

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC- 27750; 812-13336]

Vanguard Bond Index Funds, et al.; Notice of Application

March 9, 2007

Agency: Securities and Exchange Commission (“Commission”)

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for exemptions from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for exemptions from sections 17(a)(1) and (2) of the Act.

Summary of Application: Applicants request an order that would permit the following: (a) an open-end management investment company, the series of which consist of the component securities of certain fixed income securities indices, to issue a class of shares (“ETF Shares”) that can be purchased from the investment company and redeemed only in large aggregations (“Creation Units”); (b) secondary market transactions in ETF Shares to occur at negotiated prices on a national securities exchange, as defined in section 2(a)(26) of the Act (“Exchange”); (c) dealers to sell ETF Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (“Securities Act”); and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

Applicants: Vanguard Bond Index Funds (“Trust”), The Vanguard Group, Inc. (“VGI”), and Vanguard Marketing Corporation (“VMC”).

Filing Dates: The application was filed on October 25, 2006 and amended on January 23, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application 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 March 30, 2007, 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 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. Applicants, c/o Barry A. Mendelson, The Vanguard Group, Inc., P.O. Box 2600, Valley Forge, PA 19482.

For Further Information, Contact: Keith A. Gregory, Senior Counsel at (202) 551-6815, or Michael W. Mundt, Senior Special Counsel, 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 for a fee at the Commission's Public Reference Desk, 100 F Street, NE, Washington, DC 20549-0102, telephone (202) 551-5850.

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 currently has four series ("Existing

Funds”). Each Existing Fund currently offers separate classes of shares for retail and institutional investors (such classes of shares collectively, “Conventional Shares”). In the future, the Trust or another registered open-end management investment company may offer other series (“Future Funds,” and together with Existing Funds, “Funds”). Any Future Fund will (a) be advised by VGI or an entity controlled by or under common control with VGI and (b) comply with the terms and conditions of any order granted pursuant to the application.

2. VGI is a Pennsylvania corporation that is wholly and jointly owned by 35 investment companies and the series of those investment companies (each series, a “Vanguard Fund” and collectively, the “Vanguard Fund Complex”). VGI is registered as an investment adviser under the Investment Advisers Act of 1940 and as a transfer agent under the Securities Exchange Act of 1934 (“Exchange Act”). VGI provides each Vanguard Fund with corporate management, administrative, and transfer agency services at cost. VGI also provides advisory services at cost to certain Vanguard Funds, including each of the Existing Funds. VMC, a wholly owned subsidiary of VGI, is registered as a broker-dealer under the Exchange Act. VMC provides all distribution and marketing services to the Vanguard Funds, including each of the Existing Funds.

3. Each Existing Fund seeks to track as closely as possible the performance of a different index that measures the performance of the bond market as a whole or a discrete segment of the bond market (the “Target Indexes”).<sup>1</sup> The bond holdings of each Existing Fund are selected through a sampling process and at least 80% (and in most cases more than 90%) of an Existing Fund’s assets will be invested in bonds included in the Existing Fund’s Target

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<sup>1</sup> The Target Indexes are Lehman Brothers Aggregate Bond Index (“Lehman Agg. Index”), Lehman Brothers 1-5 Year Government/Credit Index, Lehman Brothers 5-10 Year Government/Credit Index and Lehman Brothers Long Government/Credit Index.

Index.<sup>2</sup> The remainder is typically invested in bonds that are not included in the Existing Fund's Target Index, cash and cash equivalents, futures, and swap contracts. Unlike the other three Existing Funds, the Vanguard Total Bond Market Index Fund ("Total Bond Market Index Fund") holds government mortgage-backed securities ("MBS"), asset backed securities ("ABS"), and commercial mortgage-backed securities (CMBS).<sup>3</sup> The Total Bond Market Index Fund seeks to track that portion of the Lehman Agg. Index devoted to MBS by investing a corresponding percentage of its assets either in MBS included in the index or in "to-be-announced" ("TBA") transactions on MBS.<sup>4</sup>

4. Applicants state that, historically, the difference between the performance of an Existing Fund and the performance of its Target Index has rarely exceeded one percentage point and in almost all cases has been significantly less than one percentage point. Applicants expect that, in the future, both the Existing Funds and Future Funds will track their Target Indexes with the same degree of precision, and will have a tracking error of less than 5% per annum. No entity that creates, compiles, sponsors, or maintains a Target Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Funds, VGI, any adviser to or promoter of a Fund, or VMC.

5. Each Fund proposes to create ETF Shares, a class of shares that would be listed on an Exchange and trade in the secondary market at negotiated prices. Applicants submit that

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<sup>2</sup> Each Fund invests in a representative sample of bonds from its Target Index that will resemble the full index in terms of characteristics such as maturity, credit quality, issuer type and yield.

<sup>3</sup> The Total Bond Market Index Fund will hold MBS, ABS, and CMBS in approximately the same percentages as those securities are represented in the Lehman Agg. Index. ABS and CMBS will not be among the Deposit Securities required to purchase a Creation Unit or among the Redemption Securities an investor will receive when redeeming a Creation Unit.

<sup>4</sup> A "TBA transaction" is essentially a purchase or sale of an MBS for future settlement at an agreed-upon date. Applicants state that most MBS trades are executed as TBA transactions. Applicants state that TBA transactions increase the liquidity and pricing efficiency of transactions in MBS because they permit similar MBS to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

the availability of ETF Shares would satisfy market demand for investment company securities which would provide intra-day liquidity and low cost exposure to an index of bonds. Applicants state that, by creating an exchange-traded class of shares, the Funds will offer short-term investors an attractive means of investing in the Funds.<sup>5</sup> Applicants state that offering ETF Shares will benefit the Funds by reducing the portfolio disruption and transaction costs caused by short-term investors.

6. The Funds will issue ETF Shares only in Creation Units, aggregations of a specified number of shares ranging from 50,000 to 100,000 shares. The price of a Creation Unit will range from \$1,500,000 to \$10,000,000. Orders to purchase Creation Units must be placed with VMC by or through an “Authorized Participant,” which is a Depository Trust Company (“DTC”) participant that has executed a participant agreement with VMC. Creation Units will be issued in exchange for an in-kind deposit of securities and cash (“Creation Deposit”).<sup>6</sup> The Creation Deposit will consist of a basket of approximately 50 to 100 fixed income securities selected by VGI (“Deposit Securities”)<sup>7</sup> and a cash payment to equalize any difference between the total aggregate market value of the Deposit Securities and the NAV per Creation Unit of the

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<sup>5</sup> Applicants expect ETF Shares to appeal to short-term investors because they can be bought and sold continuously throughout the day at market price rather than at net asset value (“NAV”), which is calculated only once per day at the close of trading on the New York Stock Exchange (“NYSE”). Transactions in Conventional Shares will continue to be priced at NAV.

<sup>6</sup> On each business day, prior to the opening of trading on the Exchange, VGI will make available through the National Securities Clearing Corporation (“NSCC”) (or through some other party if NSCC is unwilling or unable to perform this function) the list of the names and the required amount of each Deposit Security to be included in the Creation Deposit for each Fund. Each Fund reserves the right to permit or require the purchaser of a Creation Unit to substitute cash or a different security to replace a Deposit Security under certain circumstances.

<sup>7</sup> Applicants state that it would be impractical to ask an Authorized Participant to assemble a basket of several hundred or several thousand bonds that replicate the portfolio of a Fund. Accordingly, VGI will select a subset of the Fund’s portfolio using a representative sampling strategy.

Fund (“Purchase Balancing Amount”).<sup>8</sup> An investor purchasing a Creation Unit from a Fund will be charged a fee (“Transaction Fee”) to prevent any dilution of the interests of remaining shareholders due to the Fund incurring costs in connection with the investor’s purchase of the Creation Unit(s).<sup>9</sup> Each purchaser of a Creation Unit will receive a prospectus for the ETF Shares (the “ETF Prospectus”) that discloses the maximum Transaction Fee, and the method of calculating Transaction Fees will be disclosed in the Fund’s Statement of Additional Information (“SAI”). A Fund’s Conventional Shares will be covered by a separate prospectus (the “Conventional Prospectus”).

7. The Funds will accept purchase orders only on days that the NYSE is open for business. Purchase orders must be received by VMC prior to the closing time of the regular trading session of the NYSE. VMC will transmit all purchase orders to the Funds, maintain a record of each Creation Unit purchaser, and send out an ETF Prospectus and confirmation to such purchasers.

8. The purchaser of a Creation Unit will be able to separate the Creation Unit into individual ETF Shares.<sup>10</sup> ETF Shares will be listed on an Exchange and traded in the secondary

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<sup>8</sup> The Funds must comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities (as defined below), including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act. If at any time in the future the Funds accept Deposit Securities or satisfy redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Redemption Securities. The prospectus for the Funds will state that “An Authorized Participant that is not a “qualified institutional buyer” as defined in rule 144A under the Securities Act of 1933 will not be able to receive, as part of the redemption basket, restricted securities eligible for resale under rule 144A.”

<sup>9</sup> When a Fund permits an investor to substitute cash for a Deposit Security, the investor may be assessed a higher Transaction Fee to offset the increased cost to the Fund of buying the necessary Deposit Security for its portfolio.

<sup>10</sup> Applicants state that persons purchasing Creation Units will be cautioned in the ETF Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed a statutory underwriter and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent ETF Shares, and sells ETF Shares directly to its customers, or if it chooses to couple the (cont’d...)

market in the same manner as shares of other exchange-traded funds. One or more Exchange specialists (“Specialists”) will be assigned to make a market in the ETF Shares. The price of ETF Shares traded on an Exchange will be based on a current bid/offer market, and each ETF Share is expected to have an initial market value of between \$30 and \$100. Transactions involving the sale of ETF Shares in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A Specialist, in providing for a fair and orderly secondary market for ETF Shares, also may purchase Creation Units for use in its market making activities on the Exchange. Applicants expect that secondary market purchasers of ETF Shares will include both institutional and retail investors.<sup>11</sup> Applicants believe that arbitrageurs will purchase or redeem Creation Units to take advantage of discrepancies between the ETF Shares’ market price and the ETF Shares’ NAV. Applicants expect that this arbitrage activity will provide a market discipline that will result in a close correspondence between the price at which the ETF Shares trade and their NAV. Applicants do not expect ETF Shares to trade at a significant premium or discount to their NAV.<sup>12</sup>

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purchase of a supply of new ETF Shares with an active selling effort involving solicitation of secondary market demand for ETF Shares. The ETF Prospectus will state that whether a person is an underwriter depends on all the facts and circumstances pertaining to that person’s activities. The ETF Prospectus also will state that broker-dealer firms should note that dealers who are not “underwriters” but are participating in a distribution (as contrasted to an ordinary secondary trading transaction), and thus dealing with ETF Shares that are part of an “unsold allotment” within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

<sup>11</sup> ETF Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding ETF Shares. Records reflecting the beneficial owners of ETF Shares will be maintained by DTC or its participants.

<sup>12</sup> Every 15 seconds throughout the trading day, the Exchange will disseminate via the facilities of the Consolidated Tape Association the market value of an ETF Share and, separate from the consolidated tape, the Exchange or another information provider will disseminate a calculation of the approximate NAV of an ETF Share. Applicants (cont’d...)

10. Applicants will make available an ETF Shares product description (“Product Description”) for distribution in accordance with an Exchange rule requiring Exchange members and member organizations effecting transactions in ETF Shares to deliver a Product Description to investors purchasing ETF Shares, whether on or away from the Exchange. Applicants state that any other Exchange that applies for unlisted trading privileges in ETF Shares will have to adopt a similar rule, requiring delivery of the Product Description. The Product Description will provide a plain English overview of a Fund, including its investment objective and investment strategies, the identity of VGI, the material risks of investing in the Fund, and the frequency of dividends and capital gains distributions. The Product Description also will provide a brief, plain English description of the salient features of ETF Shares. The Product Description will advise investors that an ETF Prospectus and SAI may be obtained, without charge, from the investor’s broker or from VMC. The Product Description also will identify a website address where investors can obtain information about the composition and compilation methodology of the Target Index. Applicants expect that the number of purchases of ETF Shares in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in ETF Shares.

11. Except in connection with the liquidation of a Fund (or of a Fund’s ETF Share class), ETF Shares will only be redeemable in Creation Units through each Fund. An investor redeeming a Creation Unit generally will receive (a) a basket of securities (“Redemption Securities”), which in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day, and (b) a cash amount equal to the difference in the

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state that an investor comparing the two figures will be able to determine whether, and to what extent, ETF Shares are selling at a premium or discount to NAV.

value of the Redemption Securities and the NAV of a Creation Unit, which in most cases will be the same as the Purchase Balancing Amount paid (or received) by investors purchasing Creation Units on the same day. A Fund may make redemptions partly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor, if the Fund determines that such alternative is warranted. A Fund may make such a determination if, for example, a redeeming investor is unable, by law or policy, from owning a particular Redemption Security. In order to cover the Fund's transaction costs, redeeming investors will pay a Transaction Fee.<sup>13</sup>

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act for exemptions from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act for exemptions from sections 17(a)(1) and (2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 2(a)(32) of the Act

3. Section 2(a)(32) of the Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Applicants request an order under section 6(c) to permit ETF Shares to be

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<sup>13</sup> Investors who redeem for cash, rather than in kind, may pay a higher Transaction Fee.

redeemed in Creation Units only. Applicants note that because of the arbitrage possibilities created by the redeemability of Creation Units, it is expected that the market price of an ETF Share will not vary much from its NAV.

Section 18(f)(1) and 18(i) of the Act

4. Section 18(f)(1) of the Act, in relevant part, prohibits a registered open-end company from issuing any class of “senior security,” which is defined in section 18(g) to include any stock of a class having a priority over any other class as to the distribution of assets or payment of dividends. Section 18(i) of the Act requires that every share of stock issued by a registered management company be voting stock, with the same voting rights as every other outstanding voting stock. Rule 18f-3 permits an open-end fund to issue multiple classes of shares representing interests in the same portfolio without seeking exemptive relief from section 18(f)(1) and 18(i), provided that the fund complies with certain requirements. Applicants state that they will comply in all respects with rule 18f-3, except the requirements that (a) each class have the same rights and obligations as each other class (other than the differences allowed by the rule), and (b) if a class has a different distribution arrangement, the class must pay all of the expenses of the arrangement. Because applicants, therefore, may not rely on rule 18f-3, they request an exemption under section 6(c) from sections 18(f)(1) and 18(i).

5. Applicants state that there are four ways in which the Conventional Shares and ETF Shares of each Fund will have different rights: (a) Conventional Shares are individually redeemable, while ETF Shares will be redeemable in Creation Units only; (b) ETF Shares will be traded on an Exchange, while Conventional Shares will not; (c) Conventional Shares declare dividends daily, while ETF Shares will declare dividends monthly; and (d) although all shares classes of a Fund will pay dividends monthly, the payment date for the Conventional Shares will

be the same as the ex dividend date (“ex date”), while the payment date for the ETF Share will be four days or more after the ex date. Applicants assert that different trading and redemption rights are necessary if their proposal is to have the desired benefits. Applicants note that a Fund’s ETF Shares will be tradable on an Exchange and redeemable only in large aggregations in order to encourage short-term investors to conduct their trading activities in a way that does not disrupt the management of the Fund’s portfolio. Applicants assert that there is no reason to make Conventional Shares tradable and that it would be counterproductive to facilitate the ability of market timers to disrupt a Fund by making ETF Shares individually redeemable.

6. Applicants state the proposal to declare dividends to the ETF Share class on a monthly basis, as opposed to on a daily basis for the Conventional Share class, will result in a higher net asset value (“NAV”) for the ETF Share class during a monthly period due to the presence of accrued but undistributed income.<sup>14</sup> Applicants submit that absent adjustment, this difference would result in a disproportionate allocation of a fund’s income, realized capital gains and losses, and unrealized appreciation and depreciation (“Allocable Items”) to the ETF Shares relative to the Conventional Shares because such items are allocated among a fund’s classes based upon relative net assets. Applicants intend to eliminate this potential inequality by allocating the Allocable Items on the basis of class-level net assets adjusted to factor out the differences introduced by the application of the different dividend policies (“Asset Adjustment”). Applicants submit that the use of the Asset Adjustment will ensure that the daily allocation of Allocable Items to ETF Shares and Conventional Shares is not distorted by the classes’ differing

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<sup>14</sup> When dividends are declared monthly, as opposed to daily, each day’s accrued income is reflected as an increase in the shares’ NAV. At the end of the month, when dividends are declared, the NAV drops by the amount of the dividend. By contrast, when dividends are declared daily, the amount of the daily income accrual is offset by a corresponding distribution payable liability. As a result, the net effect on the shares’ NAV typically is zero.

dividend policies.<sup>15</sup> Applicants state that it is industry practice for bond ETFs to declare dividends monthly.

7. Applicants state that the accrual of dividends in the NAV of the ETF Shares but not the Conventional Shares will have an effect on the voting power of the respective classes because the shareholders of the Funds are given voting rights proportionate to the NAV of their shares. Applicants assert that such effects on voting power will be minor and that this treatment of voting rights meets the standards of section 18(i) because every share issued by the Funds will have equal voting rights in that each share will be entitled to one vote per dollar of NAV and a fractional vote per fractional dollar of NAV.

8. Applicants state that although Conventional Shares and ETF Shares both pay dividends monthly, another difference between the classes is that the holders of Conventional Shares are able to reinvest dividends immediately when paid, while the ETF Shareholders would have to wait a few days to receive their payments through their brokers. As a result, holders of Conventional Shares of the Funds who reinvest will be continuously invested, while ETF Shareholders who reinvest will be “out of the market” for four days with respect to the amount of the dividend.<sup>16</sup> Applicants state that the four day difference will affect the relative performance of the classes because during the time the dividend is out of the market, ETF Shareholders will not receive income or experience appreciation or depreciation on the amount of the dividend. Applicants do not expect this economic difference to be significant.

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<sup>15</sup> Applicants will not rely on the requested order until the board of trustees (“Board”) of each Fund has formally determined that, after applying the Asset Adjustment, the annualized rates of return of the ETF and Conventional Share classes generally will differ only by the expense differentials among the classes, as required by rule 18f-3(c)(1)(v) under the Act.

<sup>16</sup> Applicants assert that the delay between the ex date and the payment/reinvestment date occurs for all ETFs, whether they are stand-alone ETFs or part of a multi-class structure, and regardless of whether an ETF Shareholder elects to reinvest dividends.

9. Applicants assert that the different rights do not implicate the concerns underlying section 18 of the Act, including excessive leverage, conflicts of interest and investor confusion. With respect to the potential for investor confusion, applicants will take a variety of steps to ensure that investors understand the key differences between Conventional Shares and ETF Shares. Applicants state that the ETF Shares will not be marketed as a mutual fund investment. Marketing materials may refer to ETF Shares as an interest in an investment company or fund, but will not make reference to an “open-end fund” or “mutual fund,” except to compare or contrast the ETF Shares with the shares of a conventional open-end management investment company. Any marketing or advertising materials addressed primarily to prospective investors will emphasize that (a) ETF Shares are not redeemable from a Fund other than in Creation Units, (b) ETF Shares, other than in Creation Units, may be sold only through a broker, and the shareholder may have to pay brokerage commissions in connection with the sale, and (c) a selling shareholder may receive less than NAV in connection with the sale of ETF Shares. The same type of disclosure will be provided in the Conventional Prospectus, ETF Prospectus, Product Description, SAI, and any document addressed primarily to prospective investors. The prospectus for the Funds Conventional Shares will disclose that dividends are declared daily and paid monthly. The prospectus and Product Description for the ETF Shares will disclose that dividends are declared monthly and paid monthly and that the reinvestment of dividends (if elected), will not occur until approximately four days after the ex date. The applicants also note that (a) all references to a Fund’s exchange-traded class of shares will use a form of the name “ETF Shares” rather than the Fund name, (b) the cover and summary page of the ETF Prospectus will state that the ETF Shares are listed on an Exchange and are not individually redeemable, (c) VMC will only market Conventional Shares and ETF Shares in the same advertisement or

marketing material when the advertisement or marketing material contains appropriate disclosure explaining the relevant features of each class of shares and highlighting the differences between the share classes, and (d) applicants have prepared educational materials describing the ETF Shares.

10. Applicants currently allocate distribution expenses among funds in the Vanguard Fund Complex according to a cost-sharing formula approved by the Commission in 1981 as part of an order allowing the Vanguard Fund Complex to internalize its distribution services (“1981 Order”).<sup>17</sup> For those funds in the Vanguard Fund Complex offering multiple classes of shares, applicants apply the formula in the 1981 Order by treating each class as a separate fund (“Multi-Class Distribution Formula”).

11. Applicants propose to apply the Multi-Class Distribution Formula to each Fund’s class of ETF Shares. Applicants acknowledge that, because ETF Shares may have a distribution arrangement that differs from that for Conventional Shares, the proposed allocation method is inconsistent with rule 18f-3. Applicants contend, however, that the Multi-Class Distribution Formula is a fundamental feature of Vanguard’s unique, internally-managed structure, and that the proposed allocation method is consistent with the method approved by the Commission in the 1981 Order. The Multi-Class Distribution Formula has been approved by the Board of each Fund, and the Board of each Fund, including a majority of the trustees who are not interested persons, as defined in section 2(a)(19) of the Act (“Disinterested Trustees”), will review the

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<sup>17</sup> Investment Company Act Release No. 11645 (Feb. 25, 1981) (Opinion of the Commission and Final Order). Under the formula, each Vanguard Fund’s contribution is based 50% on its average month-end net assets during the preceding quarter relative to the average month-end net assets of the other Vanguard Funds, and 50% on its sales of new shares relative to the sales of new shares of the other Vanguard Funds during the preceding 24 months. So that a new fund is not unduly burdened, the formula caps each Vanguard Fund’s contribution at 125% of the average expenses of the Vanguard Funds collectively, with any amounts above the cap redistributed among the other Vanguard Funds. In addition, no fund may pay more than 0.2% of its average month-end net assets for distribution.

application of the Multi-Class Distribution Formula on an annual basis and determine that the proposed allocation is in the best interests of each class of shareholders and of the Fund as a whole.

Section 22(d) of the Act and Rule 22c-1 under the Act

12. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in ETF Shares will take place at negotiated prices, not at a current offering price described in the ETF Prospectus, and not at a price based on NAV. Thus, purchases and sales of ETF Shares in the secondary market will not comply with section 22(d) and rule 22c-1. Accordingly, applicants request exemptions from these provisions under section 6(c) of the Act.

13. Applicants assert that the sale of ETF Shares at negotiated prices does not present the opportunity for any of the abuses that section 22(d) and rule 22c-1 were designed to prevent. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants state that secondary market trading in ETF Shares would not cause dilution for existing Fund shareholders

because such transactions would not directly or indirectly affect the Fund's assets. Applicants further state that secondary market trading in ETF Shares would not lead to discrimination or preferential treatment among purchasers because, to the extent that different prices exist during a given trading day or from day to day, these variances will occur as a result of market forces. Finally, applicants contend that the proposed distribution system will be orderly because, among other things, arbitrage activity will ensure that the difference between the market price of ETF Shares and their NAV remains narrow.

#### Section 24(d) of the Act

14. Section 24(d) provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to transactions in a redeemable security issued by an open-end investment company. Applicants request an exemption under section 6(c) of the Act from section 24(d) to permit dealers selling ETF Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>18</sup>

15. Applicants state that ETF Shares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that ETF Shares, as a listed security, merit similar treatment, reducing compliance costs and regulatory burdens that result from the imposition of a prospectus delivery requirement on secondary market transactions. Applicants state that because ETF Shares will be

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<sup>18</sup> Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter.

exchange-listed, prospective investors will have access to several types of market information about the ETF Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information also will be published daily in the financial section of newspapers.

16. Applicants further state that investors that purchase ETF Shares in the secondary market will receive a Product Description, describing the Fund and its ETF Shares. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain information about ETF Shares that is tailored to meet the needs of investors purchasing ETF Shares in the secondary market.

#### Sections 17(a)(1) and (2) of the Act

17. Sections 17(a)(1) and (2) generally prohibit an affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from selling any security to, or purchasing any security from, the company. Sections 2(a)(3)(A) and (C) of the Act define "affiliated person," respectively, as any person who owns 5% or more of an issuer's outstanding voting securities and any person who controls the fund. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that a large institutional investor or the Specialist could own 5% or more, or more than 25%, of a Fund's outstanding voting securities and, as a result, be deemed to be an affiliated person of the Fund under section 2(a)(3)(A) or (C). Applicants further state that, because purchases and redemptions of Creation Units would be in-kind, rather than for cash, those investors would be precluded by sections 17(a)(1) and (2) from purchasing or redeeming Creation Units from the Fund. Accordingly,

applicants request an exemption under sections 6(c) and 17(b) of the Act to permit these affiliated persons, and affiliated persons of such affiliated persons who are not otherwise affiliated with the Fund, to purchase and redeem Creation Units through in-kind transactions.

18. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the general purposes of the Act. Applicants contend that no useful purpose would be served by prohibiting persons affiliated with a Fund, as described above, from purchasing or redeeming Creation Units from the Fund. Applicants represent that Fund affiliates making in-kind purchases and redemptions would be treated no differently from non-affiliates making the same types of transactions. Applicants state that all purchases and redemptions of Creation Units would be at the Fund's next calculated NAV. Applicants also state that, in all cases, Deposit Securities and Redemption Securities will be valued in the same manner and using the same standards as those securities are valued for purposes of calculating the Fund's NAV. Applicants assert that, for these reasons, the requested relief meets the standards of sections 6(c) and 17(b).

Applicants' Conditions:

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The ETF Shares Prospectus and the Product Description for each Fund will clearly disclose that, for purposes of the Act, ETF Shares are issued by the Fund and the acquisition of ETF Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment

companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions.

2. As long as a Fund operates in reliance on the requested order, the ETF Shares will be listed on an Exchange.

3. The ETF Shares of a Fund will not be advertised or marketed as shares of an open-end investment company or mutual fund. The ETF Shares Prospectus of each Fund will prominently disclose that ETF Shares are not individually redeemable and will disclose that holders of ETF Shares may acquire the shares from the Fund and tender the shares for redemption to the Fund in Creation Unit aggregations only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that ETF Shares are not individually redeemable and that holders of ETF Shares may acquire the shares from the Fund and tender the shares for redemption to the Fund in Creation Unit aggregations only.

4. Before a Fund may rely on the 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 ETF Shares to deliver a Product Description to purchasers of ETF Shares.

5. On an annual basis the Board of each Fund, including a majority of Disinterested Trustees, must determine, for each Fund, that the allocation of distribution expenses among the classes of Conventional Shares and ETF Shares in accordance with the Multi-Class Distribution Formula is in the best interests of each class and of the Fund as a whole. Each Fund will preserve for a period of not less than six years from the date of a Board determination, the first two years in an easily accessible place, a record of the determination and the basis and

information upon which the determination was made. This record will be subject to examination by the Commission and its staff.

6. Applicants' website, which is and will be publicly accessible at no charge, will contain the following information, on a per ETF Share basis, for each Fund: (a) the prior business day's closing NAV and the midpoint of the bid-asked spread at the time the Fund's NAV is calculated ("Bid-Asked Price") and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV; and (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's ETF Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts. In addition, the Product Description for each Fund will state that applicants' website has information about the premiums and discounts at which the Fund's ETF Shares have traded.

7. The ETF Shares Prospectus and annual report will include, for each Fund: (a) the information listed in condition 6(b), (i) in the case of the ETF Shares Prospectus, for the most recently completed calendar year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for no less than the immediately preceding five fiscal years (or the life of the Fund, if shorter); and (b) the cumulative total return and the average annual total return for one, five and ten year periods (or the life of the Fund, if shorter) of (i) an ETF Share based on NAV and the Bid-Asked Price and (ii) the Fund's Target Index.

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

Florence E. Harmon  
Deputy Secretary