

Shares ("Conversion Privilege").¹² A Fund would not offer holders of VIPER Shares the opportunity to exchange some or all of their shares for Conventional Shares.¹³ Applicants state that the Conversion Privilege would facilitate the movement of investors, who currently hold Conventional Shares but desire intraday trading flexibility, out of Conventional Shares and into VIPER Shares in an expeditious and tax efficient manner.¹⁴ Around the time that a Fund's VIPER Shares begin trading, VGI may send to existing holders of the Fund's Conventional Shares a notice describing the Conversion Privilege and explaining the process by which an investor may exchange his or her Conventional Shares for VIPER Shares. The notice will comply with section 10(b) of the Securities Act and rule 482 under the Securities Act. Comparable information about a Fund's Conversion Privilege also will be contained in a separate section of the Conventional Prospectus. To effect an exchange through the Conversion Privilege, the investor must have a brokerage account and must contact his or her broker to initiate the exchange. The investor will receive a VIPER Prospectus in connection with the exchange transaction, as required by the Securities Act. Subsequent to the exchange, the investor will have to contact his or her broker for account information relating to the VIPER Share holdings.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for exemptions from sections 2(a)(32), 18(f)(1), 18(i),

¹² Investors who own Conventional Shares through an employer-sponsored retirement plan can sell those shares and use the proceeds to buy VIPER Shares without tax consequences. It is therefore unnecessary to offer such investors the Conversion Privilege.

¹³ The terms of an exchange made pursuant to the Conversion Privilege will comply with section 11(a) of the Act and rule 11a-3 under the Act. The Conversion Privilege would offer a "one way" exchange only. Therefore, a holder of a Fund's VIPER Shares who wishes to shift to the Fund's Conventional Shares would have to sell the VIPER Shares in the secondary market and use the sale proceeds (less any brokerage commission) to purchase Conventional Shares from the Fund. The sale of VIPER Shares would be a taxable transaction.

¹⁴ Applicants note that an exchange of Conventional Shares for VIPER Shares of the same Fund generally would not be a taxable transaction. Applicants note that because DTC's systems are unable to handle fractional shares, exchange requests will be rounded down to the nearest whole VIPER Share. If an investor wishes to exchange all of his or her Conventional Shares, however, any fractional VIPER Share that results from the exchange will be liquidated and the cash will be sent to the investor's broker for the benefit of the investor.

22(d), 22(e) 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 exemptions from sections 17(a)(1) and (2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 2(a)(32) of the Act

3. Section 2(a)(32) of the Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Applicants request an order under section 6(c) to permit VIPER Shares to be redeemed in Creation Units only. Applicants note that because of the arbitrage possibilities created by the redeemability of Creation Units, it is expected that the market price of a VIPER Share will not vary much from its NAV.

Section 18(f)(1) and 18(i) of the Act

4. Section 18(f)(1) of the Act, in relevant part, prohibits a registered open-end company from issuing any class of "senior security," which is defined in section 18(g) to include any stock of a class having a priority over any other class as to the distribution of assets or payment of dividends. Section 18(i) of the Act requires that every share of stock issued by a registered management company be voting stock, with the same voting rights as every other outstanding voting stock. Rule 18f-3 permits an open-end fund to issue multiple classes of shares representing interests in the same portfolio without seeking exemptive relief from section 18(f)(1) and 18(i), provided that the fund complies with certain requirements. Applicants state that they will comply in all respects with rule 18f-3, except the requirements that (a) each class have the same rights and obligations as each other class (other than the differences allowed by the rule), and (b) if a class has a different distribution arrangement, the class must pay all of the expenses of the arrangement. Because applicants, therefore, may not rely on rule 18f-3, they request an exemption under

section 6(c) from sections 18(f)(1) and 18(i).

5. Applicants state that there are three ways in which the Conventional Shares and VIPER Shares of each Fund will have different rights: (a) Conventional Shares will be individually redeemable, while VIPER Shares will be redeemable in Creation Units only; (b) VIPER Shares will be traded on an Exchange, while Conventional Shares will not; and (c) Conventional Shares may be exchanged for VIPER Shares through the Conversion Privilege, while VIPER Shares may not be exchanged for Conventional Shares. Applicants assert that these different rights are necessary if their proposal is to have the desired benefits. Applicants note that a Fund's VIPER Shares will be tradable on an Exchange and redeemable only in large aggregations, and that its Conventional Shares will be exchangeable for VIPER Shares in order to encourage short-term investors to conduct their trading activities in a way that does not disrupt the management of the Fund's portfolio. Applicants assert that there is no reason to make Conventional Shares tradable and that it would be counterproductive to facilitate the ability of market timers to disrupt a Fund by making VIPER Shares individually redeemable or exchangeable for Conventional Shares.

6. Applicants assert that the different rights do not implicate the concerns underlying section 18 of the Act, including conflicts of interest and investor confusion. With respect to the potential for investor confusion, applicants will take a variety of steps to ensure that investors understand the key differences between Conventional Shares and VIPER Shares. Applicants state that the VIPER Shares will not be marketed as a mutual fund investment. Marketing materials may refer to VIPER Shares as an interest in an investment company or fund, but will not make reference to an "open-end fund" or "mutual fund," except to compare or contrast the VIPER Shares with the shares of a conventional open-end management investment company. Any marketing or advertising materials addressed primarily to prospective investors will emphasize that (a) VIPER Shares are not redeemable from a Fund other than in Creation Units, (b) VIPER Shares, other than in Creation Units, may be sold only through a broker, and the shareholder may have to pay brokerage commissions in connection with the sale, and (c) a selling shareholder may receive less than NAV in connection with the sale of VIPER Shares. The same type of disclosure will be provided in the Conventional Prospectus, VIPER Prospectus, Product