

the date of a Board determination, the first two years in an easily accessible place, a record of the determination and the basis and information upon which the determination was made. This record will be subject to examination by the Commission and its staff.

7. For six years following the issuance of a Fund's VIPER Shares, the Fund will (a) record and preserve any investor complaints or reports of confusion concerning the Conversion Privilege that are communicated to the Fund, VGI and/or VMC and (b) record data tracking the number of investors that, after VIPER Shares are offered, purchase the Fund's Conventional Shares and, within 90 days, convert those shares into VIPER Shares. The Fund will preserve this information in an easily accessible place, and the information will be subject to examination by the Commission and its staff.

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 midpoint of the bid-asked spread at the time the Fund's NAV is calculated ("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' Web site has information about the premiums and discounts at which the Fund's VIPER Shares have traded.

9. The VIPER Prospectus and annual report will include, for each Fund: (a) The information listed in condition 8(b), (i) in the case of the VIPER 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 the life of the Fund, if shorter) of (i) a VIPER Share based on NAV and 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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48740; File No. SR-Amex-2002-09]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendments No. 1 through 11 thereto by the American Stock Exchange LLC Relating to Registered Options Traders Use of the Electronic Entry Device

November 3, 2003.

I. Introduction

On February 12, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to registered options traders use of the electronic entry device. The Exchange submitted Amendments No. 1, 2, 3, 4, 5, 6, 7, 8³ 9,⁴ 10,⁵ and 11⁶ on February 25, 2002,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For Amendments No. 1 through 8, the Exchange filed a new Form 19b-4 each time, which replaced and superseded the original proposal and all previous amendments in their entirety.

⁴ Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, dated July 24, 2003 ("Amendment No. 9"). Amendment No. 9 transfers to the list of rules enforced by the Amex Enforcement Department under paragraph (g) of Amex Rule 590 the requirement set forth in proposed Amex Rule 933, Commentary .04(d) that the specialist use his best efforts to attempt to ensure that the registered options trader responsible for disseminating the best bid or offer receives an allocation of the next automatic execution.

⁵ The Exchange filed a new Form 19b-4, which replaced and superseded the original proposal and all previous amendments in their entirety.

⁶ Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated September 11, 2003 ("Amendment No. 11"). Amendment No. 11 revises proposed changes to Amex Rule 590(g) to clarify that a specialist who fails to properly allocate executed contracts to the price-improving registered options trader must pay restitution in amount calculated by multiplying the number of contracts that should have been allocated to the price-improving registered options trader by the number of underlying shares represented by each contract, which would then be multiplied by half of the

May 6, 2002, May 29, 2002, June 18, 2002, July 17, 2002, September 16, 2002, January 21, 2003, July 15, 2003, July 25, 2003, August 26, 2003, and September 12, 2003, respectively. The proposed rule change and Amendments No. 1 through 11 were published for comment in the **Federal Register** on September 25, 2003.⁷ The Commission received no comments on the proposal. This order approves the proposed rule change and Amendments No. 1 through 11.

II. Description of the Proposed Rule Change

Given the number of series traded for each option class and the necessity for the re-calculating and re-quoting of each series in response to changes in the price of the underlying security, the Exchange developed an automated quotation updating system known as XTOPS. The specialist and registered options traders rely upon XTOPS to calculate and disseminate a single immediately updated quotation for each option series. XTOPS uses option valuation formulas (such as the Black-Scholes Model) to generate options quotations based on a number of variables.⁸ It is the specialist's responsibility to determine for each option class the variables used in the XTOPS formula. However, the quotations generated and displayed by XTOPS may result in firm quote obligations of both the specialist and registered options traders to buy or sell options at quoted prices and sizes.⁹ The dissemination of an XTOPS quote can be overridden when a customer limit order represents the best bid or offer or when a registered options trader chooses on a series-by-series basis to better the disseminated bid or offer.

The Exchange is now proposing new Commentary .04 to Amex Rule 933, to allow registered options traders' direct access to the Electronic Entry Device ("EE Device") to input their own quotes for dissemination as the best bid or offer.¹⁰ The EE Device would be

spread between the option's bid and offer at the time the order was executed.

⁷ Securities Exchange Act Release No. 48495 (September 16, 2003), 68 FR 55422.

⁸ These variables include the price of the underlying stock, time remaining to expiration, interest rates (or "cost to carry", the amount of interest on the money used to pay for the options position during the period prior to expiration of the option series), dividends (both declared and anticipated) and volatility.

⁹ See Rule 11Ac1-1 under the Act ("Quote Rule"), 17 CFR 240.11Ac1-1, and Amex Rule 958A.

¹⁰ The Exchange submitted the proposed rule change in response to subparagraph IV.B.h(i)(aa) of the Commission's September 11, 2000 Order ("Order"), which requires the Exchange to "adopt new, or amend existing, rules concerning its

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