

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82029; File No. TP 18-02)

November 7, 2017

Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Vanguard Total Corporate Bond ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated November 7, 2017 (“Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for Vanguard Scottsdale Funds (“Trust”), on behalf of the Trust, Vanguard Total Corporate Bond ETF (“Fund”), any national securities exchange on or through which shares of the Fund (“Shares”) are listed and may subsequently trade, Vanguard Marketing Corporation (“Distributor”), and persons engaging in transactions in Shares (collectively, the “Requestors”), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 25,000 shares (“Creation Units”).

The Trust is registered with the Securities and Exchange Commission (“Commission”) under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end series investment company. The Fund seeks to track the performance of an underlying index, the Bloomberg Barclays U.S. Corporate Bond Index (“Underlying Index”). The Underlying Index measures the investment grade, fixed-rate, taxable corporate bond market, including U.S. dollar denominated securities that are publicly issued by U.S. and non-U.S. industrial, utility, and financial issuers.

The Fund will seek to track the performance of its Underlying Index through, under normal circumstances,<sup>1</sup> investing at least 80% of its total assets<sup>2</sup> in the ETFs that comprise the Underlying Index.<sup>3</sup> Except for the fact that the Fund initially intends to operate as an ETF of ETFs, the Fund will operate in a manner identical to the underlying ETFs.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end series investment company that is registered with the Commission;
- Creation Units will be continuously redeemable at the net asset value (“NAV”) next determined after receipt of a request for redemption by the Fund, and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on the Nasdaq Stock Market LLC or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the “Listing Exchange”);<sup>4</sup>
- All ETFs in which the Fund is invested will meet all conditions set forth in one or more class relief letters, will have received individual relief from the Commission, will be able

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<sup>1</sup> The term “under normal circumstances” includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events, such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>2</sup> Regardless of the representation that the Fund generally will invest at least 80% of its total assets in securities that comprise the underlying index, the Fund seeks to have performance that does not deviate more than five percent per annum from the performance of the underlying index.

<sup>3</sup> The remaining twenty percent of the Fund’s total assets may be invested in securities (including other underlying funds) not included in the underlying index, in money market instruments or funds that invest exclusively in money market instruments, and in fixed income futures, subject to applicable limitations under the Investment Company Act of 1940.

<sup>4</sup> Further, Requestors represent in the Letter that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that are, or will become, effective pursuant to Section 19(b) of the Exchange Act.

to rely upon individual relief even though they are not named parties, or will be able to rely on applicable class relief for actively-managed ETFs;

- At least 70% of the Fund is comprised of component securities that will meet the minimum public float and minimum average daily trading volume thresholds under the “actively-traded securities” definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the Fund;
- The Fund seeks to track the performance of the Underlying Index, all of the components of which will have publicly available last sale trade information;
- On each business day before the opening of business on the Listing Exchange, the Fund will cause to be published through the National Securities Clearing Corporation the list of the names and the quantities of securities and other assets of the Fund’s portfolio that will be applicable that day to creation and redemption requests;
- The Listing Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the Consolidated Tape Association, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The arbitrage mechanism will be facilitated by the transparency of the Fund’s portfolio and the availability of the intraday indicative value, the liquidity of securities held by the Fund, the ability to acquire such securities, and the arbitrageurs’ ability to create workable hedges;
- The Fund will invest solely in liquid securities;

- The Trust believes that arbitrageurs are expected to take advantage of price variations between the Fund’s market price and its NAV; and
- A close alignment between the market price of Shares and the Fund’s NAV is expected.

### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rules 101 and 102 of Regulation M, the Requestors may not rely upon those exceptions for the Shares.<sup>5</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security that is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the Rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution, and, as such, the restricted period in which distribution

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<sup>5</sup> While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>6</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market

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<sup>6</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

#### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, and subject to the conditions below, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>7</sup>

#### Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

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<sup>7</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations of the Requestors in the Letter, that the provision of the notices as described in the Letter and subject to the conditions of this Order would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17, except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Listing Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Listing Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors, and, as is the case with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying

on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(6) and (9).