

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50189; File No. SR-Amex-2004-05)

August 12, 2004

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> The Exchange filed a second amendment to the proposal on April 22, 2004 and requested accelerated approval.<sup>4</sup> The Exchange filed a third amendment to the proposal on May 14, 2004.<sup>5</sup> The Exchange filed a fourth

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

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

<sup>3</sup> 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.

<sup>4</sup> 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 further clarified Amex’s proposal, explained the indices underlying the proposed fund products, and replaced the earlier amended filing in its entirety.

<sup>5</sup> See letter from Marija Willen, Associate General Counsel, Amex, to Florence Harmon, Division, Commission, dated May 13, 2004 (“Amendment No. 3”).

amendment to the proposal on August 5, 2004.<sup>6</sup> 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®)<sup>7</sup> (“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

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Amendment No. 3 addressed questions arising during the course of Commission staff review.

<sup>6</sup> 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.

<sup>7</sup> “MSCI®” is a service mark of Morgan Stanley & Co. Incorporated.

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 company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940<sup>8</sup> (“1940 Act”) as well as the Exchange Act.<sup>9</sup> 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”):<sup>10</sup>

- Vanguard European VIPERs, a share class of Vanguard European Stock Index Fund, which seeks to track the MSCI Europe Index;

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<sup>8</sup> 15 U.S.C. 80a et seq.

<sup>9</sup> 15 U.S.C. 78a et seq.

<sup>10</sup> 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.

- 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.<sup>11</sup> The Adviser is registered under the Investment Advisers Act of 1940 (“Advisors Act”).<sup>12</sup> Pursuant to Rule 10A-3 of the

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<sup>11</sup> 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, 2003). The relief granted is substantially similar to the relief granted by the Commission in December 2000 to Vanguard Index Funds et al. See Investment Company Act Release No. 24789 (December 12, 2000), 65 FR 79439 (December 19, 2000) (approving File No. 812-12094). Information in this filing regarding the Funds is based on material in the Application and each Fund’s registration statement.

<sup>12</sup> 15 U.S.C. 80b-1 et seq.

Exchange Act<sup>13</sup> and Section 3 of the Sarbanes-Oxley Act of 2002,<sup>14</sup> the Exchange will prohibit the individual or conditional listings of any security of an issuer that is not in compliance with the requirements set forth therein.<sup>15</sup>

Amex represents that, while the Adviser will manage each Fund, the Trust's Board of Trustees ("Board") will have overall responsibility for the Funds' operations. Amex further represents that the composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act.<sup>16</sup>

Vanguard Marketing Corporation ("Distributor"), a wholly owned subsidiary of Vanguard and a broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Units (as defined below) of the Funds.<sup>17</sup>

Vanguard Index Participation Equity Receipts ("VIPER Shares") are a class of exchange-traded securities that represent an interest in the portfolio of stocks held by a

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<sup>13</sup> 17 C.F.R. 240.10A-3.

<sup>14</sup> See Section 3 of Pub. L. No. 107-204, 116 Stat. 745 (2002).

<sup>15</sup> Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Brian Trackman, Attorney, Division, Commission, on May 21, 2004.

<sup>16</sup> 15 U.S.C. 80a-10.

<sup>17</sup> As with other VIPER Shares, the Distributor is affiliated with the investment advisor. According to the Application, the Distributor facilitates creation and redemption orders for Authorized Participants. The Distributor is not involved in the selection of any portfolio securities, and appropriate information barriers and insider trading policies exist to prevent the misuse of non-public information. Telephone conversation between Scott Ebner, Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 12, 2004.

particular Vanguard Index Fund. In addition to VIPER Shares, the Funds offer classes of shares that are not exchange-traded, which are referred to as “Conventional Shares.”<sup>18</sup>

VIPER Shares will be registered in book-entry form only, and the Funds will not issue individual share certificates. The Depository Trust Company (“DTC”) or its nominee will be the record or registered owner of all outstanding VIPER Shares.

Beneficial ownership of VIPER Shares will be shown on the records of the DTC or DTC participants.

A. Target Indices, Investment Objectives, and Tracking Error

As noted in the Application, each Fund seeks to track, as closely as possible, the performance of its Target Index.<sup>19</sup> In seeking to track its Target Index, each Fund uses the “replication” method, in which each stock found in the Target Index is held in about the same proportion as represented in the index itself. Each Fund will invest at least 90% of its assets in the component securities of its respective Target Index. To the extent that

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<sup>18</sup> As described in the Application, the Vanguard Index Funds organizational documents permit the Vanguard Index Funds to issue shares of different classes. The European Stock Index Fund and the Pacific Stock Index Fund also offer three classes of Conventional Shares (Investor, Admiral and Institutional classes) and the Pacific Stock Index Fund offers two classes of Conventional Shares (Investor and Institutional classes).

<sup>19</sup> The prospectuses for the Funds disclose that each Fund reserves the right to substitute a different index for the Target Index that the Fund currently tracks. Substitution could occur if the current index is discontinued, the Fund’s license with the sponsor of the current index is terminated, 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 is replaced, and investors who hold their shares through a broker or other intermediary would receive the notification from their intermediary. Should the Fund substitute a different index for the current Target Index, the Exchange will file a proposed rule change pursuant to Form 19b-4 to address, among other things, the listing and trading characteristics of the new index and the Exchange’s surveillance procedures applicable to the new index. See Amendment No. 3.

a Fund invests in instruments other than common stocks included in its Target Index, it will invest no more than 10% of its assets in those other instruments.<sup>20</sup> 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, 15 U.S.C. 80a-12(d)(1)), stocks about to be added to the Target Index, and any other instrument not inconsistent with the Fund's investment policies as described in detail in its registration statement, which the Adviser believes will help the Fund to track the performance of its Target Index.

Each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the securities of any one issuer.<sup>21</sup>

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<sup>20</sup> Each of these Funds will invest not more than 10% of fund assets in ADRs that are not included in component securities of their Target Index. Currently, the Target Indices do not contain ADRs. To the extent that these Funds invest more than 10% of their assets in ADRs, these ADRs shall be listed on a national securities exchange or quoted on the Nasdaq NMS. Telephone conversation between Scott Ebner, Associate Director, New Product Development, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 12, 2004.

<sup>21</sup> In order for a Fund to qualify for tax treatment as a regulated investment company, it must 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 if 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 Internal Revenue Code) and that are engaged in the same or similar trades or

According to the Application, each of the Funds historically has tracked its Target Index very closely. Measured over virtually any period, the gap between the performance of a Fund and its Target Index rarely exceeds 1% per annum, and in almost all cases is significantly less than that. The Exchange states that it expects that, in the future, the Funds will track their Target Indices with a similar degree of precision and will have a tracking error of less than 5% per annum.

B. Index Maintenance

MSCI describes its index maintenance in terms of three broad categories of implementation of changes:

- Annual full country index reviews that systematically re-assess the various dimensions of the equity universe for all countries and are conducted on a fixed annual timetable;
- Quarterly index reviews, aimed at promptly reflecting other significant market events; and
- Ongoing event-related changes, such as mergers and acquisitions, which are generally implemented in the indices rapidly as they occur.

Potential changes in the status of countries (stand-alone, emerging, developed) follow their own separate timetables. These changes are normally implemented in one or more phases at the regular annual full country index review and quarterly index review dates.

MSCI carries out the annual full country index review for all the MSCI Standard Country Indices once every 12 months and implements any changes as of the close of the

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businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).



last business day of May. The implementation of changes resulting from a quarterly index review occurs on only three dates throughout the year: as of the close of the last business day of February, August and November. Any Country Indices may be impacted at the quarterly index review. MSCI Index additions and deletions due to quarterly index rebalancings are announced at least two weeks in advance.

MSCI makes changes to the methodologies, including changes to the Country Indices selected for each of the Target Indices, public via print and electronic media, and in particular, makes the press releases regarding any changes available on its Web site.

In constructing its indices, MSCI aims to target a free float-adjusted market representation of 85% within each industry group, within each country. However, because of differences in the structure of industries, this industry representation target may not be exactly and uniformly achieved in the indices across all industry groups. The differences in the structure of industries, and other considerations, may lead to over- or under-representation in certain industries. In these instances, the indices are constructed with a view to minimizing the divergence between the industry group representation achieved in the index and the 85% representation guideline. Since the over- and under-representation of industries is unlikely to be exactly off-setting, the average industry group representation achieved in a given country is also likely to be different from the 85% level.

As to defining the industry groups, MSCI uses the Global Industry Classification Standard (GICS), under which each company is assigned uniquely to one sub-industry

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according to its principal business activity. Therefore, a company can only belong to one industry grouping at each of the four levels of the GICS.

In connection with the possibility of index substitution referenced in footnote 5 to Amendment No. 2 to this filing, the Exchange represents that if a Fund substitutes a different index for the Target Index that it currently tracks, the Exchange will take appropriate steps towards listing approval, including filing for a rule change with the Commission, as necessary in light of then-existing Exchange listing standards.

C. Dissemination of Index Information

The Funds have been advised by MSCI that the value of each Fund's Target Index is now and will be disseminated intra-day at regular intervals (every 60 seconds) as individual Component Securities change in price. These intra-day values based on the sale reporting in the foreign market of the Target Indices will be disseminated real time throughout the foreign market trading day by organizations authorized by MSCI, including, by subscription, from quote vendors such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters, and Telekurs. In addition, these organizations will disseminate values for each Target Index once each trading day, based on closing prices in the relevant exchange market.

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>. In addition, various news publications (e.g., Barron's, Business Week, Forbes, Global Finance, Investor's Daily, The New York Times, and The Wall Street Journal in the United States) publish data for certain MSCI indices. For example, The Wall Street Journal has been publishing the closing index value for MSCI indices

covering the United States, the United Kingdom, Canada, Japan, France, Germany, Hong Kong, Switzerland, Australia, the World, and EAFE (Europe, Australasia, and Far East).

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 also 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). According to the Adviser, compared to the MSCI data available free of charge from the MSCI Web site, the data available to users subscribing to quote vendors such as Bloomberg and Reuters includes more frequent calculation and dissemination of index levels, including “real-time” feeds for certain indices, while the data available to MSCI paid subscribers (either directly from MSCI or from an independent “full data” vendor) includes more detailed information in respect of the securities included in a given index.

D. Target Indices – Key Characteristics

General. As further described below, the Target Indices are constructed to provide broad and fair market representation in a given market. MSCI adjusts the market capitalization of index constituents for free float and targets for index inclusion 85% of free float adjusted market capitalization in each industry group in each country. MSCI

defines the free float of a security as the proportion of shares outstanding that are deemed to be available for purchase in the public equity markets by international investors. In practice, limitations on free float available to international investors include:

- Strategic and other shareholdings not considered part of available free float.
- Limits on share ownership for foreign investors.

MSCI free-float adjusts the market capitalization of each security using an adjustment factor referred to as the Foreign Inclusion Factor (FIF). The free float-adjusted market capitalization of a security is calculated as the product of the FIF and the security's full market capitalization.

Information about average daily trading volume of the Target Indices, as of May 2004, is as follows:

- The five highest weighted stocks in the MSCI Europe Index - which represent 14.8% of index weight - had an average daily trading volume in excess of 100 million shares during the past two months. 97.9% of the components stocks traded at least 250,000 shares in each of the previous six months.
- The five highest weighted stocks in the MSCI Pacific Index - which represent 11.15% of index weight - had an average daily trading volume in excess of 4 million shares during the past two months. 95.9% of the components stocks traded at least 250,000 shares in each of the previous six months.
- The five highest weighted stocks in the Select Emerging Markets Index - which represent 16.45% of index weight - had an average daily trading volume in excess of 4.5 million shares during the past two months. 96.9% of

the components stocks traded at least 250,000 shares in each of the previous six months.

MSCI Europe Index. The MSCI Europe Index is a free float-adjusted market capitalization weighted index that is designed to measure developed market equity performance in Europe. It comprises 16 of the 50 countries for which MSCI has indices. Each MSCI country index is created separately and then aggregated, without change, into the larger regional index. Currently, the MSCI Europe Index includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. As of December 2003, the Index contained 539 components with a total market capitalization of \$5,236,148,846,065. The average market capitalization was \$9,714,561,867. The ten largest constituents represent approximately 24.05% of the index weight. The five highest weighted stocks in the MSCI Europe Index - which represent 14.8% of index weight - had an average daily trading volume in excess of 100 million shares during the past two months. Additional detail on the MSCI Europe 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 Pacific Index. The MSCI Pacific Index is a free float-adjusted market capitalization weighted index that is designed to measure equity market performance in the Pacific region. It comprises five of the 50 countries for which MSCI has indices. Each MSCI country index is created separately and then aggregated, without change, into the larger regional index. Currently, the MSCI Pacific Index includes Australia, Hong Kong, Japan, New Zealand, and Singapore. As of December 31, 2003, the Index

contained 466 components with a total market capitalization of \$2,145,036,798,509. The average market capitalization was \$4,603,083,259. The ten largest constituents represent approximately 18.59% of the index weight. The five highest weighted stocks in the MSCI Pacific Index - which represent 11.15% of index weight - had an average daily trading volume in excess of 4 million shares during the past two months. Additional detail on the MSCI Pacific 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.

Select Emerging Markets Index. The Select Emerging Markets Index is a free float-adjusted market capitalization weighted index and represents the securities included in the following standard MSCI Country Indices: Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand and Turkey. The weight of each country in the index is reviewed on a monthly basis. After the calculation of the last business day of the month, MSCI reviews the weight of each country in the index. If the weight of a country is above 20%, the initial weight of this country for the calculation of the first business day of the month is set to 20% and the excess amount is distributed among the other constituents based on their respective weights. The weight of the countries in the index will then fluctuate according to market movements until the end of the month when the monthly monitoring is performed once again. As of December 31, 2003, the Index contained 533 components with a total market capitalization of \$740,350,335,632. The average market capitalization was \$1,389,025,020. The ten largest constituents represent approximately 23.76% of the index weight. The five highest weighted stocks in the Select Emerging Markets Index – which represent 16.45% of index weight – had an

average daily trading volume in excess of 4.5 million shares during the past two months. Additional detail on the Select Emerging Markets 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.

E. Availability of Information about VIPER Shares

The Exchange states that Vanguard's Web site, [www.Vanguard.com](http://www.Vanguard.com), is and will be publicly accessible at no charge, and will contain the following information for each Fund's 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>22</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) the Fund's Prospectus and two most recent reports to shareholders; and (d) other quantitative information such as daily trading volume and a comparison of the performance of each

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<sup>22</sup> Because the NAV for all share classes of all Vanguard funds is calculated as of the close of the New York Stock Exchange ("NYSE") (usually 4:00 pm), but the market for VIPER Shares and other exchange traded funds 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 Exchange states, according to the Application, two performance figures will be comparable, and any differences will be attributable to market forces rather than timing differences.

share class of each Fund to the performance of the relevant Target Index, e.g., the tracking error. In addition, the product description for each Fund (“Product Description”) will state that the Adviser’s Web site at [www.Vanguard.com](http://www.Vanguard.com) has information about the premiums and discounts at which the Fund’s VIPER Shares have traded.<sup>23</sup>

Amex will 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, and estimated cash amount and total cash amount per Creation Unit. The Exchange will 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, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

The Exchange states that beneficial owners of VIPER Shares (“Beneficial Owners”) will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements,

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<sup>23</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.



annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

F. Creation and Redemption of VIPER Shares

Each Fund will issue and redeem VIPER Shares only in aggregations of a specified number (“Creation Units”).<sup>24</sup> Purchasers of Creation Units will be able to separate a Creation Unit into individual VIPER Shares. The actual number of VIPER Shares in a Creation Unit may differ from Fund to Fund, but will be no less than 50,000. Once the number of VIPER Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a VIPER Share will range from \$50 to \$100 per share, depending on the Fund.

Creation. Persons purchasing Creation Units from a Fund must 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 are referred to as the “Creation Deposit.” The Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value

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<sup>24</sup> The Funds will 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”). Many shareholders have taken advantage of the Conversion Privilege in those funds that currently offer VIPER Shares. The Conversion Privilege will be a “one-way” transaction only. Holders of Conventional Shares may convert those shares into VIPER Shares, but Beneficial Owners of VIPER Shares will not be permitted to convert those shares into Conventional Shares.

of the Creation Unit it is used to purchase. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.<sup>25</sup> The Transaction Fee is a fee imposed by the Funds on investors purchasing (or redeeming – see “Redemption,” below) Creation Units. The purpose of the Transaction Fee is 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>26</sup>

The Adviser will 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

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<sup>25</sup> If the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Fund to the purchaser, rather than vice versa.

<sup>26</sup> If a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. As noted in Amendment No. 2 to this filing, the Funds will impose a Transaction Fee on investors purchasing or redeeming Creation Units, the purpose of which is 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. In particular, if a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. Local restrictions on transfers of securities to and between certain types of investors exist in certain countries (currently Greece, Taiwan, Korea, India and Brazil), which may restrict “in kind” creations and redemptions of Creation Units and therefore require that creation (or redemption) take place partly in cash and partly “in kind.” The Exchange will disclose this information in the Information Circular sent to members and member organizations about the Funds. It is expected that continuous sales and redemptions of the Funds that hold shares of companies in the relevant countries will result in their trading close to net asset values.

Deposit for each Fund.<sup>27</sup> The Adviser also will make available on a daily basis information about the previous day's Balancing Amount.

The Funds reserve the right to permit or require a purchasing investor to substitute an amount of cash or a different security to replace any prescribed Deposit Security.<sup>28</sup> Substitution might be permitted or required, for example, because one or more Deposit Securities may be unavailable, may not be available in the quantity needed to make a Creation Deposit, or may not be eligible for trading by an Authorized Participant<sup>29</sup> (or the investor on whose behalf the Authorized Participant is acting) due to local trading restrictions or other circumstances.<sup>30</sup> Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit are expected to be immaterial, and in any event the Adviser represents that it will adjust the relevant Transaction Fee to ensure that the Fund collects the extra expense from the purchaser.

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<sup>27</sup> The Exchange states that, in accordance with Vanguard's Code of Ethics and Inside Information Policy, personnel of the Adviser with knowledge about the composition of a Creation Deposit will 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>28</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, however, states that the Funds have no current intention of issuing Creation Units for cash and would only do so in unusual circumstances.

<sup>29</sup> Orders to create or redeem VIPER Shares must be placed through an Authorized Participant, which is either (1) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation or (2) a DTC participant.

<sup>30</sup> See supra note 26.

As noted above, on each business day, each Fund will 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 will 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 will not be involved in, or responsible for, the calculation or dissemination of any such amount and will make no warranty as to its accuracy.<sup>31</sup>

Redemption. VIPER Shares in Creation-Unit-size aggregations will be redeemable on any day on which the New York Stock Exchange is open in exchange for a basket of securities (“Redemption Securities”). As it does for Deposit Securities, the Adviser will 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 will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.<sup>32</sup> Depending on whether the NAV of a Creation Unit is higher or lower

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<sup>31</sup> The Commission, however, would have concerns if the IIV was not an accurate reflection of the Fund’s value and would expect the Exchange to evaluate the continued listing of such a product.

<sup>32</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.

than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the Fund a cash amount equal to the difference.<sup>33</sup> The redeeming investor also must pay to the Fund the applicable Transaction Fee to cover transaction costs.<sup>34</sup>

A Fund has 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>35</sup> The Adviser currently contemplates that Creation Units of each Fund will be redeemed principally in kind, except in certain circumstances. A Fund may 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. For example, a foreign country's regulations may restrict or prohibit a redeeming investor from holding shares of a particular issuer

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<sup>33</sup> In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount will be equal to the Balancing Amount described above in the creation process.

<sup>34</sup> Redemptions in which cash is substituted for one or more Redemption Securities will be assessed an appropriate Transaction Fee to offset the transaction cost to the fund of selling those particular Redemption Securities. See supra text accompanying note 26.

<sup>35</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 may nonetheless 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 will permit the Fund to buy the missing VIPER Shares at any time and will 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.

located in that country.<sup>36</sup> The Adviser represents that it will 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.

In order to facilitate delivery of Redemption Securities, each redeeming Beneficial Owner or DTC participant acting on behalf of such Beneficial Owner must have arrangements with a broker-dealer, bank, or other custody provider in each jurisdiction in which any of the Redemption Securities are customarily traded. If neither the redeeming Beneficial Owner nor the Authorized Participant has such arrangements, and it is not otherwise possible to make other arrangements, the Fund may in its discretion redeem the VIPER Shares for cash.

G. Dividends

Dividends from net investment income will be declared and paid at least annually by each Fund in the same manner as other open-end investment companies. Distributions will generally occur in December.

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

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

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<sup>36</sup> See supra note 26.

reinvestment service will appear in each Fund’s prospectus and in its Product Description.<sup>37</sup>

The cash proceeds of dividends and capital gain distributions payable to all Beneficial Owners participating in DTC’s reinvestment service will be used to purchase additional VIPER Shares for such Beneficial Owners. These additional shares will be purchased on the secondary market. Some DTC participants may 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 will receive their dividends and distributions in cash. The prospectus for VIPER Shares and the Product Description will disclose this fact.

H. Criteria for Initial and Continued Listing

Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. A minimum of 100,000 VIPER Shares will 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 will 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 will be approximately \$50 to \$100 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.

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<sup>37</sup> See supra note 23, and infra “Prospectus Delivery.”

I. Original and Annual Listing Fees

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

J. 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 Shares, including VIPER Shares, as eligible for this treatment.<sup>38</sup>

K. 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. However, a specialist’s creation

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<sup>38</sup> See Securities Exchange Act Release No. 29063, (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR-Amex-90-31) note 9 (designating equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c)).



unit transaction may only be effected on the same terms and conditions as any other investor, and only at the NAV of the ETF shares.

L. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus and Product Description delivery requirements that apply to the Funds. The Application requested, and the Exemptive Order granted, relief from Section 24(d) of the 1940 Act,<sup>39</sup> 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.<sup>40</sup> Amex represents that any Product Description used in reliance on a Section 24(d) of the 1940 Act exemptive order will comply with all representations made therein and all conditions thereto.

M. Trading Halts

In addition to other factors that may be relevant, the Exchange may 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>41</sup> In addition,

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<sup>39</sup> 15 U.S.C. 80a-24(d).

<sup>40</sup> See supra note 11.

<sup>41</sup> See Amex Rule 918C.

trading in VIPER Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

N. Suitability

Prior to commencement of trading, the Exchange will 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).

O. Information Circular

In connection with the trading of the Funds, the Exchange will inform Exchange members and member organizations in an Information Circular of certain characteristics of certain Funds, as discussed below. The Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Funds are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus or Product Description to investors purchasing shares of the Fund prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (including Amex Rule 411).<sup>42</sup> A Circular will also discuss exemptive, no-action and interpretive relief, if granted, by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a-1, Rule 10b-

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<sup>42</sup> The Commission has issued an order granting the Funds relief from Section 24(d) of the 1940 Act, 15 U.S.C. 80a-24(d). See Investment Company Act Release No. 26281 (December 1, 2003). Any Product Description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for the order. See supra note 11.

10, Rule 14e-5, Rule 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Act.

If a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. As noted in Amendment No. 2 to this filing, the Funds will impose a Transaction Fee on investors purchasing or redeeming Creation Units, the purpose of which is 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. In particular, if a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

Local restrictions on transfers of securities to and between certain types of investors exist in certain countries (currently Greece, Taiwan, Korea, India and Brazil), which may restrict “in kind” creations and redemptions of Creation Units and therefore require that creation (or redemption) take place partly in cash and partly “in kind.” In such cases, a Fund will charge creation and redemption fees intended to offset the transfer and other transaction costs incurred by the Fund, including market impact expenses (primarily associated with creation units for cash), related to investing in or disposing of the basket of securities held by the Fund.<sup>43</sup> For Funds that effect creations and/or redemptions in part or in whole for cash, it is possible that portfolio securities

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<sup>43</sup> See supra note 26.

transactions in the relevant local markets for those Funds could affect the prices of those portfolio securities at the times those Funds' NAVs are calculated. The Exchange will disclose this information in the Information Circular sent to members and member organizations about the Funds.

The Information Circular will likewise disclose that the NAV for VIPER Funds will be calculated once daily as of 4:00 p.m. (Eastern Time) each day that the American Stock Exchange is open for trading.

P. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will 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 are not individually redeemable but are redeemable only in Creation-Unit-size aggregations or multiples thereof.

Q. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the VIPER Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Exchange Act. In addition, the Exchange, Vanguard, 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 Indices, it is imperative that there exists a functional separation, such as a firewall, between the trading desk of the broker-dealer and the research persons responsible for maintaining the Indices. MSCI has represented that such a firewall exists.

R. Hours of Trading/ Minimum Price Variation

The Funds will trade on the Exchange until 4:15 pm (New York time) each business day. Shares of each Fund will trade with a minimum price variation of \$0.01.

S. Dissemination of Intraday Indicative Value

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem VIPER Shares based on indices with non-U.S. components, as noted above, the Exchange will disseminate through the facilities of the CTA: (1) continuously throughout the trading day the market value of a VIPER Share;<sup>44</sup> and (2) every 15 seconds throughout the trading day a calculation of the estimated NAV (also known as the Intraday Indicative Value or “IIV”)<sup>45</sup> of a VIPER Share as calculated by a third-party calculator (“IIV Calculator”). Comparing these two figures helps 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 will calculate the IIV of a VIPER Share as follows. First, it will 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 will 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. As the respective international local markets

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<sup>44</sup> The consolidated tape will show the market price of VIPER Shares only; it will not show the price (i.e., the NAV) of Conventional Shares.

<sup>45</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.

close, the market valuation of the Creation Deposit will continue to be updated for foreign exchange rates for the remainder of the U.S. trading day at the prescribed 15-second interval. The valuations of the Creation Deposit throughout the day will be compared against the previous night's value to determine the percentage change in the value of the Creation Deposit. This percentage will then be applied against the previous night's closing NAV to estimate the current NAV of a VIPER Share.

The IIV may not reflect the value of all securities included in the applicable index. In addition, the IIV does 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 NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex at the start of the trading day is expected to be generally close to the most recently calculated Fund NAV 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. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

Amex states, however, that during the trading day, while the relevant foreign markets are open for trading, the IIV of a Fund's VIPER Shares can 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 further states that the circumstances that might cause the IIV of a Fund's VIPER Shares to be based on calculations different from the valuation per VIPER Share of the actual

portfolio of a Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the IIV based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with VIPER Shares trading on the Exchange or the creation or redemption of VIPER Shares.

#### MSCI Pacific Index

For the MSCI Pacific Index, there is no overlap in trading hours between the foreign markets and Amex. Therefore, for these VIPER Shares, the IIV Calculator will utilize closing prices (in the applicable foreign currency) in the principal foreign market for securities in the Fund's portfolio and convert the price to U.S. dollars. Those values will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The IIV will also include the applicable estimated cash component for the Fund.

#### MSCI Europe Index and Select Emerging Markets Index

For the MSCI Europe Index and the Select Emerging Markets Index, both of which include companies trading in markets with trading hours overlapping regular Amex trading hours, the IIV Calculator will update the applicable IIV every 15 seconds to reflect price changes in the principal foreign market and convert such price into U.S. dollars based on the current currency exchange rate. When the foreign market is closed but Amex is open, the IIV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The IIV will also include the applicable estimated cash component for each Fund.

## 2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>46</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>47</sup> in particular, in that it is designed 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; 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 would impose any burden on competition.

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

No written comments were solicited or received with respect to 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

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<sup>46</sup> 15 U.S.C. 78f(b).

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



- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2004-05 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-2004-05. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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-2004-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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 Exchange Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>48</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>49</sup> and will promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.<sup>50</sup>

The Commission believes that the new VIPER Shares will provide investors with an additional investment choice. Specifically, the proposal to list and trade the proposed Vanguard Funds will provide investors with a convenient and less expensive means of participating in the foreign securities markets. The Commission believes that 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

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<sup>48</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> Pursuant to Section 6(b)(5) of the Exchange 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.

single securities at negotiated prices throughout the business day that generally track the price and yield performance of the respective underlying MSCI Indices.<sup>51</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 Exchange Act.<sup>52</sup> The VIPER Shares to be issued by the Vanguard International Equity 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 Exchange Act.<sup>53</sup> The stocks included in the Target Indices are among the stocks with the highest liquidity and market capitalization in their respective countries. 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

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<sup>51</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 56869 (November 13, 2001) (File No. SR-Amex-2001-45).

<sup>52</sup> 17 CFR 240.19b-4.

<sup>53</sup> 15 U.S.C. 78s(b)(2).

individual VIPER Shares, approximately \$50 to \$100, 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 Share Funds continuously throughout the business day in secondary market transactions at negotiated prices.<sup>54</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; and (3) reduce transaction costs for trading a portfolio of securities.

The Commission believes that each of the proposed Funds are 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 Europe Index;<sup>55</sup> (2) the component securities comprising

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<sup>54</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>55</sup> The MSCI Europe Index comprises 16 of the 50 countries for which MSCI has indices. The MSCI Europe Index is a free float-adjusted market capitalization weighted index that is designed to measure developed market equity performance in Europe. As of December 2003, the Index contained 539 components with a total market capitalization exceeding \$5 trillion.

the MSCI Pacific Index;<sup>56</sup> and (3) the Select Emerging Markets Index.<sup>57</sup> 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 representative portfolio sampling strategy to attempt to track its Underlying Index. Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error. It is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%.

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<sup>56</sup> The MSCI Pacific Index is comprised of five of the 50 countries for which MSCI has indices. The MSCI Pacific Index is a free float-adjusted market capitalization weighted index that is designed to measure equity market performance in the Pacific region. As of December 31, 2003, the Index contained 466 components with a total market capitalization exceeding \$2 trillion.

<sup>57</sup> The Select Emerging Markets Index is comprised of securities included in the following standard MSCI Country Indices: Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand and Turkey. The weight of each country in the index is reviewed on a monthly basis. After the calculation of the last business day of the month, MSCI reviews the weight of each country in the index. If the weight of a country is above 20%, the initial weight of this country for the calculation of the first business day of the month is set to 20% and the excess amount is distributed among the other constituents based on their respective weights. The weight of the countries in the index will then fluctuate according to market movements until the end of the month when the monthly monitoring is performed once again. As of December 31, 2003, the Index contained 533 components with a total market capitalization exceeding \$740 billion.

The Advisers to each Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, repurchase agreements, options, swaps and currency exchange contracts; however, these instruments will not constitute more than 10% of the Funds' assets.<sup>58</sup> The Exchange represents, however, that none of the Funds will use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes. Also, the Exchange represents that each Fund does not intend to concentrate in any particular industry except to the extent that its Underlying Index concentrates in the stocks of a particular industry or industries. As described above the MSCI Indices are regional indices that MSCI may adjust based on annual full country indeed reviews, quarterly index reviews, and ongoing event-related changes. Changes to the indices are made public via print and electronic media, and, in particular, through press releases on the MSCI Web site. MSCI aims to target a free float-adjusted market representation of 85% within each country's industry group and uses GICS industry classifications.

The market capitalization and liquidity of the Fund components is such that an adequate level of liquidity exists to allow for the maintenance of fair and orderly markets. Also the Fund components will not be highly concentrated such that the Funds become surrogates for trading unregistered foreign securities on the Exchange.

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<sup>58</sup> Each of these Funds will invest not more than 10% of fund assets in ADRs that are not included in component securities of their Target Index. To the extent that these Funds invest more than 10% of their assets in ADRs, these ADRs shall be listed on a national securities exchange or quoted on the Nasdaq NMS. Because the Target Indices do not currently contain ADRs, the Commission would consider a significant investment by the Funds in ADRs to be a material change necessitating review of these listing standards.

While the Commission believes that these requirements should help to reduce concerns that the Funds could become a surrogate for trading in a single or a few unregistered stocks, in the event that a Fund were to become such a surrogate, or if the Funds' characteristics changed significantly from the characteristics described herein,<sup>59</sup> the Funds would not be in compliance with the listing and trading standards approved herein, and the Commission would expect the Amex to file a proposed rule change pursuant to Rule 19b-4 of the Exchange Act if a Fund's Target Index. 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 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

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<sup>59</sup> For example, if the Fund substitutes a different index in the Target Index that the Fund currently tracks, the Exchange has committed to file a Form 19b-4.

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. The circular will also remind members of their suitability obligations.<sup>60</sup> 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 and that local restrictions may cause certain funds to effect creations and redemptions for cash.<sup>61</sup>

#### C. Dissemination of Fund Information

With respect to pricing, the Exchange will disseminate the recent NAV for each Fund on the Exchange Web site [amextrader.com](http://amextrader.com).<sup>62</sup> As indicated above, each Fund's NAV will be calculated once daily as of 4:00 p.m.

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<sup>60</sup> Amex Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, order or account accepted. Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Brian Trackman, Attorney, Division, Commission, on May 26, 2004.

<sup>61</sup> See Footnote 26, *supra*. The information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a-1; Rule 10b-10; Rule 14e-5; Rule 10b-17; Rule 11d1-2; Rules 15c1-5 and 15c1-6; and Rule 101 and 102 of Regulation M under the Act.

<sup>62</sup> The Exchange will post additional information about each Fund, including dividend amounts to be paid as well. Local restrictions on transfers of securities currently in Greece, Taiwan, Korea, India, and Brazil may cause the Fund to do cash creations and redemptions of Creation Units to track efficiently the Target Index. To the extent that the Fund substitutes a new index that contain such restrictions, the Commission notes that the Exchange has committed to file a Form 19b-4.



The Exchange states that the value of each Fund's Target Index is now and will be disseminated intra-day at regular intervals (every 60 seconds) as individual Component Securities change in price. These intra-day values based on the sale reporting in the foreign market of the Target Indices will be disseminated real time throughout the foreign market trading day by organizations authorized by MSCI, including, by subscription, from quote vendors such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters, and Telekurs. In addition, these organizations will disseminate values for each Target Index once each trading day, based on closing prices in the relevant exchange market.

Amex will also disseminate by means of Consolidated Tape Association ("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, share closing price, estimated cash amount and total cash amount per Creation Unit, and final dividend amounts to be paid for each Fund.<sup>63</sup> The Commission believes that dissemination of this information will facilitate

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<sup>63</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 in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

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,<sup>64</sup> 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; and other quantitative information such as daily trading volume.<sup>65</sup>

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

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<sup>64</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 4:00 pm), but the market for VIPER Shares and other exchange traded funds 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>65</sup> See supra text accompanying notes 22-23.

#### 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,<sup>66</sup> responsibilities of the specialist, account opening and customer suitability requirements,<sup>67</sup> 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>68</sup> As the Commission has noted previously,<sup>69</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

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<sup>66</sup> In addition to other factors that may be relevant, the Exchange may 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. In addition, trading in VIPER Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

<sup>67</sup> Prior to commencement of trading, the Exchange states that it will 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).

<sup>68</sup> See Amex Rule 1002A.

<sup>69</sup> See, e.g., Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (File No. SR-Amex-2001-45); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (File No. SR-Amex-95-43).

safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, the Amex expects to require that a minimum of two Creation Units (100,000 VIPER Shares) for each Fund to be outstanding 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>70</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. In addition, the Exchange, Vanguard,<sup>71</sup> and MSCI have a general policy prohibiting the distribution of material, non-public information by its employees. Further, based on MSCI's representation, the Commission finds that an adequate functional barrier exists between the trading desk of the broker-dealer and the research persons responsible for maintaining the Indices.

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<sup>70</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>71</sup> Vanguard has represented that sufficient information barriers exist between the Advisor and other affiliated Vanguard entities to prevent misuse of non-public information.

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>72</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that the proposal 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 based on foreign indices.<sup>73</sup> The Commission does not believe that the proposed rule change, as amended, 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>74</sup> to approve the proposal on an accelerated basis.

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<sup>72</sup> 15 U.S.C. 78s(b)(2).

<sup>73</sup> See, e.g., Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (File No. SR-Amex-2001-45); 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (File No. SR-Amex-95-43).

<sup>74</sup> 15 U.S.C. 78s(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR-Amex-2004-05), is hereby approved on an accelerated basis.<sup>75</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>76</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>75</sup> 15 U.S.C. 78s(b)(2).

<sup>76</sup> 17 CFR 200.30-3(a)(12).