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Via Electronic Submission

July 30, 2020

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Attn: Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

Dear Sir or Madam:

The Vanguard Group Inc. (Vanguard)<sup>1</sup> appreciates the opportunity to comment on the Department of Labor's (Department) recent proposal on the investment duties regulation under the Employee Retirement Income Security Act of 1974 (ERISA).<sup>2</sup> Among other things, the Proposal requires plan fiduciaries to select investments and investment courses of action based *solely* on pecuniary considerations. Plan fiduciaries should prioritize pecuniary considerations in selecting plan investments because a steady focus on long-term investment returns improves the likelihood of investment success. We firmly believe, however, that investors should have the choice to avoid investment risks they would prefer not to take, including risks associated with environmental, social, and governance (ESG) considerations. We are concerned that the Proposal would reduce the ability of investors to manage risks in their portfolio by constraining access to ESG investment options. We respectfully suggest that the Department address risks posed by ESG investments through a robust disclosure regime, instead of outright investment restrictions. Additionally, we believe it is unnecessary to single out ESG products for enhanced regulatory scrutiny.

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<sup>1</sup> Vanguard is one of the world's leading asset managers and a leading provider of investment, advisory, and recordkeeping services for defined contribution retirement plans. As of June 30, Vanguard managed approximately \$6.1 trillion in assets globally on behalf of more than 30 million investors. We provide direct recordkeeping and investment related services to nearly 5 million participants in nearly 1,500 defined contribution plans. These assets account for more than \$530 billion of Vanguard's total assets under management. We also manage over \$780 billion through Vanguard funds for over 5.1 million individual retirement account (IRA) investors.

<sup>2</sup> 85 Fed. Reg. 39113 (June 30, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13705.pdf> (Proposal).

Vanguard's core purpose is to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success. Maximizing long-term returns is a fundamental component of investment success, and for this reason we do not object to the Department affirming that a plan's financial returns and the financial interests of plan participants and beneficiaries is of paramount importance under ERISA's fiduciary standard. Consistent with this standard, Vanguard has long advocated that Main Street investors—including investors saving for retirement — are best served by a diversified portfolio that includes appropriate allocations to broad markets, such as U.S. stocks, U.S. bonds, international stocks, and international bonds. At the same time, all investors, including retirement plan participants, should have the ability to make informed decisions to invest in a wide range of other investments, consistent with their personal preferences, investment objectives and risk tolerance.

### **Investors should have a choice on ESG investments in their retirement plans**

We are concerned that the Proposal would uniquely constrain the ability of retirement investors to access investment products that consider ESG factors in their asset selection process. For example, if a fiduciary determines an ESG investment is economically indistinguishable from, or superior to, a non-ESG investment and chooses the ESG investment, the fiduciary would be required to document specifically why the selected investment was chosen based on the purposes of the plan, diversification of investments, and the interests of plan participants and beneficiaries in receiving benefits from the plan. This and other aspects of the Proposal would reduce the likelihood that plan fiduciaries would make ESG investments or include ESG offerings in their investment lineups by imposing additional obligations with respect to investment decisions that consider ESG factors.

We see no basis to single out ESG products for enhanced regulatory scrutiny. The Proposal asserts that ESG investment choices often come with higher fees, increased risk, or lower returns than more conventional investment choices. However, some of these conclusions apply to nearly any investment option that seeks to mitigate risk exposure to certain sectors or asset classes by restricting investments to a subset of the market. Yet the fiduciary standard appropriately allows for fiduciaries to select a suitable actively managed fund based on pecuniary criteria. Moreover, these statements imply a homogenous view of ESG investing that misstates the range of investment products and objectives that investors seek to achieve by holding such positions. Some investors seek to invest in line with their values, while others aim to effect some manner of societal change through their investments. Still others believe that considering certain ESG factors can generate pecuniary benefit or mitigate certain types of risk in their portfolios.

The Proposal does not explain why ESG investments warrant different treatment from other types of investments under ERISA's investment duties regulation. We have concerns that this approach may unnecessarily and inappropriately restrict investors' ability to manage risks and pursue investment opportunities in their portfolio. Instead of using the investment duties regulation to reduce investor choice, we encourage the Department to modify the regulation to

allow investors to make informed decisions through strong and effective disclosure requirements that apply to all plan investments.<sup>3</sup>

### **Improved disclosure of ESG considerations is warranted**

The ESG market continues to evolve and investment managers may use different strategies to incorporate ESG risk and other factors. Some fund managers may use screens to exclude or underweight sectors, countries, and companies that do not meet certain ESG criteria (exclusionary). Others may use screens to include sectors or companies with higher ESG ratings than their industry peers (inclusionary). Some may focus on generating positive societal or environmental impact alongside financial return (impact investing) or, in some cases, may prioritize ESG over financial return. Index and active fund managers may integrate ESG as part of portfolio company investment risk analysis, investment stewardship and engagement practices, and corporate governance outcomes that impact long-term value for investors.

Investors must have access to full and fair disclosure in order to make an informed investment decision. Like all investors, retirement investors need accurate information to enable them to evaluate which products align to their individual goals. Fiduciaries need accurate and comparable information to enable them to prudently select and monitor plan investments.

In the context of ESG products, for example, required disclosures should inform investors about a broad range of relevant considerations including whether the product prioritizes ESG impact over financial returns. ESG products that screen out particular industries or sectors should be required to disclose long-term impact to portfolio risk/return associated with not having exposure to those sectors. Products that use inclusionary screens that proactively select sectors or firms that meet the manager's criteria, or use techniques to overweight or underweight securities based on ESG criteria rather than screening, should be required to disclose impact to portfolio risk/return associated with that strategy. Similarly, and importantly, if a product or investment prioritizes ESG over financial return, we believe that approach should be prominently disclosed and should be an important factor in a plan fiduciary's process to prudently select and monitor plan investments, including a qualified default investment alternative (QDIA).

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<sup>3</sup> Vanguard has consistently advocated for meaningful regulatory disclosure requirements so that investors understand product offerings and can make informed investment decisions – including in the context of ESG. *See, e.g.*, Letter from Anne Robinson, General Counsel, Vanguard, to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, dated May 5, 2020, available at <https://www.sec.gov/comments/s7-04-20/s70420-7153862-216465.pdf>.

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Vanguard appreciates the opportunity to comment on the Proposal. We welcome the opportunity to continue working with the Department on these important issues. If you have any questions or would like to discuss our views further, please contact Natalie Bej at (202) 824-1290 or Stephanie Napier at (610) 503-1377.

Sincerely,

/s/ John James

John James  
Managing Director, Institutional Investor Group  
The Vanguard Group Inc.