

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"),¹ and

Rule 19b-4 thereunder,² 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 Act³ and Rule 10A-3 thereunder.⁴ 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.⁵ On October 31, 2003, the Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register**.⁶ The Commission received one comment letter on the proposal.⁷ On December 1, 2003, the Exchange filed Amendment No. 2 to the proposal.⁸ 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

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78j-1(m).

⁴ 17 CFR 240.10A-3.

⁵ 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").

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

⁷ 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.

⁸ 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.

¹ 15 U.S.C. 78s(b)(1).