

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54625; File No. SR-Amex-2006-95)

October 18, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto Relating to the Vanguard Emerging Markets Stock Index Fund

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 29, 2006, 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 Amex. On October 17, 2006, the Amex filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to substitute the index tracked by a class of exchange-traded securities (formerly referred to as Vanguard Emerging Market VIPERs, the “ETF Shares”) issued by the Vanguard Emerging Markets Stock Index Fund (“Fund”).<sup>3</sup> The complete filing is available on the Amex’s Web site, <http://www.amex.com>, at the Amex’s Office of the Secretary, and at the Commission’s Public Reference Room.

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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> In addition to the ETF Shares, the Fund offers a class of shares that are not exchange-traded, which are referred to as “Investor Shares.”

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

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

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

1. Purpose

On August 12, 2004, the Commission approved the Exchange's proposal to list and trade the ETF Shares under Amex Rules 1000A et seq.<sup>4</sup> Amex Rules 1000A et seq. provide standards for the listing and trading of Index Fund Shares<sup>5</sup> issued by registered open-end investment companies, such as the Fund. In approving the ETF Shares for Exchange trading, the Exchange states that the Commission thoroughly considered the structure of the Fund, the usefulness of the ETF Shares to investors and to the markets, and the Amex rules that govern their trading.<sup>6</sup>

The ETF Shares originally sought to track, as closely as possible, the performance of the Select Emerging Markets Index ("Select Index"), a regional index compiled by Morgan Stanley Capital International Inc. (MSCI®)<sup>7</sup> ("MSCI"). Pursuant to the Fund's prospectus for the ETF

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<sup>4</sup> See Securities Exchange Act Release No. 50189, 69 FR 51723 (August 20, 2004) (SR-Amex-2004-05) ("Original Approval Order").

<sup>5</sup> Amex Rule 1000A defines "Index Fund Shares" 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.

<sup>6</sup> See *supra*, note 4.

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

Shares and the Original Approval Order, the Exchange states that the Fund has the right to substitute a different index for the Select Index, provided, that the reason for the substitution is determined in good faith, the substitute index measures the same general market as the Select Index, and investors are notified of the index substitution.<sup>8</sup> On August 23, 2006, The Vanguard Group, Inc., as investment adviser to the Fund (“Vanguard”), announced that the Fund had substituted the Select Index with the MSCI Emerging Markets Index (formerly known as the MSCI Emerging Markets (Free) Index) (“Emerging Markets Index”).<sup>9</sup> In accordance with the Original Approval Order, the purpose of this filing is to obtain the Commission’s approval for the listing and trading of the ETF Shares on the Exchange now that the Fund is based on the Emerging Markets Index.<sup>10</sup>

The Select Index<sup>11</sup> is modeled on the more expansive Emerging Markets Index with certain adjustments designed to reduce risk, including the exclusion of countries because of concerns about illiquidity, repatriation of capital, or entry barriers to those markets. As of June 13, 2006, Colombia, Egypt, Jordan, Malaysia, Morocco, Pakistan, Russia, Sri Lanka, and Venezuela were excluded from the Select Index due to the above concerns. As specific emerging markets such as Russia and Malaysia have become more liquid and accessible, Vanguard believes that additional emerging markets countries now warrant inclusion in the Fund. The Exchange states that the addition of these emerging markets to the Select Index would result in a benchmark that is effectively the same as the Emerging Markets Index and, as a

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<sup>8</sup> See supra, note 4.

<sup>9</sup> See <http://onlinepressroom.net/vanguard/>.

<sup>10</sup> See supra, note 4.

<sup>11</sup> The Select Index includes approximately 668 common stocks of companies located in Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand, and Turkey.

result, the Exchange proposes that the substitution of the Emerging Markets Index for the Select Index be approved.

The Emerging Markets Index provides exposure to 25 emerging market countries, whereas the Select Index only provides exposure to 18 emerging market countries. As of August 24, 2006, the Emerging Markets Index was comprised of 848 constituents with the top five constituents representing the following weights: 4.07%, 2.84%, 2.1%, 1.84% and 1.77%. As of June 30, 2006, the average market capitalization of the constituents was approximately \$2.18 billion. Countries represented in the Emerging Markets Index include Argentina, Brazil, Chile, China, Colombia, the Czech Republic, Egypt, Hungary, India, Indonesia, Israel, Jordan, Malaysia, Mexico, Morocco, Pakistan, Peru, the Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey. The Exchange states that MSCI periodically adjusts the list of included countries to keep pace with the evolution in world markets (such adjustments are made on a forward-looking basis, so past performance of the Emerging Markets Index always reflects actual country representation during the relevant period).

The Exchange states that MSCI exclusively administers the Emerging Markets Index. Similar to the Select Index, the Emerging Markets Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Index. The Emerging Markets Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in the Emerging Markets Index. The Emerging Markets Index is rebalanced quarterly, calculated in U.S. dollars on a real time basis, and disseminated every 60 seconds during market trading hours. The Commission

has previously approved the listing and trading on the Amex of an exchange-traded fund based on the Emerging Markets Index.<sup>12</sup>

The Fund's investment objectives, policies and methodology, MSCI's index maintenance procedures and standards, and the dissemination of index information as described in the Original Approval Order will not be affected by the index substitution. For example, the Fund will continue to employ a "representative sampling" methodology to track the Emerging Markets Index, which means that the Fund invests in a representative sample of securities in the Emerging Markets Index that have a similar investment profile as the Emerging Markets Index.<sup>13</sup> The Exchange believes that the Fund's investment policies will continue to prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the ETF Shares could become a surrogate for trading in unregistered securities. The Exchange also expects that the expense ratios of the ETF Shares will remain at 0.30%, and the Fund will not generate any capital gains as a result of the substitution.

The Exchange has reviewed the Emerging Markets Index and believes that sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Emerging Markets Index. Specifically, the Exchange represents that it will rely on existing surveillance procedures governing Index Fund Shares. In addition, the Exchange, Vanguard, and MSCI have a general policy prohibiting the distribution of

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<sup>12</sup> See Securities Exchange Act Release No. 44900 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR-Amex-2001-45), as corrected by Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001).

<sup>13</sup> As of August 24, 2006, the Fund was comprised of 851 constituents. The aggregate percentage weighting of the top 5, 10, and 20 constituents in the Fund were 11.07%, 18.17%, and 28.09%, respectively.

material, non-public information by their employees. Due to MSCI's role as a broker-dealer that maintains the Emerging Markets Index, MSCI has represented that a functional separation, such as a firewall, exists between its trading desk and the research persons responsible for maintaining the Emerging Markets Index.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

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

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

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

## III. Solicitation of Comments

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

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<sup>14</sup> 15 U.S.C. 78f(b).

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-95 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2006-95 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.<sup>16</sup> In particular, the Commission finds that the Amex's proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange has requested that the Commission approve the proposal on an accelerated basis. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>17</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). Furthermore, in the Original Approval Order, the Commission approved a similar product based on a substantially similar index covering the same general market. The Commission has also previously approved the listing and trading on the Amex of an exchange-traded fund based on the Emerging Markets Index.<sup>18</sup> The Exchange represents that the Fund's investment objectives, policies and methodology, MSCI's index maintenance procedures and standards, and the dissemination of index and other information as described in the Original Approval Order will not be affected by the index substitution. The Exchange also represents that

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<sup>16</sup> 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> See supra, note 12.



its representations in the Original Approval Order with regard to the adequacy of its surveillance procedures and trading rules applicable to this product continue to be in effect. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>19</sup> to approve the proposed rule change, as amended, on an accelerated basis.<sup>20</sup>

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change, as amended (SR-Amex-2006-95), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

Nancy M. Morris  
Secretary

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<sup>19</sup> 15 U.S.C. 78s(b)(5).

<sup>20</sup> The Commission's approval of the Exchange's listing and trading of the ETF Shares based on the Emerging Markets Index is not retroactive in effect.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).