

Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-0724; fax number: (301) 415-5369; e-mail: [douglas.mandeville@nrc.gov](mailto:douglas.mandeville@nrc.gov).

Dated at Rockville, Maryland, this 30th day of September 2010.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2010-25274 Filed 10-6-10; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[NRC-2010-0319; Docket No. 50-400]

### Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Renewed Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of the Carolina Power & Light Company (the licensee) to withdraw its application dated September 29, 2008, as supplemented by letters dated January 16, 2009, August 12, 2009, January 18, 2010, and August 16, 2010, for a proposed amendment to Renewed Facility Operating License No. NPF-63 for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake County, North Carolina.

The proposed amendment would have modified Technical Specification (TS) Sections 5.6.1.3.a and 5.6.1.3.b to incorporate the results of a new criticality analysis. Specifically the TSs would be revised to add new requirements for the Boiling-Water Reactor (BWR) spent fuel storage racks containing Boraflex in Spent Fuel Pools A and B. The requirements for the BWR spent fuel racks currently contained in TS 5.6.1.3 would be revised to specify applicability to the spent fuel storage racks containing Boral in Spent Fuel Pool B.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 24, 2009 (74 FR 8283). However, by letter dated September 28, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 29, 2008

(Agencywide Documents Access and Management System (ADAMS) Accession No. ML082800410), as supplemented by letters dated January 16, 2009, (ADAMS Accession No. ML090230373), August 12, 2009 (ADAMS Accession No. ML092310549), January 18, 2010 (ADAMS Accession No. ML100250850), and August 16, 2010 (ADAMS Accession No. ML102370768), and the licensee's letter dated September 28, 2010, which withdrew the application for license amendment.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 30th day of September 2010.

For the Nuclear Regulatory Commission.

**Douglas A. Broaddus,**

*Chief, Plant Licensing Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-25281 Filed 10-6-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29455; 812-13624]

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

October 1, 2010.

**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") for an exemption 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 sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(j) of the Act granting an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) 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 (each a "Fund," collectively, the "Funds") to issue shares that can be redeemed only in large aggregations ("Creation Units"); (b) secondary market transactions in shares to occur at negotiated prices; (c) dealers to sell such shares to secondary market purchasers unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) under specified limited circumstances, certain Funds to pay redemption proceeds more than seven days after the tender of shares; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds to acquire shares; and (f) certain affiliated persons of the Funds to deposit securities into, and receive securities from, the Funds in connection with the purchase and redemption of Creation Units of such Funds ("Prior Order").<sup>1</sup> Applicants seek to amend the Prior Order to: (a) Permit certain Funds based on equity and/or fixed income securities indexes for which Van Eck Associates Corporation ("Adviser") or an "affiliated person" of the Adviser as defined in section 2(a)(3) of the Act, is an index provider (each a "Self Indexing Fund"); (b) delete the relief granted from section 24(d) of the Act and revise various disclosure requirements in the applications for the Prior Order ("Prior Applications"); (c) modify the 80% investment requirement in the Prior Applications; (d) revise the discussion of depositary receipts in the Prior Applications; and (e) revise the discussion in the Prior Applications of the composition of securities deposited with the Fund to purchase Creation Units ("Deposit Securities") and securities received in connection with redemption of Creation Units ("Fund Securities").

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

**Filing Dates:** The application was filed on January 23, 2009, and amended

<sup>1</sup> Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 27283 (Apr. 7, 2006) (notice) and 27311 (May 2, 2006) (order), as 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), Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 28007 (Sept. 28, 2007) (notice) and 28021 (Oct. 24, 2007) (order), Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 28349 (July 31, 2008) (notice) and 28365 (August 25, 2008) (order).

on June 3, 2009, March 12, 2010, June 23, 2010, August 13, 2010, and August 25, 2010.

**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 October 25, 2010, 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, 335 Madison Avenue, New York, NY 10017.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551–6876, 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 via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### 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 Trust. The Adviser may retain sub-advisers ("Sub-Advisers") to manage the assets of one or more Funds. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter and distributor of the Trust's shares.

2. The applicants are currently permitted to offer Funds that track the performance of equity and fixed income indexes developed by either (i) third

parties that are not "affiliated persons" (as such term is defined in section 2(a)(3) of the Act), or affiliated persons of affiliated persons, of the Trust, the Adviser, any Sub-Adviser, the Distributor or a promoter of a Fund or (ii) by the Adviser to the extent the Adviser may be deemed a sponsor of an underlying index due to licensing arrangements between the Adviser and S-Network Global Indexes, LLC or other similar arrangements. Applicants seek to amend the Prior Order to permit Self Indexing Funds. Applicants request that the order apply to any Self Indexing Funds offered in the future that are advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser and operate pursuant to the terms and conditions of the Prior Order, as amended. Applicants also seek to amend the Prior Order to (a) Delete the relief granted from section 24(d) of the Act and revise the Prior Applications accordingly; (b) modify the Fund's 80% investment requirement; (c) revise the discussion of depository receipts; and (d) revise the discussion of the composition of Deposit Securities and Fund Securities.

### Self-Indexing Funds

3. Each underlying index ("Underlying Index") for a Self Indexing Fund is or will be a rules based index comprised of equity and/or fixed income securities (including depository receipts). A wholly owned subsidiary of the Adviser currently domiciled in Germany (the "Index Provider") will create and/or own a proprietary, rules based methodology ("Rules-Based Process") to create indexes for use by the Self Indexing Funds and other equity or fixed income investors.<sup>2</sup> The Index Provider intends to license the use of the Underlying Indexes, their names and other related intellectual property to the Adviser for use in connection with the Trust and the Self Indexing

<sup>2</sup> The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be "investment companies" in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser ("Affiliated Accounts") as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser ("Unaffiliated Accounts"). The Affiliated Accounts and the Unaffiliated Accounts (collectively referred to herein as "Accounts"), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

Funds. The licenses for the Self Indexing Funds will specifically state that the Adviser must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self Indexing Funds.

4. Applicants contend that any potential conflicts of interest arising from the fact that the Index Provider will be an "affiliated person" of the Adviser will not have any impact on the operation of the Self Indexing Funds because the Underlying Indexes will maintain transparency, the Self Indexing Funds' portfolios will be transparent, and the Index Provider, the Adviser, any Sub-Adviser and the Self Indexing Funds each will adopt policies and procedures to address any potential conflicts of interest ("Policies and Procedures"). The Index Provider will publish in the public domain, including on its Web site and/or the Self Indexing Funds' Web site ("Web site"), the rules that govern the construction and maintenance of each of its Underlying Indexes. Applicants believe that this will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Index Provider. Applicants note that the identity and weightings of the component securities of an Underlying Index ("Component Securities") for a Self Indexing Fund will be readily ascertainable by anyone, since the Rules-Based Process will be publicly available.

5. While the Index Provider does not presently contemplate specific changes to the Rules-Based Process, it could be modified, for example, to reflect changes in the underlying market tracked by an Underlying Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the employees of the Index Provider ("Index Group") have given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Each Underlying Index for a Self Indexing Fund will be reconstituted or rebalanced on at least an annual basis, but no more frequently than monthly.

6. As owner of the Underlying Indexes, the Index Provider will enter into an agreement ("Calculation Agent Agreement") with a third party to act as "Calculation Agent." The Calculation Agent will be solely responsible for the calculation and maintenance of each Underlying Index, as well as the dissemination of the values of each

Underlying Index. The Calculation Agent is not, and will not be, an affiliated person, as such term is defined in the Act, or an affiliated person of an affiliated person, of the Self Indexing Funds, the Adviser, any Sub-Adviser, any promoter or the Distributor.

7. The Adviser and the Index Provider will adopt and implement Policies and Procedures to minimize or eliminate any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication with respect to issues/information related to the maintenance, calculation and reconstitution of the Underlying Indexes between the "Index Administrator," the Index Group and the employees of the Adviser. As employees of the Index Provider, the Index Administrator and members of the Index Group (i) Will not have any responsibility for the management of the Self Indexing Funds or the Affiliated Accounts, (ii) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, including those persons that have responsibility for the management of the Self Indexing Funds or the Affiliated Accounts until such information is publicly announced, and (iii) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser and any Sub-Adviser have adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. Also, the Adviser has adopted a Code of Ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act.

#### Additional Changes to Prior Order

8. Applicants also seek to amend the Prior Order to delete the relief granted from the requirements of section 24(d) of the Act. Applicants believe that the deletion of the exemption from section 24(d) that was granted in the Prior Order is warranted because the adoption of the summary prospectus under Investment Company Act Release No. 28584 (Jan. 13, 2009) (the "Summary Prospectus Rule") should make unnecessary any need by a Fund to use a product description ("Product Description"). Applicants also note that, to date, no Fund has utilized a Product Description. The deletion of the relief granted with respect to section 24(d) of the Act from the Prior Order will also result in the deletion of related discussions in the

Prior Application, revision of the Prior Application to delete references to the Product Descriptions including in the conditions, and the deletion of condition 7 to the Prior Order.<sup>3</sup>

9. The application for the Prior Order states that a Fund will hold, in the aggregate, at least 80% of its total assets in Component Securities of its Underlying Index and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index. Applicants seek to amend the Prior Order to require a Fund to hold at least 80% of its total assets in Component Securities of its Underlying Index or in Depositary Receipts (defined below) or to-be-announced transactions ("TBAs") representing Component Securities.

10. The application for the Prior Order states, among other things, that the Fund will invest only in Depositary Receipts listed on a national securities exchange, as defined in section 2(a)(26) of the Act ("Exchange"), and that all Depositary Receipts in which the Funds invest will be sponsored by the issuers of the underlying security, except for certain specified exceptions. Applicants seek to amend the application for the Prior Order by revising the discussion of Depositary Receipts to note that "Depositary Receipts" include American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs"). With respect to ADRs, the depositary is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. The ADR is registered under the Securities Act on Form F–6. ADR trades occur either on an Exchange or off-exchange. FINRA Rule 6620 requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depositary may be foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. No affiliated persons of applicants will serve as the depositary for any Depositary Receipts held by a Fund. A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.

11. The Prior Order provides that Deposit Securities and Fund Securities

generally will correspond pro rata, to the extent practicable, to the portfolio securities of a Fund ("Portfolio Securities"). Applicants seek to amend this discussion of the composition of Deposit Securities and Fund Securities to state that Deposit Securities and Fund Securities either (a) will correspond pro rata to the Portfolio Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Fund Securities (1) consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (2) consist only of securities that are already included among the existing Portfolio Securities, and (3) are the same for all Authorized Participants on a given Business Day. In either case, the Deposit Securities and Fund Securities may differ from each other (and from the Portfolio Securities) (a) to reflect minor differences when it is not possible to break up bonds beyond certain minimum sizes needed for transfer and settlement, or (b) for temporary periods to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index.

12. The Self Indexing Funds, except as otherwise noted herein, will operate in a manner identical to the operation of the other Funds. Applicants agree that any order of the Commission granting the requested relief will be subject to all of the conditions in the Prior Order, except that condition 7 will be deleted.<sup>4</sup> 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,**

*Deputy Secretary.*

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<sup>3</sup> Condition 7 states "Before an Index Fund may rely on this order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares."

<sup>4</sup> All representations and conditions contained in the Application that require a Fund to disclose particular information in its Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).