

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54628; File No. SR-NYSEArca-2006-74)

October 19, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change 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 October 10, 2006, NYSE Arca, Inc. (“Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), 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 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 is proposing 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>

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on

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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.”

the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On August 8, 2005, the Commission approved the Exchange's filing proposing to trade the ETF Shares pursuant to unlisted trading privileges ("UTP").<sup>4</sup> The Commission had previously approved the original listing and trading of the ETF Shares by the American Stock Exchange LLC ("Amex").<sup>5</sup> The Exchange is filing this proposal to obtain the Commission's approval of the substitution of the index tracked by the ETF Shares issued by the Fund. The Amex has recently filed a similar proposal.<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 (MSCI®)<sup>7</sup> ("MSCI"). Pursuant to the Fund's prospectus for the ETF Shares and the Amex Approval Order, 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

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<sup>4</sup> See Securities Exchange Act Release No. 34-52221 (August 8, 2005), 70 FR 48222 (August 16, 2005) (SR-PCX-2005-74) (the "Approval Order"). The Exchange expanded the hours during which the ETF Shares are eligible to trade on the NYSE Arca Marketplace (f/k/a the Archipelago Exchange) in December 2005. See Securities Exchange Act Release No. 34-52927 (December 8, 2005), 70 FR 74397 (December 15, 2005) (SR-PCX-2005-128).

<sup>5</sup> See Securities Exchange Act Release No. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (SR-Amex-2005-04) (the "Amex Approval Order").

<sup>6</sup> See SR-Amex-2006-95 (September 29, 2006) (the "Amex Proposal").

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

index substitution. The Vanguard Group, Inc., as investment adviser to the Fund (“Vanguard”), recently decided to substitute the Select Index with the Vanguard<sup>®</sup> Emerging Markets Index (“Emerging Markets Index”) and issued a press release announcing such substitution.<sup>8</sup>

According to the Amex Proposal, the Select Index<sup>9</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 noted concerns. Because emerging markets, such as Russia and Malaysia, have become more liquid and accessible, Vanguard believes that additional emerging market countries now warrant inclusion in the Fund. 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. As a result, it is proposed that the Emerging Markets Index be substituted for the Select Index.

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%. 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. MSCI periodically adjusts the list of included countries to keep

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<sup>8</sup> See <http://onlinepressroom.net/vanguard/>.

<sup>9</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.

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).

MSCI ([www.msci.com](http://www.msci.com)) administers the Emerging Markets Index exclusively. 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 Fund's investment objectives, policies and methodology, MSCI's index maintenance procedures and standards and the dissemination of Index information as described in the Approval Order and the Amex 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 Index that have a similar investment profile as the Index.<sup>10</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. It is also expected 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.

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

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 Index. Specifically, the Exchange represents that it will rely on existing surveillance procedures governing derivative products trading on the Exchange. In addition, the Exchange, Vanguard, and MSCI have a general policy prohibiting the distribution of material, non-public information by their employees. Due to MSCI's role as a broker-dealer that maintains the 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 Index.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>12</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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In addition, the proposed rule change is consistent with Rule 12f-5<sup>13</sup> under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

### 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.

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 240.12f-5.

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

No written comments on the proposed rule change were solicited or received.

III. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2006-74 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-74. 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 offices 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-NYSEArca-2006-74 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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires that an exchange have rules designed, among other things, 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 Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the Federal Register. As noted above, the Commission previously found that the trading of these ETF Shares on the Exchange is consistent with the Act.<sup>16</sup> Substituting the Emerging Markets Index for the Select Index does not change the Commission's analysis, and the Commission believes accelerating approval of this proposed rule change is appropriate.

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<sup>14</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>16</sup> See Approval Order, supra note 4.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2006-74), is hereby approved on an accelerated basis.<sup>17</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris  
Secretary

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).