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Submitted electronically

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: Facilitating Shareholder Director Nominations
Release No. IC-28765; File Number S7-10-09

Dear Ms. Murphy:

The Vanguard Group, Inc. ("Vanguard")[1] appreciates the opportunity to comment on the Commission's recent proxy access proposals, *Facilitating Shareholder Director Nominations*.[2] Vanguard supports shareholder rights and a strong corporate governance framework. However, we do not support the rules as proposed ("Proposed Rules"), from two perspectives.

First, from the position of the Vanguard funds as issuers, we are concerned that the Proposed Rules could disrupt the corporate governance model that the Commission has developed for investment companies. The corporate governance needs of investment companies and the regulatory framework in which they operate differ substantially from those of public operating companies. The Commission recognized this when, only five years ago, it adopted substantial changes to investment company governance practices to strengthen the role of independent directors. We question the need for comprehensive proxy rule reform for investment companies in light of the Commission's acknowledgment in 2004 that the system of fund governance has served mutual fund investors well and should be preserved, [3] in the absence of specific investor concerns warranting such reform.

Second, from the position of the Vanguard funds as long-term investors in thousands of public companies, we are concerned that the Proposed Rules' ownership thresholds are far too low. Our proxy voting principles are based on maximizing value to fund shareholders over the long term, and we strongly support the exercise of shareholder rights, in proportion to economic ownership, as a fundamental privilege of stock ownership. However, in our view, the Proposed Rules lower the bar *too* far, giving investors an ability to influence and disrupt corporate management that is out of proportion with their stake in companies' long-term success.

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[1] Vanguard offers more than 150 U.S. mutual funds with total assets of approximately $1 trillion. We serve approximately 23 million shareholder accounts.

[2] Investment Company Act Release No. 28765, 74 Fed. Reg. 29024 (June 18, 2009).

[3] *Investment Company Governance Rule, Final Rule*, Investment Company Act Release No. 26520, 69 Fed. Reg. 46378 at 46380 (August 2, 2004) ("Fund Governance Rules").

The Proposed Rules are not well designed for investment companies.

Although investment company shares, like those of public operating companies, are publicly issued under the Securities Act of 1933, the corporate governance framework applicable to investment companies is materially different from the framework applicable to public operating companies. Investment companies operate under a comprehensive statutory and regulatory framework that is premised on a governance structure in which independent directors play a key role and protect shareholders from overreaching by their management firms. This statutory and regulatory framework, and the industry model that has developed under the Commission's guidance and supervision, would be disrupted, not enhanced, by extending the public company shareholder access model to investment companies.

The Investment Company Act of 1940 creates a set of rules and regulations that depends on governance by independent directors whose role is to ensure that funds are managed in the best interests of their shareholders and not in the interests of management. The Commission reinforced its commitment to the independent-director-based governance model when it adopted the Fund Governance Rules in 2004. It also preserved the deep-rooted and generally effective model of unitary, or common, boards of directors serving multiple funds within a complex, acknowledging that there is strong support for the unitary board model.[4] In addition, most of the industry has endorsed the unitary board model: "[s]ervice on multiple boards can provide the independent directors of those boards with an opportunity to obtain better familiarity with the many aspects of fund operations that are complex-wide in nature. It also can give the independent directors greater access to the fund's adviser and greater influence with the adviser than they would have if there were a separate board for each fund in the complex."[5] Although questions have arisen from time to time as to how single boards effectively manage large numbers of funds, the Commission has acknowledged their usefulness and success. Vanguard's experience and decades of industry experience also demonstrate that unitary boards are powerful and efficient bodies, better able to moderate the influence of the advisers who operate the funds day-to-day.

The Proposed Rules, if applied to investment companies, would interfere with and disrupt the Commission's Fund Governance Rules and an industry-wide corporate governance model without apparent justification. Because the multiple funds within a complex have different shareholder bases, a director nominating process based on holdings of individual funds within the complex would result in nomination and election of different directors for funds within the complex. The resulting need for multiple, separate board meetings would create additional costs, pose greater logistical challenges for the conduct of meetings, fracture the funds' relationship with their common investment adviser, and fragment management of funds, thereby undermining all of the benefits to fund shareholders of unitary boards.

The Fund Governance Rules also protect investors' best interests by providing a framework for the independent directors to select and nominate other independent directors to serve on a fund's board. In connection with the Fund Governance Rules, the Commission reaffirmed and strengthened the critical role of independent directors in examining director nominees and scrutinizing whether a nominee's personal and business relationships are consistent with independent representation of fund investors. The Commission has urged independent directors to identify individuals who have the background, experience, and independent judgment

[4] *Investment Company Governance Rule, Proposed Rule*, Investment Company Act Release No. 26323, 69 Fed. Reg. 3472 at 3476 (January 23, 2004).
[5] Investment Company Institute, *Report of the Advisory Group on Best Practices for Fund Directors: Enhancing A Culture of Independence and Effectiveness* (June 24, 1999), at 28.

necessary to represent the interests of fund investors, a higher bar than simply meeting minimum eligibility and ownership requirements. The concerns that animate the Proposed Rules – to ensure that director nominations are not dominated by entrenched management interests – are unnecessary in the mutual fund context, because new directors are nominated by independent directors, who are the shareholders' proxies, and who are charged with explicit statutory and regulatory obligations to protect the funds from overreaching by their management firms.

In sum, we believe that the approach of the Proposed Rules calls into question the continuing validity of the Commission's Fund Governance Rules and undermines the carefully considered structure under which independent directors are charged with protecting shareholders' interests, by, among other things, nominating other independent directors.

The ownership thresholds under the proposed proxy access rules would not enhance the interests of long-term shareholders.

Vanguard is the investment manager of over $439 billion in equity index fund assets as of July 31, 2009. In turn, these Vanguard index funds, on behalf of their investors, are long-term shareholders of large stakes in public companies. Consequently, Vanguard is uniquely focused on enhancing the long-term value of public companies and takes very seriously its role in monitoring the management of those companies over years if not decades. We do not support the proposed share ownership requirements in the Proposed Rules and are concerned that the low ownership thresholds do not enhance the interests of most long-term shareholders. As fiduciaries acting on behalf of our funds, we care deeply about the effective management of public companies. We fear that the ownership thresholds in the Proposed Rules will open the door to distraction and expense at the whim of investors whose financial interests do not justify the amount of management attention and resources they could consume.

This issue is important to the Vanguard funds as investors in public equity securities and as issuers of mutual fund shares. Under the Proposed Rules, shareholders who own as little as one percent of the voting securities of a company for a period of one year can force a company to include director nominees in the company's proxy materials. As proposed, shareholders are not required to continue holding the company's securities after the election process and can divest their securities immediately following the election for which they nominate a director. Moreover, shareholders with small ownership interests could nominate a director who is focused solely on promoting a special interest. We believe that facilitation of shareholder access must always be appropriately balanced against potential disruption to the board, particularly when that process is used to advance a particular shareholder agenda to the detriment of shareholders as a group and the long-term interests and strength of a company.

Under the Proposed Rules, the bar is set even lower for eligibility to submit a shareholder proposal relating to the director nomination process – an investment of $2,000 held for one year. Shareholder proposals relating to the director nomination process could open the process to misuse by special interests. Shareholders could require a company to include shareholder proposals that could disrupt the efficient operation of the board and force the company to include similar proposals at consecutive shareholder meetings.

We generally support the recommendations of the Investment Company Institute in its comment letter dated August 17, 2009, with respect to beneficial ownership requirements for shareholder access to public operating company proxy materials. Thresholds should be higher, with shareholders owning at least 5% of a company's securities for at least one year to be permitted to submit bylaw amendments regarding director nomination procedures. We strongly

believe that raising the beneficial ownership and holding period requirements in the Proposed Rules is critical to protect long-term shareholder value and interests.

Cost-Benefit Analysis

Finally, we believe that the Commission has not given sufficient consideration to the direct costs of including director nominees and shareholder proposals in company proxy materials. In the Proposed Rules, the Commission estimates that the print, mail and tabulation costs to include one shareholder proposal in a company's proxy materials is in the range of $15,000 to $50,000. In our recent experience, actual costs can run much higher. Vanguard recently concluded a complex-wide proxy solicitation that included a shareholder proposal. We estimate that the costs of including the submitted shareholder proposal in our complex-wide proxy materials exceeded $3 million in tabulation expenses alone. (We do not include incremental printing and mailing costs in our estimate because the proposal was added to a larger proxy statement and did not require a separate mailing.) The tabulation expenses varied on a fund-by-fund basis depending on the size of the fund, from $15,000 to as much as $500,000 per fund.

Under the Proposed Rules, company proxy materials for each shareholder meeting could be required to include both director nominees and an unlimited number of shareholder proposals relating to nomination procedures. If a director nominee who was included in a company's proxy materials is not elected by shareholders, the same candidate can be re-nominated at consecutive shareholder meetings by the same shareholder or shareholder group. We are concerned that the repeated costs of including nominees and shareholder proposals in a company's proxy statement could become costly to fund shareholders and may result in a negative impact on long-term shareholder value without commensurate benefits.

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If you have any questions or require additional information, please contact me or Natalie Bej, Principal in Vanguard's Legal Department, at (610) 503-5693.

Sincerely,

/s/ Heidi Stam

Heidi Stam
Managing Director and General Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner

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