a Fund under rule 12b–1 under the Act) received from a Fund by the Purchasing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Purchasing Fund Adviser, Trustee or Sponsor, or its affiliated person by a Fund, in connection with the investment by the Purchasing Fund in the Fund. Any Purchasing Fund Sub-Adviser will waive fees otherwise payable to the Purchasing Fund Sub-Adviser, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received from a Fund by the Purchasing Fund Sub-Adviser, or an affiliated person of the Purchasing Fund Sub-Adviser, other than any advisory fees paid to the Purchasing Fund Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Purchasing Management Company in a Fund made at the direction of the Purchasing Fund Sub-Adviser. In the event that the Purchasing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

14. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

15. Once an investment by a Purchasing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors/trustees of a Fund (''Board''), including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to a Purchasing Fund or a Purchasing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

16. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting once the investment by a Purchasing Fund in a Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Purchasing Fund in a Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders of the Fund.

17. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by a Purchasing Fund in shares of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Purchasing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Purchasing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Purchasing Management Company.

19. No Fund will acquire securities of any other investment company or companies relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18151 Filed 8–6–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28349; 812–13507]

Van Eck Associates Corporation, et al.; Notice of Application

July 31, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') to grant exemptions from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order to amend a prior order that permits: (a) Series of an open-end management investment company that are based on equity or fixed-income indexes for which no entity that creates, compiles, sponsors, or maintains the indexes is or will be an affiliated person, or an affiliated person of an affiliated person, of any applicant, or any sub-adviser or promoter to a series, to issue shares that can be redeemed only in large aggregations; (b) secondary market transactions in shares to occur at negotiated prices; (c) dealers to sell shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of large aggregations of shares; (e) under specified limited

circumstances, certain series to pay redemption proceeds more than seven days after the tender of shares; and (f) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire shares of the series (''Prior Order'').[1] Applicants seek to amend the Prior Order in order to offer five new series (the ''New Funds'') based on equity securities indexes for which the investment adviser may be deemed a sponsor.

Applicants: Van Eck Associates Corporation (''Adviser''), Market Vectors ETF Trust (''Trust''), and Van Eck Securities Corporation (''Distributor'').

Filing Dates: The application was filed on March 10, 2008, and amended on July 10, 2008 and July 29, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 22, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o the Distributor, 99 Park Avenue, 8th Floor, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is organized as a series fund with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), will serve as investment adviser to the New Funds. The Adviser may retain sub-advisers (''Sub-Advisers'') to manage the assets of a New Fund. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the principal underwriter and distributor of the New Funds' shares.

2. The applicants are currently permitted to offer series of the Trust based on equity or fixed-income securities indexes for which no entity that creates, compiles, sponsors, or maintains the indexes is or will be an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act), or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, promoter, or any Sub-Adviser to the series (''unaffiliated indexes'') in reliance on the Prior Order (''Current Funds''). Applicants seek to amend the Prior Order to permit the Trust to offer the New Funds based on indexes for which the Adviser may be deemed a sponsor due to licensing arrangements between the Adviser and the Index Provider (defined below).[2]

3. The underlying indexes of the New Funds are rules-based, capitalization-weighted, float adjusted indexes comprised of equity securities of companies engaged in the production of certain commodities, including, but not limited to, industrial metals, energy products, precious metals and agricultural products (the ''Hard Assets Indexes'').[3] Each Hard Assets Index has been created and will be compiled, sponsored, and maintained by S-Network Global Indexes, LLC (the ''Index Provider''). The Index Provider has created each Hard Assets Index in collaboration with James Beeland Rogers, Jr. (''Rogers''), the owner of Beeland Interests, Inc. (''Beeland''). None of the Index Provider, Rogers or Beeland is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, any Sub-Adviser, the Distributor, or a promoter of a New Fund.

4. The Adviser has entered into a licensing agreement with the Index Provider pursuant to which the Adviser will pay a licensing fee to the Index Provider for use of the Hard Assets Indexes in connection with the New Funds. The Adviser has also granted the Index Provider a license to use the ''Van Eck'' name in connection with each Hard Assets Index (''VE Name License'').[4] Applicants state that the Index Provider will pay the Adviser a share of the revenues earned from the licensing of each Hard Assets Index in exchange for the grant of the VE Name License. Applicants assert that, as a result of the VE Name License arrangements, the Adviser may be deemed a sponsor of the Hard Assets Indexes and the New Funds would be unable to rely on the Prior Order without amendment.

5. Applicants note that the restriction that the Prior Order apply only to series based on unaffiliated indexes is designed to address potential conflicts of interest. Applicants state that the potential conflicts relating to the possible manipulation of the Hard Assets Indexes are addressed through policies and procedures that require the Hard Assets Indexes to be transparent. Applicants state that the Index Provider will maintain a publicly available Web site on which it will publish the basic concept of each Hard Assets Index and disclose the composition and methodology for each Hard Assets Index (the ''Index Composition Methodology), in addition to the components and weighting of the components of each Hard Assets Index. Applicants note that the identity and weightings of the

[1] Van Eck Associates Corporation, *et al.*, Investment Company Act Release Nos. 27283 (Apr. 7, 2006) (notice) and 27311 (May 2, 2006) (order), subsequently amended by Van Eck Associates Corporation, *et al.*, Investment Company Act Release Nos. 27694 (Jan 31, 2007) (notice) and 27742 (Feb. 27, 2007) (order), subsequently amended by Van Eck Associates Corporation, *et al.*, Investment Company Act Release Nos. 28007 (Sept. 28, 2007) (notice) and 28021 (Oct. 24, 2007) (order).

[2] Applicants request that the amended order apply to any future series of the Trust that operate in substantially similar fashion to the New Funds and are based on indexes for which the Adviser may be deemed a sponsor due to licensing arrangements that are substantially identical to those described in the application (''Future Funds''). Any Future Fund will comply with the terms and conditions of the Prior Order as amended by the application.

[3] The Hard Assets Indexes for the New Funds are The Rogers™ Van Eck Hard Assets Producers Index℠, The Rogers™ Van Eck Hard Assets Producers Liquid Index℠, The Rogers™ Van Eck Agricultural Producers Index℠, The Rogers™ Van Eck Energy Producers Index℠, and The Rogers™ Van Eck Metals Producers Index℠.

[4] The Adviser is responsible for paying all fees associated with the license of the Hard Assets Indexes from the Index Provider. The licensing arrangements involving the Hard Assets Indexes, including the VE Name License, will not directly or indirectly affect the fees and expenses of a New Fund.

component securities will be readily ascertainable by a third party because the Index Composition Methodology will be publicly available.

6. In addition, although the Index Provider may change the rules of the Index Composition Methodology in the future, applicants state that any change to the Index Composition Methodology would not take effect until the Index Provider has given the Calculation Agent (defined below) and the public at least 60 days prior written notice of the change, disclosed on the Web site of the Index Provider. The ''Calculation Agent'' is the entity that will implement the Index Composition Methodology, calculate and maintain the Hard Assets Indexes, and calculate and disseminate the values of the Hard Assets Indexes. The Calculation Agent is not and will not be an affiliated person (as defined in the Act), or an affiliated person of an affiliated person, of the Trust, the Adviser, any Sub-Adviser, the Distributor, or a promoter of a New Fund.

7. Applicants also state that the Adviser and the Index Provider have adopted policies and procedures designed to prevent the dissemination and improper use of non-public information in a manner similar to firewalls. The Adviser has adopted written policies and procedures in accordance with rule 206(4)–7 under the Advisers Act, including procedures designed to prevent and detect the misuse of material non-public information and its Code of Ethics, as required under rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from trading on the basis of, improperly disseminating or otherwise engaging in any improper use of nonpublic information. Applicants state that the Index Provider has adopted a code of ethics forbidding its personnel, including Rogers, from trading on the basis of, improperly disseminating or otherwise engaging in any improper use of nonpublic information.

8. Applicants state that the New Funds will operate in a manner identical to the operation of the Current Funds under the Prior Order, except as specifically noted by applicants (and summarized in this notice). The New Funds will comply with all of the terms and conditions of the Prior Order as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18149 Filed 8–6–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58265; File No. SR–Amex–2008–63]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Relocation of Equities Trading After the Acquisition of the Exchange by NYSE Euronext

July 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2008, the American Stock Exchange LLC (''the Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is submitting this rule filing in order to implement the relocation (the ''Equities Relocation'') of all equities trading conducted on or through the Amex's systems and facilities to the trading systems and facilities operated by NYSE Market, Inc., (''NYSE'') in connection with the acquisition of the Amex's parent corporation, The Amex Membership Corporation, by NYSE Euronext. In connection with such acquisition, the Amex will be renamed NYSE Alternext U.S. LLC (''NYSE Alternext'').

The text of the proposed rule change is available at the Amex's principal office, the Commission's Public Reference Room, and *http://www.amex.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 IV 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

In order to implement the Equities Relocation, the Exchange proposes to amend its existing rules as needed and to adopt, subject to such changes as are necessary to apply the rules to the Exchange, NYSE Rules 1–1004 applicable to transactions conducted on NYSE systems and facilities and governing the off-floor conduct of members and member organizations.[3]

Background and Post-Merger Structure

As described more fully in the rule filing concerning the Mergers,[4] upon completion of the Mergers, the Amex will become one of the U.S. Regulated Subsidiaries[5] of NYSE Euronext and will continue to operate as a national securities exchange registered under Section 6 of the Act.[6] Following the Mergers, the name of the new exchange will be NYSE Alternext U.S. LLC.[7]

Following the Mergers, the Exchange will relocate all equities trading currently conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York,

[3] In connection with the series of mergers (the ''Mergers''), the Exchange has submitted related rule filings concerning changes to its corporate governance structure. *See* SR–Amex–2008–62 (defining Mergers). The Exchange intends to submit additional rule filings addressing its rules and procedures for certain legacy disciplinary matters, equity listing requirements and procedures, and ETF delisting rules. The NYSE and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will also be submitting companion filings concerning membership issues, and the NYSE will be submitting a related rule filing to amend NYSE Rule 18.

[4] *See* SR–Amex–2008–62.

[5] The term ''U.S. Regulated Subsidiary'' is defined under Article VII, Section 7.3(G) of the Bylaws of NYSE Euronext.

[6] 15 U.S.C. 78f.

[7] *See* SR–Amex–2008–62. For the avoidance of doubt, NYSE Alternext U.S. LLC will be a separate self regulatory organization from NYSE Euronext's European-market subsidiary, NYSE Alternext.