

the Act<sup>252</sup> with respect to the FINRA rules the Exchange proposes to incorporate by reference into the Exchange's rules, subject to the conditions specified in this Order.

By the Commission.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-5868 Filed 3-17-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29174; File No. 811-21873]

### American Vantage Companies; Notice of Application

March 11, 2010.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** American Vantage Companies requests an order declaring that it has ceased to be an investment company.

**APPLICANT:** American Vantage Companies (the "Company").

**FILING DATES:** The application was filed on November 25, 2008 and amended on April 30, 2009, November 12, 2009, February 4, 2010 and March 10, 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 applicant 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 5, 2010 and should be accompanied by proof of service on applicant, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicant, P.O. Box 81920, Las Vegas, Nevada 89180.

**FOR FURTHER INFORMATION CONTACT:** Jae F. Hahn, Senior Counsel, at (202) 551-

6870, or Jennifer L. Sawin, Branch Chief, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

**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.

### Applicant's Representations

1. The Company is a holding company that operates through its subsidiaries primarily in the gaming and hospitality and corporate staffing businesses. Although the Company was not engaged in the business of investing, reinvesting, owning, holding or trading in securities, the Company registered as a closed-end investment company on June 21, 2006 because it held investment securities that had a value exceeding 40% of the Company's total assets on an unconsolidated basis from March 2005 through March 2006.<sup>1</sup> The Company no longer has investment securities having a value near or exceeding 40% of its total assets nor does it hold itself out as being engaged primarily, nor does it propose in the future to engage primarily, in the business of investing, reinvesting or trading in securities. On March 27, 2008, the Company's board of directors resolved that it would be in the best interest of the Company to deregister from the Act. The Company's stockholders approved a proposal to deregister the Company from the Act on November 14, 2008. The Company seeks an order declaring that it has ceased to be an investment company under the Act.

2. The Company was incorporated in Nevada in 1979 and since then has engaged in the business of recreational and leisure time activities, including casino gaming and hospitality. The Company currently maintains ongoing business operations through its subsidiaries, American Vantage

<sup>1</sup> These investment securities principally consisted of 7,000,000 shares of common stock, and warrants to purchase 1,400,000 shares of common stock, of Genius Products, Inc. ("Genius") acquired when the Company sold its subsidiary American Vantage Media Corporation to Genius, together with a 49% interest in the Border Grill Restaurant ("Border Grill"). The Company privately placed most of its shares of Genius stock and used the net proceeds for working capital and to fund its purchase in September 2007 of Candidates on Demand Group, Inc. ("COD"), a temporary placement agency and recruitment firm which operates as a wholly-owned subsidiary of the Company.

Brownstone, LLC, which focuses on Native American tribal gaming and commercial/jurisdictional gaming, and COD. Despite its registration under the Act, the Company has never represented or stated that it is involved in any business other than gaming, media, restaurants and entertainment and has always emphasized its operating results rather than investment income as a material factor in its business. The Company has never employed an investment advisor nor is there an employee who is specifically assigned to manage the Company's investments.

3. As described more fully in the application, the Company's assets primarily consist of interests in its wholly-owned and majority-owned subsidiaries and a 49% interest in the Border Grill and the Company derives substantially all of its revenues from operations. The Company currently has investment securities that equal approximately 16.4% of its total assets on an unconsolidated basis.<sup>2</sup> For the six months ended June 30, 2009, the Company derived 98.8% of its revenues from its operating subsidiaries. The Company derived only 1.2% of its income from investment assets for the six months ended June 30, 2009.

### Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(1)(C) of the Act defines an investment company as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines investment securities as all securities except (a) Government securities, (B) securities issued by employees'

<sup>2</sup> The Company's investment assets consist of its 49% interest in Border Grill, auction-rate securities, and its remaining Genius common stock and warrants.

securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of section 3(c) of the Act.

3. The Company states that it is actively engaged in ongoing business operations in the placement agency, restaurant, gaming and entertainment fields and that it has never been an investment company as defined by section 3(a)(1)(A).<sup>3</sup> Because the Company's investment securities are currently only approximately 16.4% of its total assets, the Company believes that it no longer meets the definition of investment company as defined in section 3(a)(1)(C) of the Act. The Company further states that it intends to manage its assets and any future cash earnings in a manner that will cause the Company to continue to be excluded from the definition of an investment company under the Act. The Company states that after entry of the order requested by the application, it will continue to be a publicly-held company and will continue to be subject to the reporting and other requirements of the Securities Exchange Act of 1934. Accordingly, the Company states that it is qualified for an order of the Commission pursuant to section 8(f) of the Act.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-5920 Filed 3-17-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61692; File No. SR-OCC-2010-0]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to ETFS Palladium Shares And ETFS Platinum Shares

March 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on March 1, 2010, The Options Clearing Corporation

<sup>3</sup> The Company also states that none of its subsidiaries can be defined as an investment company for purposes of the Act and none of its subsidiaries is relying on sections 3(c)(1) or 3(c)(7) of the Act.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 the Substance of the Proposed Rule Change

The proposed rule change would add ETFS Palladium Shares and ETFS Platinum Shares to the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of options or security futures on ETFS Palladium Shares or ETFS Platinum Shares. To accomplish this purpose, OCC is proposing to amend the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws. On May 30, 2008, the Commission approved rule filing SR-OCC-2008-07, which added the interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares.<sup>2</sup> On December 4, 2008, the Commission approved rule filings SR-OCC-2008-13 and SR-OCC-2008-14, which amended the interpretation to extend similar treatment to options and security futures on iShares® COMEX Gold Shares and iShares® Silver Shares.<sup>3</sup> On February 25, 2010, the Commission approved rule filing SR-OCC-2009-20, which extended similar treatment to options and security futures on ETFS Physical Swiss Gold Shares and ETFS Physical Silver

Shares.<sup>4</sup> Under the current proposed rule change, OCC would also (i) clear and treat as securities options any option contracts on ETFS Palladium Shares and ETFS Platinum Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Palladium Shares and ETFS Platinum Shares.

In its capacity as a "derivatives clearing organization" registered with the Commodity Futures Trading Commission ("CFTC"), OCC is filing this proposal for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options or the clearing of such futures as security futures constitutes a violation of the CEA. The products for which approval is requested are essentially the same as the options and security futures on SPDR Gold Shares, iShares® COMEX Gold Shares, and iShares® Silver Shares that OCC currently clears pursuant to the rule changes referred to above and exemptions issued by the CFTC.<sup>5</sup> OCC believes that this filing raises no new regulatory or policy issues.

OCC states that the proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Act<sup>6</sup> because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options and security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. OCC states that the proposed rule change accomplishes these purposes by reducing the likelihood of a dispute as to the Commission's jurisdiction or shared jurisdiction in the case of security futures over derivatives based on ETFS Palladium Shares or ETFS Platinum Shares. OCC also states that the

<sup>4</sup> Securities Exchange Act Release No. 61591, 75 FR 9979 (Mar. 4, 2010).

<sup>5</sup> CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008). CFTC Order Exempting the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares, 73 FR 79830 (Dec. 3, 2008).

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>2</sup> Securities Exchange Act Release No. 57895, 73 FR 32066 (June 5, 2008).

<sup>3</sup> Securities Exchange Act Release No. 59054, 73 FR 75159 (Dec. 10, 2008).