

continue to meet the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The NRC staff examined the licensee's rationale to support the exemption request, and accepts the licensee's determination that an exemption would be required to approve the use of ASME Code Case N-640. The staff has also concluded that the use of ASME Code Case N-640 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concluded that the application of the technical provisions of ASME Code Case N-640 provided sufficient margin in the development of RPV P-T limit curves such that the underlying purpose of the regulations contained in Appendix G to 10 CFR part 50 continued to be met. Therefore, the specific conditions required by the regulations; *i.e.*, the use of all provisions in Appendix G to Section XI of the ASME Code, were not necessary. The NRC staff has, therefore, concluded that the exemption requested by Entergy is justified based on the special circumstances of 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50 and Appendix G to Section XI of the ASME Code, the staff concluded that the application of ASME Code Case N-640 would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. The staff concludes that the exemption requested by Entergy is appropriate under the special circumstances of 10 CFR 50.12(a)(2)(ii), and the methodology of ASME Code Case N-640 may be used to revise the P-T limits for the IP3 RPV. Pursuant to 10 CFR 50.12(a)(1), the granting of this exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the staff considers granting an exemption to 10 CFR 50.60(a) and Appendix G to 10 CFR part 50 to allow use of ASME Code Case N-640 as part

of the basis for generating the P-T limit curves for IP3 is appropriate.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy an exemption from the requirements of 10 CFR 50.60 and Appendix G to 10 CFR part 50, to allow for the application of ASME Code Case N-640 in establishing TS requirements for the RPV P-T limits for IP3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 67490).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission,  
**Ledyard B. Marsh, Director,**  
*Division of Licensing Project Management,*  
*Office of Nuclear Reactor Regulation.*  
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**BILLING CODE 7590-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26282; 812-12912]

#### The Vanguard Group, Inc., et al.; Notice of Application

December 2, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act to the extent necessary to amend a prior order.<sup>1</sup>

*Summary of Application:* Applicants request an order to amend the Original VIPERs Order. The requested order would permit additional registered investment companies, and their series, to rely on the Original VIPERs Order, and modify certain terms and

<sup>1</sup> Vanguard Index Funds, *et al.*, Investment Company Act Rel. Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order) ("Original VIPERs Order").

conditions of the Original VIPERs Order.

*Applicants:* The Vanguard Group, Inc. ("VGI"), Vanguard Index Funds ("Index Trust"), Vanguard Specialized Funds ("Specialized Trust"), Vanguard World Fund ("World Trust"), and Vanguard Marketing Corporation ("VMC").

*Filing Dates:* The application was filed on December 13, 2002, and amended on October 30, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, P.O. Box 2600, Valley Forge, PA 19482.

**FOR FURTHER INFORMATION CONTACT:** Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone 202-942-8090).

*Applicants' Representations:*

1. Index Trust, VGI and VMC (together, "Original Applicants") obtained the Original VIPERs Order to permit the nine series of Index Trust ("Original Applicant Funds") to offer an exchange-traded class of shares ("VIPER Shares"). The Original VIPERs Order granted exemptions under section 6(c) of the Act from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c-1 under the Act and under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and (2) of the Act. The Original Applicants, Specialized Trust, and World Trust (together,

“Applicants”) seek to amend the Original VIPERs Order to permit additional entities to rely on the relief and to modify certain terms and conditions of the Original VIPERs Order.

2. Index Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of nine series. Specialized Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of five series. World Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of three series.

3. Applicants seek to permit an additional series of Index Trust,<sup>2</sup> a series of Specialized Trust,<sup>3</sup> certain series of World Trust<sup>4</sup> (together with the Original Applicant Funds, “Current Funds”), and other registered open-end management investment companies, and their series, that are advised by VGI or an entity controlled by or under common control with VGI (“Future Funds,” and together with the Current Funds, “Funds”) to rely on the Original VIPERs Order, as amended by the requested order. All Funds will comply with the terms and conditions of the Original VIPERs Order, as amended by the requested order. Because the amended order would extend relief to Future Funds, Applicants seek to amend condition 1 of the Original VIPERs Order as stated below.

4. Each Fund tracks, or will track, a domestic equity securities index (“Target Index”). The application for the Original VIPERs Order (“Original VIPERs Application”) specified the nine Target Indices tracked by the Original Applicant Funds. Applicants note that the Target Indices for six of the Original Applicant Funds have since been

<sup>2</sup> The new series of Index Trust will track the MSCI U.S. Prime Market 750 Index.

<sup>3</sup> Only one of the five existing series of Specialized Trust, which tracks the Morgan Stanley REIT Index, may offer a class of VIPER Shares.

<sup>4</sup> Only one of the three existing series of World Trust, which tracks the Calvert Social Index, currently intends to offer a class of VIPER Shares. Applicants state that future series of World Trust that will offer a class of VIPER Shares will track the following Target Indices: MSCI U.S. Investable Market Consumer Discretionary Index; MSCI U.S. Investable Market Consumer Staples Index; MSCI U.S. Investable Market Energy Index; MSCI U.S. Investable Market Financials Index; MSCI U.S. Investable Market Health Care Index; MSCI U.S. Investable Market Industrials Index; MSCI U.S. Investable Market Information Technology Index; MSCI U.S. Investable Market Materials Index; MSCI U.S. Investable Market Telecommunication Services Index; MSCI U.S. Investable Market Utilities Index.

replaced.<sup>5</sup> None of those six Original Applicant Funds currently offers a class of VIPER Shares. Consistent with the relief requested for Future Funds, Applicants seek relief to permit any Fund to change its Target Index in a manner that is consistent with the Fund’s policies and complies with the terms and conditions of the Original VIPERs Order, as amended by the requested order, including condition 1 below. Any new Target Index would track the same market or market segment as the Fund’s existing Target Index. No entity that creates, compiles, sponsors or maintains a Target Index is, or will be, an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Fund, VGI, VMC, or any promoter or subadviser of the Fund.

5. Conditions 8 and 9 of the Original VIPERs Order require the Original Applicants to include on their website and in the Original Applicant Funds’ prospectuses and annual reports, among other things, a comparison of the previous day’s net asset value (“NAV”) and closing market price of its VIPER Shares. Applicants state that because the Funds’ NAV is calculated at 4 p.m., which is the close of trading on the New York Stock Exchange, and the market for VIPER Shares does not close until 4 p.m., the closing market price of a Fund’s VIPER Shares is not measured at the same time as its NAV is calculated. Applicants state that the difference in timing could lead to discrepancies between a Fund’s NAV and the closing market price of its VIPER Shares, thereby giving investors an inaccurate picture of the correlation between the two figures. Applicants assert that comparing a Fund’s NAV to the midpoint of the bid-asked price of its VIPER Shares at the time NAV is calculated (“Bid-Asked Price”) would be more appropriate. Applicants accordingly seek to amend conditions 8 and 9 as stated below.

6. In the Original VIPERs Application, the Original Applicants represented that VMC would not market a Fund’s VIPER Shares and its retail and institutional shares (“Conventional Shares”) in the same advertisement or marketing material. Applicants contend that publishing materials that describe a Fund’s VIPER Shares and its

<sup>5</sup> Specifically, Applicants replaced the S&P MidCap 400 Index, Russell 2000 Index, S&P 500/BARRA Value Index, S&P Small Cap 600/BARRA Value Index, S&P 500/BARRA Growth Index and S&P Small Cap 600/BARRA Growth Index with, respectively, the MSCI U.S. Mid Cap 450 Index, MSCI U.S. Small Cap 1750 Index, MSCI U.S. Prime Market Value Index, MSCI U.S. Small Cap Value Index, MSCI U.S. Prime Market Growth Index and MSCI U.S. Small Cap Growth Index.

Conventional Shares may help investors to determine which class of shares is best for them, so long as the materials clearly outline the differences between the share classes. Accordingly, Applicants propose to modify the representation made in the Original VIPERs Application to permit VMC to market a Fund’s VIPER Shares and Conventional Shares in the same advertisement or marketing material with appropriate disclosures explaining the relevant features of each class of shares and highlighting the differences between the classes.

7. Under the Original VIPERs Order, the Original Applicants were granted relief under sections 6(c) and 17(b) from sections 17(a)(1) and (2) to permit persons that are affiliated persons of a Fund, as defined in section 2(a)(3)(A) of the Act, by virtue of owning 5% or more of a Fund’s outstanding voting securities (“5% Affiliates”), to purchase and redeem VIPER Shares in large blocks of shares (“Creation Units”) through in-kind transactions. Applicants seek an expansion of that relief to permit persons that are affiliated persons, as defined by section 2(a)(3)(C) of the Act, by virtue of owning more than 25% of a Fund’s voting securities (“25% Affiliates”), to purchase and redeem Creation Units in-kind with the Funds. The requested relief would also allow affiliated persons of 5% and 25% Affiliates (that are not otherwise affiliated persons of a Fund) to purchase and redeem Creation Units in-kind with the Funds. Applicants state that securities tendered by investors through in-kind transactions with a Fund will be valued in the same manner as they are valued for purposes of calculating the Fund’s NAV.

8. Applicants also propose to modify certain other terms of the Original VIPERs Order that they believe to be non-material. First, Applicants indicate that each of the Funds may offer up to three classes of Conventional Shares even though the Original VIPERs Application stated that the Original Applicant Funds only offered one or two classes of Conventional Shares. Second, whereas the Original VIPERs Application specified that each Original Applicant Fund would use a replication indexing method to track its Target Index, Applicants propose to give the Funds the flexibility to track their Target Indices by using a replication or representative sampling strategy.<sup>6</sup>

<sup>6</sup> Applicants state that each Fund will invest at least 90% of its assets in the component securities of its Target Index and have a tracking error with respect to its Target Index of five percentage points or less.

Third, Applicants seek the flexibility to list each Fund's VIPER Shares on any "national securities exchange," as defined in section 2(a)(26) of the Act ("Exchange"), and not exclusively on the American Stock Exchange, as stated in the Original VIPERs Application. Finally, Applicants seek to clarify two statements in the Original VIPERs Application in which the Original Applicants stated that (a) the product description for the Original Applicant Funds' VIPER Shares ("Product Description") would not contain information that was not also in the Fund's prospectus for VIPER Shares ("VIPER Shares Prospectus") and (b) the Product Description would include a website address where investors could obtain information on the composition and compilation methodology of the Fund's Target Index. Applicants state that because Form N-1A does not require them to include information about a Target Index's website, the Funds' VIPER Shares Prospectuses do not include such information. Applicants state that such information is, however, included in the Funds' Product Descriptions. Applicants state, as a clarification, that other than information about a Target Index's website, a Fund's Product Description does not contain information that is not also in its VIPER Shares Prospectus.

9. For the reasons set forth above and for the reasons set forth in the Original VIPERs Application, Applicants contend that the standards of sections 6(c) and 17(b) are satisfied.

#### *Applicants' Conditions:*

Applicants agree that any order granting the requested relief will be subject to the conditions of the Original VIPERs Order, except that conditions 1, 8 and 9 will be amended as follows:

1. Applicants will not register the VIPER Shares of a Future Fund by means of filing a post-effective amendment to a Future Fund's registration statement or by any other means, unless (a) Applicants have requested and received with respect to such VIPER Shares either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) such VIPER Shares will be listed on an Exchange without the need for filing pursuant to rule 19b-4 under the Securities Exchange Act of 1934.

8. Applicants' Web site, which is and will be publicly accessible at no charge, will contain the following information, on a per VIPER Share basis, for each Fund: (a) The prior business day's closing NAV and the Bid-Asked Price, and a calculation of the premium or

discount of the Bid-Asked Price in relation to the closing NAV; and (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. In addition, the Product Description for each Fund will state that Applicants' website has information about the premiums and discounts at which the Fund's VIPER Shares have traded.

9. The VIPER Shares Prospectus and annual report will include, for each Fund: (a) The information listed in condition 8(b), (i) in the case of the VIPER Shares Prospectus, for the most recently completed calendar year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for no less than the immediately preceding five fiscal years (or the life of the Fund, if shorter); and (b) the cumulative total return and the average annual total return for one, five and ten year periods (or life of the Fund, if shorter) of (i) a VIPER Share based on NAV and the Bid-Asked Price and (ii) the Fund's Target Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-30351 Filed 12-5-03; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48863; File No. SR-Amex-2003-65]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating To Enhanced Corporate Governance Requirements Applicable to Listed Companies**

December 1, 2003.

#### **I. Introduction**

On June 23, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and

Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend sections 101, 110, 120, 121, 401, 402, 610 and 1009 of the Amex Company Guide, and adopt new sections 801 through 808 of the Amex Company Guide to enhance the corporate governance requirements applicable to listed companies. The proposed rule change, among other things, would require each issuer listed on the Amex to comply with the standards for audit committees mandated by section 10A(m) of the Act<sup>3</sup> and Rule 10A-3 thereunder.<sup>4</sup> The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On September 9, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> On October 31, 2003, the Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register**.<sup>6</sup> The Commission received one comment letter on the proposal.<sup>7</sup> On December 1, 2003, the Exchange filed Amendment No. 2 to the proposal.<sup>8</sup> This Order approves the proposed rule change, provides notice of Amendment No. 2, and approves Amendment No. 2 on an accelerated basis.

#### **II. Description of Amended Proposal**

The proposed rule change, as amended, consists of comprehensive enhancements to the corporate governance requirements applicable to companies listed on the Amex. Some of these changes respond to Rule 10A-3, which requires each national securities

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

<sup>3</sup> 15 U.S.C. 78j-1(m).

<sup>4</sup> 17 CFR 240.10A-3.

<sup>5</sup> See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 ("Amendment No. 1").

<sup>6</sup> See Securities Exchange Act Release No. 48706 (October 27, 2003), 68 FR 62109 (October 31, 2003) ("Notice").

<sup>7</sup> Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated November 21, 2003 ("ICI Letter"). The ICI Letter supported the Exchange's proposal and, in particular, noted that provisions of the Amex proposal are analogous to rules of the New York Stock Exchange and The Nasdaq Stock Market, which were recently approved by the Commission. See *infra* note and accompanying text.

<sup>8</sup> See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 26, 2003 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces the original proposal and Amendment No. 1 in their entirety. The most significant changes to the proposed rule change that are contained in Amendment No. 2 are summarized in section II. below.

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