track the MSCI Pacific Index; and
- Vanguard Emerging Market VIPERs, a share class of Vanguard Emerging Markets Stock Index Fund, which seeks to track the Select Emerging Markets 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 Exchange's proposed rule change. Index descriptions, component selection criteria, index maintenance and issue changes, the top components of each index, and portfolio composition and characteristics are attached as Exhibits A through C of the Form 19b-4 submitted by the Exchange and are available as specified in Item IV below. The index on which a particular Fund is 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") is the investment adviser to each Fund.¹¹ The Adviser is registered under

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Marija Willen, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 8, 2004 ("Amendment No. 1"). Amendment No. 1 replaced in its entirety Amex's original filing. Amendment No. 1 made various nonsubstantive changes to the proposed rule change and clarified the manner in which costs associated with the proposed new listings would be paid.

⁴ See letter from Marija Willen, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated April 21, 2004 ("Amendment No. 2"). Amendment No. 2

⁸ 15 U.S.C. 80a *et seq.*

⁹ 15 U.S.C. 78a *et seq.*

¹⁰ The Trust has other funds that issue VIPER Shares. The Exchange states that those issues of VIPER Shares met the requirements of Amex Rule 1000A, Commentary .02, for listing pursuant to Rule 19b-4(e) of the Exchange Act.

¹¹ Vanguard requested an exemption from various provisions of the 1940 Act and rules thereunder ("Application"). See Investment Company Act Release No. 26246 (November 3, 2003), 68 FR 63135 (November 7, 2003) (File No. 812-12860). The Commission granted the requested exemption in an order dated December 1, 2003. See Investment Company Act Release No. 26281 (December 1,