

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 15g-5; OMB Control No. 3235-0394; SEC File No. 270-348.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in the following rule: Rule 15g-5—Disclosure of compensation of associated persons in connection with penny stock transactions (17 CRF 240.15g-5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g-5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 209 broker-dealers will spend an average of 87 hours annually to comply with the rule. Thus, the total compliance burden is approximately 18,183 burden-hours per year.

Rule 15g-5 contains record retention requirements. Compliance with the rule is mandatory.

The Commission may not conduct or sponsor collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief

Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

Dated: May 11, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-11929 Filed 5-16-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30063; 812-13846]

### Van Eck VIP Trust, et al.; Notice of Application

May 10, 2012.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application to amend a prior 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 (C) of the Act.

**APPLICANTS:** Van Eck VIP Trust (f/k/a Van Eck Worldwide Insurance Trust (“VIP”), Van Eck Funds, Market Vectors ETF Trust (each, a “Trust” and collectively, the “Trusts”), and Van Eck Associates Corporation (the “Adviser”).

**SUMMARY OF THE APPLICATION:** Applicants previously obtained an order (“Prior Order”) permitting certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.<sup>1</sup> Applicants request an order (“Order”) that would amend the Prior Order by also permitting such registered open-end management investment companies to acquire shares of registered closed-end investment companies and business development companies as defined by section 2(a)(48) of the Act (“business development companies,” and, collectively with registered closed-end

<sup>1</sup> In the Matter of Van Eck Worldwide Insurance Trust, et al., Investment Company Act Release Nos. 27820 (May 9, 2007) (notice) and 27849 (June 1, 2007) (order). Van Eck Funds, Inc. was a party to the application for the Prior Order but is not among the applicants for the Application (as defined below) because Van Eck Funds, Inc. was deregistered on June 25, 2008 (under the name Van Eck Funds II, Inc.).

investment companies, “Closed-End Funds”) that are within and outside the same group of investment companies in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(C) of the Act.

**FILING DATES:** The application was filed on November 16, 2010, and amended on May 10, 2011, November 18, 2011, March 15, 2012, and May 7, 2012.

**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 June 4, 2012, 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:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants, 335 Madison Avenue 19th Floor, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551-6819, or David P. Bartels, Branch Chief, 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 via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants’ Representations

1. Each Trust is registered under the Act as an open-end management investment company. The shares of each series of VIP currently are offered and sold through registered separate accounts of insurance companies that are not affiliates of the Adviser (“Registered Separate Accounts”) and unregistered separate accounts of insurance companies that are not affiliates of the Adviser (“Unregistered Separate Accounts” and, together with the Registered Separate Accounts, the

“Separate Accounts”).<sup>2</sup> The Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 and is the investment adviser for each of the Funds (as defined below).

2. The Prior Order permits certain series of the Trusts (“Funds”) to operate as funds of funds (“Funds of Funds”) that will invest in other Funds that are part of the same “group of investment companies” (as defined in section 12(d)(1)(G) of the Act) as the Fund of Funds and also in other registered open-end management investment companies and unit investment trusts that are not part of the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Fund of Funds.<sup>3</sup> Applicants request an Order under section 12(d)(1)(f) that would amend the Prior Order by also permitting the Funds of Funds to invest in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(C) of the Act in securities issued by Closed-End Funds that may or may not be part of the same group of investment companies<sup>4</sup> as the Fund of Funds.<sup>5</sup>

#### Applicants’ Legal Analysis

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total

<sup>2</sup> Capitalized terms not otherwise defined in this notice have the same meaning ascribed to them in the application for the Order (“Application”). To ensure that the Closed-End Funds are covered by the terms and conditions of the Prior Order, as amended by the Application, applicants have proposed modifying the terms “Affiliated Underlying Funds,” “Unaffiliated Underlying Funds” and “Unaffiliated Funds” to include relevant Closed-End Funds.

<sup>3</sup> Each Fund of Funds will comply with the terms and conditions of the Prior Order, as amended by the Application. All entities that currently intend to rely on the requested Order have been named as applicants and any other entity that relies on the Order in the future will comply with the terms and conditions of the Application. Applicants request that the relief also apply to any other existing or future registered open-end management investment company that is part of the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Funds.

<sup>4</sup> For purposes of the Application, the term “group of investment companies” means any two or more registered investment companies, including closed-end investment companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

<sup>5</sup> With respect to investments in business development companies, applicants only seek an exemption from section 12(d)(1)(A) of the Act, not section 12(d)(1)(C). Applicants state that, for purposes of the Application, investments in business development companies do not present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies.

assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the value of the total assets of the acquiring company. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(f) 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 of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

3. Applicants state that the terms and conditions of the Prior Order would largely address the concerns underlying section 12(d)(1) with respect to the acquisition by a Fund of Funds of shares of Closed-End Funds, which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. For example, applicants state that, pursuant to condition 8 of the Prior Order, as amended, prior to an investment in shares of a Closed-End Fund in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds and the Closed-End Fund will execute a Participation Agreement. Applicants also state that an Unaffiliated Fund (including a Closed-End Fund) would retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, applicants state that, subject solely to the giving of notice to the Fund of Funds and the passage of a reasonable notice period, an Unaffiliated Fund (including a Closed-End Fund) could terminate a Participation Agreement with the Fund of Funds.

4. Furthermore, applicants believe that a Fund of Funds’s investments in Closed-End Funds raise less potential for a fund to exercise undue influence over the management and operation of an Underlying Fund through the threat of large scale redemptions. Applicants state that this concern is not applicable to a Fund of Funds’ investments in Closed-End Funds because Closed-End Funds do not issue redeemable

securities. Rather, applicants state that sales will only be effected through transactions in the secondary market.<sup>6</sup> Applicants state that, because these sales would not require the Closed-End Fund to alter its investments or deplete its assets, a Fund of Funds should not be able to influence the management or operation of a Closed-End Fund through threats of sales of shares.

5. However, applicants state that there may be a greater opportunity for a Fund of Funds to exercise influence over the management and operations of a Closed-End Fund through voting power than is the case with respect to open-end funds. To address this concern, applicants submit that, with respect to a Fund of Funds’ investment in an Unaffiliated Underlying Fund that is a Closed-End Fund, (i) each member of the Group or the Subadviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Closed-End Fund in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or the Subadviser Group will vote its shares of the Closed-End Fund in the same proportion as the vote of all other holders of the same type of such Closed-End Fund’s shares (except that any member of the Group or Subadviser Group that is a Separate Account will instead be subject to the voting procedures described in Condition 1 below). Applicants state that this would preclude the Group and Subadviser Group from influencing the management or operation of a Closed-End Fund, including the outcome of a shareholder proposal, through voting by a Fund of Funds of shares.

6. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

#### Applicants’ Conditions

Applicants agree that the Order granting the requested relief would be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which would be revised as follows:

The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within

<sup>6</sup> Applicants note that a Fund of Funds would purchase and sell shares of a Closed-End Fund through secondary market transactions at market prices rather than through principal transactions with the Closed-End Fund at net asset value. Applicants are not requesting section 17(a) relief to acquire shares of Closed-End Funds and will not rely on the section 17(a) relief granted in the Prior Order for such purpose.

the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. With respect to a Fund of Funds' investment in an Unaffiliated Underlying Fund that is a Closed-End Fund (i) each member of the Group or the Subadviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Closed-End Fund in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or the Subadviser Group will vote its shares of the Closed-End Fund in the same proportion as the vote of all other holders of the same type of such Closed-End Fund's shares (except that any member of the Group or Subadviser Group that is a Separate Account will instead be subject to the voting procedures described below). If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Underlying Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of such Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Fund of Funds Subadviser or a person controlling, controlled by or under common control with the Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Underlying Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares or (b) seek voting

instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-11930 Filed 5-16-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66969; File No. 4-546]**

### **Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add the BOX Options Exchange LLC as a Participant**

May 11, 2012.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2012, BOX Options Exchange LLC ("BOX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Options Order Protection and Locked/Crossed Market Plan ("Plan").<sup>3</sup> The amendment proposes to add BOX Options as a Participant<sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX BX, Inc. ("BOX"), NASDAQ OMX PHLX, Inc. ("Phlx"), NYSE Amex, LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). See also Securities Exchange Act Release Nos. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. ("BATS") as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated ("C2") as a Participant).

<sup>4</sup> The term "Participant" is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

## **I. Description and Purpose of the Amendment**

The current Participants in the Linkage Plan are C2, CBOE, BATS, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. The proposed amendment to the Plan would add BOX Options as a Participant in the Plan. BOX Options has submitted a signed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically an Eligible Exchange<sup>5</sup> may become a Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; (iii) effecting an amendment to the Plan, as specified in Sections 3(c) and 4(b) of the Plan.

Section 4(b) of the Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) Execute a copy of the Plan with the only change being the addition of the new participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

## **II. Effectiveness of the Proposed Linkage Plan Amendment**

The foregoing proposed Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act<sup>6</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,<sup>7</sup> if it appears to the Commission that such

<sup>5</sup> Section 2(6) of the Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. BOX Options has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Lisa J. Fall, President, BOX Options, to Elizabeth Murphy, Secretary, Commission, dated May 3, 2012.

<sup>6</sup> 17 CFR 242.608(b)(3)(iii).

<sup>7</sup> 17 CFR 242.608(b)(1).