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Submitted electronically

September 20, 2019

Vanessa Countryman, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: SEC Roundtable on the Proxy Process (File No. 4-725)

Dear Ms. Countryman:

The Vanguard Group, Inc. ("Vanguard") appreciates the opportunity to provide comments to the Commission on ways to reform the proxy process on behalf of the Vanguard funds as both issuers of securities, as well as investors in thousands of public companies around the world. As issuers, the Vanguard funds collectively conducted the largest mutual fund proxy solicitation in U.S. history in 2017, soliciting more than 20 million shareholders. As investors, the Vanguard funds voted on over 169,000 proposals in 2019.[1] With this past experience, we offer a unique perspective on the inefficiencies and costs inherent in the current proxy process and look forward to working with the Commission and its staff to improve the process. Greater efficiencies and reduced cost will benefit all shareholders.

The proxy process serves as a vital mechanism to enable shareholders to engage with the companies they own. The process, however, can be costly and inefficient. Our goal is to promote a process that balances the benefits of engagement with the costs to issuers and, ultimately, to shareholders. In this letter we encourage the Commission to consider several areas of the proxy process for improvement. Specifically:

- Section I discusses the inefficiencies that can arise due to the distinction between objecting beneficial owners ("OBOs")[2] and non-objecting beneficial owners ("NOBOs")[3] and the challenges associated with shareholder record maintenance.
- Section II highlights our suggestions for how the Commission might consider balancing the need for shareholder engagement with the costs borne by funds. This section also makes recommendations to simplify the proxy disclosure requirements to focus on information that is materially relevant for decision-making in order to improve the investor experience and potentially increase retail investor participation.

[1] *See 2019 Investment Stewardship Annual Report* (Aug. 30, 2019) available at about.vanguard.com/investment-stewardship/perspectives-and-commentary/2019_investment_stewardship_annual_report.pdf

[2] Shareholders who have objected to disclosure of their identity and contact information to issuers, except in limited circumstances.

[3] Shareholders who have given an intermediary permission to release their identity and contact information to an issuer.

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- Section III focuses on the challenges to retail investor participation and the need to consider how various rules and regulations impact proxy solicitation of retail investors.
- Section IV outlines our recommendations for improving the shareholder proposal process to better balance the benefits of shareholder proposals with the costs to both issuers and shareholders.

I. Current Inefficiencies in Communicating with Shareholders

A. The OBO/NOBO Distinction

In 2017, the Vanguard funds in aggregate solicited the largest mutual fund proxy in U.S. history, successfully obtaining votes from millions of registered accounts holding shares of 195 funds. Notwithstanding the success of our recent proxy solicitation, the barriers to contacting beneficial shareholders through intermediaries were both challenging and costly. Factors that most impacted the efficiency of our proxy process were (i) the inability to directly contact beneficial shareholders through an intermediary because of the distinction between OBOs and NOBOs and (ii) the inaccurate or incomplete shareholder records maintained by intermediaries.

The current regulatory framework impedes direct communication with shareholders and requires issuers to incur significant costs to solicit votes, which are ultimately borne by shareholders. In 1985, the SEC adopted rules that created a distinction between OBOs and NOBOs.[4] This construct, and the related proxy solicitation rules, require issuers to utilize intermediaries and their vendors to send shareholders proxy materials, at a set fee, in order to solicit the votes of OBOs.[5] The current proxy process has created massive cost inefficiencies to shareholders' detriment. In our 2017 proxy, less than 41% of our shareholders held their shares through intermediaries, yet more than 60% of our overall solicitation cost was attributed to fees paid to vendors to contact beneficial shareholders holding Vanguard funds through intermediaries. The cost of soliciting a beneficial shareholder account through an intermediary, based on our experience, is almost three times the amount of soliciting a registered shareholder account.

Given the enormous cost inefficiencies of the current framework, we urge the Commission to consider eliminating the distinction between OBOs and NOBOs for purpose of proxy solicitation and require intermediaries to provide sufficient identifying information for beneficial owners, along with any communication preference that the intermediary has recorded for the beneficial owners. This would facilitate greater access by issuers, or their transfer agents, to beneficial owner information for the purpose of soliciting proxies. This change would, for the

[4] *See Facilitating Shareholder Communications*, SEC Release No. 34-22533 (Oct. 15, 1985).
[5] *See The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting*, Council of Institutional Investors (February 2010) available at www.sec.gov/comments/s7-14-10/s71410-22.pdf. In 2006, the Proxy Working Group considered the NYSE's current fee structure and stated that ''issuers and shareholders deserve periodic confirmation that the system is performing as cost-effectively, efficiently and accurately as possible, with the proper level of responsibility and accountability in the system." *See Report and Recommendations of the Proxy Working Group to the New York Stock Exchange* (2006), available at www.nyse.com/pdfs/PWG_REPORT.pdf.

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limited purpose of soliciting proxies, treat all beneficial owners as NOBOs. As a result, issuers would be permitted to have their selected proxy service provider communicate with all beneficial owners. This change would also allow issuers to negotiate fees in a more competitive proxy vendor marketplace, resulting in lower costs for shareholders. Our proposed change would continue to protect shareholders' interests, as access to shareholder information would be limited to proxy solicitations.

B. Shareholder Records Maintained by Intermediaries

Another consequence of the framework is that it relies heavily on the books and records of intermediaries. The requirements for maintaining information and the need for shareholder information by intermediaries are different than that of issuers. During our most recent proxy experience on behalf of the Vanguard funds, one of the challenges in successfully soliciting votes was inaccurate or insufficient records held by intermediaries for beneficial shareholders. In one instance, we learned that one of our large institutional beneficial shareholders did not receive its proxy materials because the intermediary had the incorrect address in its records. The proxies had to be re-mailed to the beneficial shareholder via overnight delivery for an additional cost. Our recent fund proxy experience also highlighted several instances where it was challenging for intermediaries to identify who had the right to vote.

We recognize that there are numerous rules and regulations that govern the system for how intermediaries keep records of shareholder accounts, and with whom they may share information about customer account holdings. The frequency with which intermediaries are required to update their books and records depends on the type of account holder, and the type of relationship that the intermediary has with the account holder. The regulatory requirements for updating intermediary books and records are not designed to meet the needs of issuers who issue proxies to a substantial number of shareholders at the same time, regardless of the type of account holder. We believe that maintaining accurate shareholder records would reduce the costs of mailings to shareholders and would ensure that proxy information is being received by the intended recipients. We encourage the Commission to consider how the rules impacting the proxy process and proxy intermediaries might be enhanced to create a more efficient and cost-effective system.

II. Contents of Proxy Statements

A. Matters Required to be Submitted for Investment Company Shareholder Approval

Changes to fundamental policies that are material to a fund's investment strategies or risks, and the election of fund trustees are important decisions for which shareholder approval should be solicited. We believe, however, that the Commission should reconsider what other matters must be submitted to investment company shareholders for a vote and what information is required to be disclosed in an investment company's proxy statement. In lieu of requiring shareholder approval for technical regulatory matters, we suggest the Commission consider whether, in limited circumstances, requiring approval by a majority independent board advised by independent counsel, along with notice to shareholders, would be sufficient to protect shareholders' interests.

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Under the Investment Company Act of 1940, and the rules, regulations, and exemptive relief provided thereunder, investment companies are required to seek shareholder approval for certain matters, some of which are quite technical in nature. We believe in such cases an independent board's judgement, informed by an independent counsel and coupled with shareholder disclosure, could be a more cost-effective solution. For example, during our most recent proxy we included a "manager of managers" proposal to allow Vanguard to hire a wholly-owned investment advisor to manage its U.S. mutual funds for business continuity purposes. This was one of the proposals that caused the most confusion for shareholders due to the technical, highly regulatory nature of the request.

Informed by this experience, we encourage the Commission to consider, both in its rulemaking and exemptive relief, whether it is necessary to proxy shareholders on certain issues if there are other, less costly steps that can be taken to protect shareholder interests. A recent example of this is the index fund diversification no-action letter issued by the Division of Investment Management. This no-action letter permits an index fund to become non-diversified due to the composition of its index, without obtaining shareholder approval, so long as the prospectus and fund website provide shareholders with appropriate disclosure on the updated diversification policy and its risks. We believe this effectively demonstrates how the SEC can protect the interests of shareholders while providing cost efficiencies in the regulation of the mutual fund industry.

B. Simplification of Proxy Disclosure for Investment Companies

In addition to the specific requirements that govern which matters must be presented to investment company shareholders, Schedule 14A details the requisite contents of proxy statements. While much of the required disclosure is beneficial for shareholders, we cannot overlook the distinction between operating companies and investment companies and how this distinction impacts the proxy process. Investment companies have the ability to issue complex-wide proxy statements that will apply to each fund within a registrant. Schedule 14A requirements that compel investment companies to include disclosure items which are not materially relevant for shareholder decision-making increase the cost of printing and mailing proxy statements in the context of an investment company issuer. Those costs are ultimately borne by fund shareholders who receive little to no benefit from the inclusion of this information in the printed proxy statement.

For example, Schedule 14A requires that issuers disclose information required by Item 403 of Regulation S-K – the names and addresses of beneficial owners of 5% or more of an issuer's outstanding shares. For investment companies issuing a complex-level proxy statement for a registrant, this requires disclosing 5% or more beneficial ownership information for each fund within the registrant. In our 2017 proxy, this disclosure covered almost 50% of the pages in the proxy statement. Another example is the Schedule 14A requirement to include the fees paid to an independent registered public accountant in instances when the shareholders are not approving or ratifying the selection of the accountant. The inclusion of information regarding 5% or more beneficial ownership and fees paid to an independent registered public accountant does little to assist shareholders in coming to an informed decision on the proposals contained in the proxy statement. Further, the cost burden of including this information outweighs the minimal benefit, if any, that may be derived from its inclusion in the printed proxy materials.

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We commend the Commission for the recent amendments to Regulation S-K and similar regulations mandated by the FAST Act, but encourage the Commission to further evaluate where disclosure requirements for proxy statements can be simplified. Alternatively, allowing investment companies to incorporate certain disclosures by reference and post such disclosure on a fund website would significantly reduce the costs of printing and mailing proxy statements.

III. Avenues to Increase Retail Participation

We recognize the importance of retail participation in the proxy process. In light of the declining retail participation rates over the years,[6] we have leveraged technology to reach our shareholders to allow them to vote on the matters impacting the Vanguard funds. During our most recent proxy, we utilized a digital campaign that resulted in over 60% of our registered accounts submitting their votes electronically. Notwithstanding this success, we encountered operational and regulatory obstacles in engaging retail shareholders.

It is important to acknowledge how the evolution in technology and methods of communication over the past few decades have impacted the proxy solicitation process. The Telephone Consumer Protection Act has added more complexity to the proxy process due to requirements to obtain consent prior to calling an individual's cell phone. This impedes proxy vendors, who may not have obtained shareholder consent, from soliciting shareholders using their cell phones and leaves landlines as the primary means of reaching shareholders by phone. However, more than half of all households in the U.S. no longer have a landline telephone and that number increases significantly for those between the ages of 18 and 44.[7]

As the Commission considers the proxy process, we encourage not only consideration of the relevant SEC rules, but also the interconnectedness of rules promulgated by other regulators such as the Federal Communications Commission, which collectively can frustrate achievement of the goals of the proxy solicitation process. As technology and communication preferences evolve, issuers will need to avail themselves of more efficient, reliable and convenient methods of communicating with shareholders in order to maintain and increase retail participation.

IV. Shareholder Proposals

Rule 14a-8 of the Securities Exchange Act of 1934 permits a shareholder to submit a proposal for inclusion in the issuer's proxy statement. Chairman Clayton noted that the Commission should consider reviewing the criteria for submitting such proposals[8] and several market participants have provided recommendations for how to reform the current thresholds. We support solutions that appropriately balance the rights of shareholders with the costs to issuers,

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[6] *See ProxyPulse 2018 Proxy Season Review* (Oct. 2018) available at www.broadridge.com/_assets/pdf/broadridge-2018-proxy-season-review.pdf.

[7] *See Wireless Substitution: Early Release of Estimates from the national Health Interview Survey, July-December 2016* National Center for Health Statistics (2016), available at www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf.

[8] *See Statement Announcing SEC Staff Roundtable on the Proxy Process* (July 30, 2018), available at www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process

and ultimately to fund shareholders. We also recognize the improvements that have taken place in the corporate governance of companies with the rise of shareholder proposals and support the Commission's efforts to maintain and champion the protection of shareholder rights.

Consistent with our mission – "To take a stand for all investors, to treat them fairly, and to give them the best chance for investment success" – we believe in creating and preserving shareholder value over the long term. As a voter and issuer of proxies, we believe, therefore, that proposals submitted for inclusion in an issuer's proxy should be focused on long term value. Taking into consideration the impact proposals can have on operating companies and investment companies, we would support the Commission increasing the amount of time shares must be held by a shareholder in order to submit a proposal for inclusion in an issuer's proxy statement. Specifically, we believe that increasing the continuous holding period from one year to three years would ensure that any shareholder submitting a proxy proposal has proven to have a long-term commitment to the company. We believe that a three-year holding period appropriately balances a shareholder's right to access the company proxy, regardless of a shareholder's wealth, with the interests of all shareholders who are impacted by the costs of shareholder proposals.

During our 2009 and 2017 proxies, we spent millions of dollars to include a shareholder proposal that received little support from shareholders, and did not pass for any of our funds. Considering the amount of time and resources that are expended in order to add a shareholder proposal to an issuer's proxy statement, we would also support a proposal to increase the ownership threshold required to submit a proposal for inclusion in a proxy statement. The current threshold, owning shares worth at least $2,000 in market value, is disproportionately low. Others have suggested requiring shareholders to pay the costs associated with including a proposal in the proxy statement if the proposal does not pass. We have concerns that this proposed solution would disenfranchise shareholders and essentially eliminate their ability to submit proposals due to the high costs associated with the inclusion of shareholder proposals. We would, however, support a measure that institutes a "time out" period for resubmission of proposals that failed to garner an adequate number of votes to pass over successive years, similar to that recommended by the Investment Company Institute's comment letter submitted on March 15, 2019.[9] We urge the Commission to re-evaluate the criteria to submit and resubmit shareholder proposals to better balance the costs and benefits to both shareholders and issuers.

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[9] *See* Letter from Paul Schott Stevens, President and CEO, ICI, to Ms. Vanessa Countryman, Acting Secretary, SEC, dated March 15, 2019, available at www.sec.gov/comments/4-725/4725-5124158-183336.pdf.

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Vanguard appreciates the opportunity to share its perspective on the proxy voting process and how it impacts our fund shareholders. We will continue to engage with the Commission and its staff in moving this initiative forward. If you have any questions, please contact Glenn Booraem ([redacted]) or Laura Merianos ([redacted]).

Sincerely,

Anne Robinson
Managing Director and General Counsel,
The Vanguard Group, Inc.

cc: The Honorable Jay Clayton
Chairman
Securities and Exchange Commission

The Honorable Robert J. Jackson Jr.
Commissioner
Securities and Exchange Commission

The Honorable Allison Herren Lee
Commissioner
Securities and Exchange Commission

The Honorable Hester M. Peirce
Commissioner
Securities and Exchange Commission

The Honorable Elad L. Roisman
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Securities and Exchange Commission

Dalia Blass
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