SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26406; 812–12827]

The Vanguard Group, Inc., et al.; Notice of Application

March 29, 2004.

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

ACTION:

Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions. The order would supersede a prior order.[1] The order would also amend two prior orders.[2]

APPLICANTS: The Vanguard Group, Inc. (''Vanguard''), Vanguard Admiral Funds, Vanguard Balanced Index Fund, Vanguard Bond Index Funds, Vanguard California Tax-Free Funds, Vanguard Convertible Securities Fund, Vanguard Explorer Fund, Vanguard Fenway Funds, Vanguard Fixed Income Securities Funds, Vanguard Florida Tax-Free Fund, Vanguard Horizon Funds, Vanguard Index Funds, Vanguard Institutional Index Fund, Vanguard International Equity Index Funds, Vanguard Malvern Funds, Vanguard Massachusetts Tax-Exempt Funds, Vanguard Money Market Reserves, Vanguard Morgan Growth Fund, Vanguard Municipal Bond Funds, Vanguard New Jersey Tax-Free Funds, Vanguard New York Tax-Free Funds, Vanguard Ohio Tax-Free Funds, Vanguard Pennsylvania Tax-Free Funds, Vanguard Chester Funds, Vanguard Quantitative Funds, Vanguard Specialized Funds, Vanguard STAR Fund, Vanguard Tax-Managed Funds, Vanguard Treasury Fund, Vanguard Trustees' Equity Fund, Vanguard Variable Insurance Fund, Vanguard Wellesley Income Fund, Vanguard Wellington Fund, Vanguard Whitehall Funds, Vanguard Windsor Funds, and Vanguard World Funds (each such fund, and any future registered investment companies or series thereof that are part of the same ''group of investment companies'' as defined in section 12(d)(1)(G) of the Act and that are organized, managed, or advised by Vanguard or a person controlling, controlled by, or under common control with Vanguard, each a ''Vanguard Fund'' and, collectively, the ''Vanguard Funds'').

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain registered open-end management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds and/or short-term bond funds, and (b) the registered investment companies and certain affiliated entities to engage in purchase and sale transactions involving portfolio securities.

FILING DATES: The application was filed on May 17, 2002 and was amended on August 4, 2003, and March 22, 2004. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application 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 April 22, 2004, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o R. Gregory Barton, The Vanguard Group, Inc., P.O. Box 2600, Mail Stop V26, Valley Forge, PA 19482.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (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 Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Vanguard Group, Inc., a Pennsylvania corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 and as a transfer agent under the Securities Exchange Act of 1934. Vanguard is wholly and jointly owned by certain Vanguard Funds (the ''Member Funds''). Vanguard and the Member Funds operate under an ''internalized'' management structure pursuant to exemptive orders issued by the Commission and in accordance with a common service agreement between Vanguard and the Member Funds (the ''Service Agreement''). Under this structure, Vanguard provides the Member Funds with corporate management, administrative, transfer agency, distribution, and investment advisory services on an at-cost basis. Vanguard Institutional Index Fund and Vanguard STAR Fund are not Member Funds. These two funds (together with any existing or future Vanguard Funds that are not Member Funds, the ''Non-Member Funds'') are not parties to the Service Agreement and do not make capital contributions to Vanguard. The Non-Member Funds receive all required services pursuant to separate management and shareholder services agreements with Vanguard. Each Vanguard Fund is a registered open-end management investment company organized as a Delaware statutory trust.[3]

2. Vanguard serves as the sole investment adviser of certain Vanguard Funds, while other Vanguard Funds are advised by Vanguard and one or more third party investment advisers. Vanguard or a person controlling, controlled by, or under common control with Vanguard, also serves, or may in the future serve, as investment adviser or as trustee exercising investment discretion for certain existing and future collective trust funds and managed accounts (the ''Other Vanguard Accounts''). The managed accounts are not pooled investment vehicles, and the Other Vanguard Accounts are not investment companies as defined in the Act. The Vanguard Funds and the Other Vanguard Accounts are collectively referred to herein as the ''Participating Accounts.''

3. Each Participating Account holds uninvested cash derived from a variety

[1] *Vanguard Municipal Bond Fund, Inc., et al.*, Investment Company Act Release Nos. 17655 (Aug. 7, 1990) (notice) and 17726 (Sep. 5, 1990) (order).

[2] *Vanguard STAR Fund, et al.*, Investment Company Act Release Nos. 21372 (Sep. 22, 1995) (notice) and 21426 (Oct. 18, 1995) (order) (the ''Amended STAR Order'') and *The Vanguard Group, Inc., et al.*, Investment Company Act Release Nos. 21470 (Nov. 3, 1995) (notice) and 21555 (Nov. 29, 1995) (order) (the ''Fund of Index Funds Order'').

[3] All Vanguard Funds that currently intend to rely on the requested order are named as Applicants. Any other existing or future Vanguard Fund will rely on the requested order only in accordance with the terms and conditions of the Application.

of sources (''Uninvested Cash''), such as dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment or temporary defensive purposes, scheduled maturity of investments, proceeds from the liquidation of portfolio securities, and money received from investors. Participating Accounts may also receive cash collateral from borrowers (''Cash Collateral'' and, together with Uninvested Cash, ''Available Cash'') in connection with a securities lending program (the ''Securities Lending Program'')

4. The Cash Management Trust will be organized as a Delaware statutory trust and will register as an open-end management investment company under the Act. The Cash Management Trust will be advised by Vanguard, and will be a series company with several different portfolios (each, a ''CMT Fund''). The CMT Funds will not be Member Funds and will not make capital contributions to Vanguard. Vanguard will provide corporate management, administrative, transfer agency, distribution, and investment advisory services to the CMT Funds on an at-cost basis pursuant to separate management and shareholder services agreements. The CMT Funds will have their own investment objectives, strategies, and policies, and will be separately managed by Vanguard generally to provide current income, preserve principal, and maintain liquidity through investments in repurchase agreements, money market instruments, and other fixed-income securities. Certain CMT Funds are expected to operate as money market funds in compliance with rule 2a–7 under the Act. Those CMT Funds which do not operate as money market funds in compliance with rule 2a–7 under the Act will operate as short-term bond funds and maintain a dollar-weighted average maturity of three years or less.

5. Applicants request an order to permit: (i) any Participating Account to use its Available Cash to purchase shares issued by a CMT Fund and to redeem such shares; (ii) any CMT Fund to sell shares to and redeem shares from any Participating Account; and (iii) the Participating Accounts and the CMT Funds to engage in certain interfund purchase and sale transactions in portfolio securities (''Interfund Transactions''). The order would also amend the Amended STAR Order and the Fund of Index Funds Order by permitting Vanguard funds of funds operating in reliance on these orders to purchase and redeem shares of any underlying Vanguard Fund that, in turn, invests its Available Cash in the Cash Management Trust.

Applicants' Legal Analysis

I. Investment of Available Cash by the Participating Accounts in the CMT Funds

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits any registered investment company (the ''acquiring company'') from purchasing shares of another investment company (the ''acquired company'') if immediately after the purchase the acquiring company would own: (i) More than 3% of the outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value greater than 5% of the value of the acquiring company's total assets; or (iii) securities issued by the acquired company and all other investment companies having an aggregate value greater than 10% of the value of the acquiring company's total assets.

Section 12(d)(1)(B) of the Act, in relevant part, prohibits an open-end registered investment company from selling its securities to another investment company if immediately after the sale: (i) More than 3% of the outstanding voting stock of the acquired company is owned by the acquiring company; or (ii) more than 10% of the outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies.

2. Section 12(d)(1)(J) provides that the Commission may provide exemptive relief from the provisions of Section 12(d)(1) if and to the extent that the relief requested is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Vanguard Funds to use their Available Cash to acquire shares of the CMT Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Vanguard Fund's aggregate investment of Uninvested Cash in shares of the CMT Funds will not exceed 25% of the Vanguard Fund's total assets at any time. Applicants also request relief to permit the CMT Funds to sell their securities to the Vanguard Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each CMT Fund will be managed specifically to maintain a highly liquid portfolio, CMT Funds will not be susceptible to undue influence due to the threat of large-scale redemptions. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because the shares of the CMT Funds sold to and redeemed from Vanguard Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers (''NASD'') Conduct Rules) or, if such shares are subject to any such fees in the future, Vanguard will waive its advisory fee for each Vanguard Fund in an amount that offsets the amount of such fees incurred by the Vanguard Fund. If a CMT Fund offers more than one class of securities, each Vanguard Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Vanguard Fund's investment) at the time of the investment. In addition, condition 5 below (in the case of Member Funds) and condition 6 below (in the case of Non-Member Funds) provide that the boards of trustees (''Boards'') of the Vanguard Funds, including trustees who are not ''interested persons'' of the Vanguard Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), will review and consider on an annual basis whether costs or fees for the Vanguard Funds should be reduced to account for reduced services to the Vanguard Funds as a result of Uninvested Cash being invested in the CMT Funds.

B. Section 17(a) of the Act

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of or a principal underwriter for a registered investment company, or an affiliated person of such a person or principal underwriter, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include (i) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (iii) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (iv) any investment adviser to the investment company. Because

Vanguard may be viewed as controlling the Participating Accounts and the Cash Management Trust, they may be deemed to be under common control and therefore, affiliated persons of each other. In addition, if a Participating Account purchases more than 5% of the voting securities of the Cash Management Trust, the Cash Management Trust and the Participating Account may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Cash Management Trust to the Vanguard Funds, and the redemption of the shares by the Vanguard Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act, if the 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.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the CMT Funds by the Vanguard Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that the consideration paid and received on the sale and redemption of shares of the Cash Management Trust will be based on the net asset value of such shares. Applicants state that the Vanguard Funds will retain their ability to invest Available Cash directly in short-term investments as authorized by their respective investment objectives, strategies and policies. Applicants represent that each CMT Fund reserves the right to discontinue selling shares to any of the Vanguard Funds if such sales would adversely affect the CMT Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that by establishing and operating the Cash Management Trust as a vehicle for the collective investment of Available Cash, Vanguard, the Participating Accounts and the Cash Management Trust could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that they currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between a registered investment company and a person that is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers and/or common directors or trustees. Applicants state that the Other Vanguard Accounts and CMT Funds or Vanguard Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to each other because some of the Other Vanguard Accounts may own 5% or more of the outstanding voting securities of a CMT Fund and, therefore, an affiliation would not exist solely by reason of having a common investment adviser, common officers and/or common directors or trustees.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the participating Other Vanguard Account and the participating CMT Fund or Vanguard Fund will comply with rule 17a–7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that by complying with the conditions of rule 17a–7, the Interfund Transactions do not raise any conflicts of interest or opportunities for abuse. Thus, the Applicants submit that the Interfund Transactions are reasonable and fair, do not involve overreaching, and will be consistent with the purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the CMT Funds sold to and redeemed from Vanguard Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules) or, if such shares are subject to any such fees in the future, Vanguard will waive its advisory fee for each Vanguard Fund in an amount that offsets the amount of such fees incurred by the Vanguard Fund.

2. The Cash Management Trust, each CMT Fund, and each Vanguard Fund that may rely on the order will be part of the same group of investment companies (as defined in section 12(d)(1)(G) under the Act) and will be organized, managed, or advised by Vanguard or a person controlling, controlled by, or under common control with Vanguard. The Other Vanguard Accounts that may rely on the order will be advised by Vanguard or a person controlling, controlled by, or under common control with Vanguard.

3. Investment by a Vanguard Fund in shares of the CMT Funds will be in accordance with the Vanguard Fund's investment restrictions and will be consistent with the Vanguard Fund's investment policies as set forth in its prospectus and statement of additional information. A Vanguard Fund that complies with rule 2a–7 under the Act will not invest its Available Cash in any CMT Fund that does not comply with the requirements of rule 2a–7.

4. A CMT Fund will not acquire securities of any investment company or company relying on section 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.

5. Before the next meeting of the Boards of the Member Funds is held for the purpose of annually reviewing and approving the proposed allocation of the costs of the operation of Vanguard among the Member Funds, and, if applicable, for purposes of approving an investment advisory agreement with third party investment adviser(s) pursuant to section 15 of the Act, Vanguard and, if applicable, the third party investment adviser(s), will provide the Boards with specific information regarding the approximate

cost to Vanguard and/or the third party investment adviser(s) of, or the approximate portion of the total fee paid to Vanguard and/or the third party investment adviser by each Member Fund that is attributable to, managing the portion of the Member Fund's Uninvested Cash that can be expected to be invested in the CMT Funds. In connection with their annual review and approval of the proposed allocation of the costs of the operation of Vanguard among the Member Funds, and/or investment advisory agreements with the third party investment adviser(s), the Boards, including a majority of the Independent Trustees, shall consider to what extent, if any, such allocated costs and/or advisory fees should be reduced to account for reduced services provided to the Member Funds by Vanguard or a third party investment adviser as a result of Uninvested Cash being invested in the CMT Funds. The minute books of the Member Funds will record fully the Board's consideration in approving the allocated costs and/or advisory agreement(s), including the considerations related to fees referred to above.

6. Before the next meeting of the Boards of the Non-Member Funds is held for the purpose of considering and approving the continuation for one year of the management agreement between the Non-Member Fund and Vanguard, and, if applicable, for purposes of approving an investment advisory agreement with third party investment adviser(s) pursuant to section 15 of the Act, Vanguard and, if applicable, the third party investment adviser(s), will provide the Boards with specific information regarding the approximate cost to Vanguard and/or the third party investment adviser(s) of, or the approximate portion of the total fee paid to Vanguard and/or the third party investment adviser by each Non-Member Fund that is attributable to, managing the portion of the Non-Member Fund's Uninvested Cash that can be expected to be invested in the CMT Funds. In connection with its consideration and approval of the continuation for one year of the management agreement between the Non-Member Fund and Vanguard, and, if applicable, the investment advisory agreement with the third party investment adviser(s), the Boards, including a majority of the Independent Trustees, shall consider to what extent, if any, such allocated costs and/or advisory fees should be reduced to account for reduced services provided to the Non-Member Funds by Vanguard or a third party investment adviser as a result of Uninvested Cash being invested in the CMT Funds. The minute books of the Non-Member Funds will record fully the Board's consideration in approving the allocated costs and/or advisory agreement(s), including the considerations related to fees referred to above.

7. Before a Vanguard Fund that participates in the Securities Lending Program is permitted to invest Cash Collateral in the Cash Management Trust, a majority of the Board (including a majority of Independent Trustees) will approve such investment. No less frequently than annually, the Board also will evaluate, with respect to each Vanguard Fund, any securities lending arrangement and its results and determine that any investment of Cash Collateral in the CMT Funds is in the best interests of the Vanguard Fund.

8. Each of the Vanguard Funds may invest in, and hold shares of, a CMT Fund only to the extent that the Vanguard Fund's aggregate investment of Uninvested Cash in the CMT Fund at the time the investment is made does not exceed 25% of the total assets of the Vanguard Fund.

9. When engaging in Interfund Transactions, the participating Other Vanguard Account and the participating CMT Fund or Vanguard Fund will comply with rule 17a-7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of one another solely by reason of having a common investment adviser (or investment advisers that are affiliated persons of each other), common officers, and/or common directors, solely because the Other Vanguard Accounts and the CMT Funds might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

Applicants agree that condition 2 of the Amended STAR Order shall be replaced with the following condition:

No acquired Vanguard Fund shall acquire securities of any other investment company or company relying on section 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, except to the extent such acquired Vanguard Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such acquired Vanguard Fund to acquire securities of one or more registered open-end investment companies in the same group of investment companies as the acquired Vanguard Fund that are money market funds or short-term bond funds for short-term cash management purposes.

Applicants agree that condition 2 of the Fund of Index Funds Order shall be replaced with the following condition:

No acquired underlying Index Portfolio shall acquire securities of any other investment company or any company relying on section 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, except to the extent such acquired underlying Index Portfolio acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such acquired underlying Index Portfolio to acquire securities of one or more registered open-end investment companies in the same group of investment companies as the acquired underlying Index Portfolio that are money market funds or short-term bond funds for short-term cash management purposes.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7496 Filed 4–1–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49488; File No. SR–AMEX–2004–18]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to the Proposed Rule Change Relating to an Extension of the Marketing Fee Voting Procedures Pilot Program

March 26, 2004.

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 March 11, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change relating to the marketing fee voting procedures pilot program. The proposed rule change is described in Items I and II below, which the Amex has prepared. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change. The Commission is also approving the proposal on an accelerated basis.

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

[2] 17 CFR 240.19b–4.