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March 22, 2024

Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
Secretary of the Commission
888 First Street, NE
Washington, DC 20580

*Re: Notice of Inquiry Regarding Federal Power Act Section 203 Blanket Authorizations for Investment Companies, Docket No. AD24-6-000*

Dear Ms. Reese:

Vanguard[1] appreciates the opportunity to comment on the Notice of Inquiry ("NOI") issued by the Federal Energy Regulatory Commission ("FERC" or "Commission") regarding the Commission's policy on providing blanket authorizations for investment companies under section 203(a)(2) of the Federal Power Act.[2] At its core, the NOI raises a number of important questions, including whether passive investment funds—as opposed to private equity funds or other control investors—could wield undue influence or control over public utilities, and if so, what steps could these passive funds or FERC take to buttress existing protections and further ensure investment companies that receive authorizations remain well within FERC's expectations for passivity.

**Introduction**

As *the* fund company that popularized index investing almost 50 years ago, Vanguard is built around passive investing and a unique mission to help individual investors reach their financial goals. We have developed a product suite (consisting of both index and actively managed funds), a corporate culture, and an internal infrastructure that both helps individual investors reach their financial goals and facilitates precisely the passivity we believe FERC is seeking.

Vanguard is a unique investor-owned asset manager that puts the interests of *individuals and families* first and helps them meet their most important financial goals, such as enjoying a secure retirement, purchasing a home, or saving for college. We do this by offering a large selection of low-cost mutual funds, exchange-traded funds ("ETFs"), investment advice, and related services

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[1] "Vanguard" refers to the Vanguard Group, Inc., and its subsidiaries, which act as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). The Vanguard Group, Inc. provides corporate, administrative, distribution, and investment advisory services to over 200 U.S.-domiciled investment companies registered under the Investment Company Act of 1940 and subject to the oversight of each fund's board and offers over 200 additional investment companies in markets outside the United States (collectively, the "Vanguard Funds").

[2] Federal Power Act Section 203 Blanket Authorizations for Investment Companies, 85 Fed. Reg. 89346 (December 27, 2024) *available at* https://www.federalregister.gov/documents/2023/12/27/2023-28665/federal-power-act-section-203-blanket-authorizations-for-investment-companies.

that are used by more than 50 million investors. We do not manage separate funds for large pension firms, sovereign wealth funds, or other institutions that may seek to promote certain corporate practices or behaviors.

Unlike other fund managers that are owned by external parties, Vanguard is a mutual company, owned by the U.S. funds it advises which, in turn, are owned by their investors. As a result, when an investor invests in these funds, they also own Vanguard, the asset manager. This structure aligns Vanguard's interests with the financial goals of fund investors. Rather than increasing fees to grow earnings and pay dividends to external owners, Vanguard's earnings benefit fund investors. We lowered expenses more than 2000 times—cumulatively more than 80%—since our founding, allowing fund investors to keep more of *their* gains.

Our focus on providing high-quality, low-cost products is central to our core purpose to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success. Indeed, a recent Morningstar study compared asset managers for delivering value to investors and found that Vanguard ranked first—delivering $3.8 trillion over a 10-year period ending in 2023—more than *double* the value creation of any other fund family.[3] Vanguard is proud to have lowered the cost of investing to help millions of investors keep more of their earnings so they can meet their financial goals. In light of the success of investors, these mutual funds tend to grow, periodically requiring authorization from FERC to meet ongoing investor demand to invest in U.S. companies, including utilities. Other fund companies and different types of investment vehicles also periodically seek FERC's authorization to acquire such securities and achieve their investment objectives.[4]

**Summary**

The NOI raises important questions about how these authorizations might impact public utilities, utility markets, and ratepayers because the acquisition of public company shares also generally conveys certain shareholder rights, such as proxy voting. We support FERC's efforts to review its process and confirm the passivity of firms seeking authorizations.

Vanguard is proud of the steps we have taken to ensure that neither we nor the Vanguard Funds influence the strategy or operations of public companies, including public utilities. As described in more detail below, these steps include (1) refraining from using tools that shareholders have to potentially influence company management, (2) instituting a clear, transparent and accountable stewardship methodology focused on maximizing investment returns by promoting strong corporate governance practices, and (3) empowering retail investors to participate in the proxy voting process through our investor choice proxy voting pilot program.

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[3] *See* Morningstar, *15 Top Wealth Creators in the Fund Industry* (2024) *available at* https://www.morningstar.com/funds/15-top-wealth-creators-fund-industry-2. Additionally, seven of the top fifteen wealth creating funds were Vanguard index funds.

[4] *See* NOI at 89348.

As a leader in index investing, which is a particularly passive form of investing, we have valuable insight into additional safeguards and reforms that FERC can put in place to ensure passivity by passive investors and to better risk-align its review process.

We are also pleased to provide specific suggestions the Commission could consider to clarify and streamline its authorization process to better achieve its goal of promoting passive investment in public utility companies, including by mutual funds. Specifically, we recommend the Commission:

- Establish clearer expectations and a public framework for reviewing authorizations. While FERC's current process for issuing authorizations succeeds in facilitating "greater investment in utilities by mutual funds,"[5] both investment companies and public utilities could benefit from the Commission establishing a transparent, public framework for how it assesses and determines when an investor "controls" a public utility or raises questions regarding passivity. A clear review framework would allow all investment companies to better understand FERC's expectations regarding passivity and establish compliance programs designed to meet those expectations, leading to reduced uncertainty for public utilities and investors.

- Risk-align the authorization review process. In addition to improving clarity for investment companies and public utilities regarding passivity expectations, FERC could benefit from a more risk aligned review process that provides a streamlined review process for investment companies that commit to specific measures designed to ensure passivity.

  Such measures might provide streamlined review for applicants with robust processes and clear limits that align with FERC's control framework and "passive practices." These practices might include commitments to refrain from (1) nominating directors, (2) submitting shareholder proposals or (3) threatening to buy or sell shares to influence corporate behavior. FERC could also use this process to encourage firms to have clear, public stewardship policies and annual reports that outline their philosophy and summarize their activities over the previous year, including with regard to public utilities. These disclosures could also describe any memberships, agreements, or understandings, regarding a firm's stewardship of public utility shares.

  Vanguard follows these practices, and others, and believes measures like these would address concerns FERC may have about undue influence of a public utility. Such an approach would encourage passive investors to remain truly passive and allow FERC to perform more meaningful reviews on entities that may have a greater impact on the behavior of public utilities.

[5] *See* NOI at 89348.

## I. The Vanguard Funds are passive, employ varied investment strategies, and never invest for control. They provide investors with economic exposure to stocks without interfering with strategy, management or operations.

### *A. Understanding index funds and active funds.*

Vanguard offers investors a range of low-cost, diversified mutual funds designed to help them meet their investment goals. A mutual fund is an investment vehicle that pools money from and invests on behalf of its shareholders—typically, in the case of the U.S. domiciled Vanguard Funds, a widely dispersed group of retail investors—to invest in stocks, bonds, or other assets.[6] The fund's investment adviser manages fund assets—but does not own them—and must make investment decisions solely for the economic benefit of the fund without regard to the adviser's own interest or the interest of any other party.[7]

The funds Vanguard offers can be categorized as either index funds or actively managed funds.[8] An index fund (such as Vanguard Total Stock Market Index Fund) aims to provide shareholders with the returns of a benchmark index (CRSP US Total Market Index)—constructed and maintained by an independent third-party—less fund expenses. The index provider determines the components (i.e., securities) that comprise the index and the weighting of each component (how much of each security to hold) in a manner outlined by the index's methodology. A Vanguard portfolio manager then buys and sells securities to track the index. Trading may occur in response to a variety of external factors including: investors' decisions to buy or sell, index providers' decisions to change or "rebalance" an index, or company decisions to repurchase shares or engage in a merger.[9] Vanguard, as the manager of the index fund, manages the fund to respond to these external changes but does not make decisions regarding which companies go into or out of the index.

In addition to index funds, Vanguard offers investors access to actively managed funds that retain portfolio managers who select securities with the goal of outperforming market returns. These managers use robust economic, financial, and market analysis to make investment decisions consistent with the fund's investment objective and policies. Unlike index funds, actively managed funds are not constrained by the need to track a specified benchmark and their portfolio managers can use their research and judgement to try to beat the market or manage risk. Almost all actively managed equity funds Vanguard offers are managed by third-party external

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[6] Shareholders participate in the investment returns and cost of the fund on a *pro rata* basis. An ETF is a type of mutual fund that is listed on a national securities exchange.

[7] The Advisers Act establishes a federal fiduciary duty for investment advisers that prohibits an investment adviser from placing its own interests ahead of the interests of its client.

[8] Approximately eighty percent of the total assets managed by Vanguard are held by index funds.

[9] Vanguard evaluates portfolio managers of index funds based on how closely the fund tracks its benchmark index, which creates a strong incentive to "replicate" equity indices (i.e., holding all of the stocks in the same proportion as the index).

investment firms, and each of these external managers has sole investment discretion.[10] Additionally, these third-party managers are empowered to vote proxies and engage with portfolio companies independently from Vanguard, in a manner consistent with their funds' investment objectives.

Whether index or active, Vanguard funds have made long-term investing accessible to millions of investors, enabling them to achieve their financial goals. These funds also play an important role in allocating capital across the economy and, with respect to public utilities, fostering deep, liquid, and efficient capital markets that provide utilities with a reliable, long-term source of capital they can use to reduce costs for ratepayers, improve efficiency, and innovate.[11]

**Regardless of investment strategy, no Vanguard Fund invests to control or influence the business decisions or strategies of the companies in which it invests.** The Securities and Exchange Commission's control disclosure framework requires disclosure of most stock acquisitions that exceed five percent of a company's total issuance. Investors that do not seek to control a company and meet other criteria may file one type of disclosure (Schedule 13G), while investors that seek control file another (Schedule 13D). Vanguard and the Vanguard Funds are eligible to file Schedule 13G because they acquire securities in the ordinary course of business and do not seek to exercise control or influence over any of the portfolio companies in which they invest. As part of each Schedule 13G filing, Vanguard and each applicable Vanguard Fund certifies that the securities were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities.[12]

Vanguard's approach to passive investment management may help provide a path forward should FERC decide to provide greater clarity on the investment activities it considers passive under its non-control framework.

*B. Vanguard has taken a number of significant steps to demonstrate our commitment to clear, transparent, and targeted stewardship in line with passive index fund investment.*

The owner of a security generally has the ability to exercise the shareholder rights associated with that security, including proxy voting. Investment companies exercise these rights in different ways. Some hedge funds or private equity firms buy stocks of companies they perceive to be poorly managed and trading at a discount—and use their ownership stake to seek changes

[10] Collectively, these externally advised funds have retained investment advisory services from twenty-four external managers. Vanguard provides investment advisory services for a small portion of actively managed portfolios through Vanguard Quantitative Equity Group ("QEG"). As of January 31, 2024, these QEG portfolios account for less than one percent of Vanguard's total assets under management.

[11] Across the industry, at the end of 2022, more than 50 percent of U.S. households owned mutual funds, and mutual funds and similar investment products comprised more than 20 percent of U.S. household wealth, underscoring the importance of these investment companies to investors and the capital markets. Investment Company Institute, *2023 Investment Company Factbook: A Review of Trends and Activities in the Investment Company Industry*, 19 and 85, *available at* https://www.ici.org/system/files/2023-05/2023-factbook.pdf.

[12] *See* Rule 13d-1(c)(1) of the Securities Exchange Act of 1934.

to, or even control, a company's board, strategy, or operations—to improve returns for their investors. Other firms take an active, but not activist approach. These firms, which include some actively managed mutual funds, might decide to buy or sell shares based on corporate strategy or management's actions, and may use their shareholder rights, including proxy voting, to encourage certain behaviors while stopping short of outright activism (e.g., nominating directors or making shareholder proposals).

The index funds Vanguard advises are different—more passive—investors. They make investment decisions based on factors outside their control to track an index as closely as possible. These funds hold a company's stock for as long as that stock remains in their benchmark indices, which can be decades. These funds have adopted an approach to investment stewardship that embodies passivity because it is:

- Subject to a clear, transparent and accountable stewardship methodology focused on maximizing investment returns by promoting strong corporate governance;
- Clear about its independence from external groups;
- Restrained in its use of shareholder tools; and
- Open to empowering fund shareholders to express *their* views and preferences.[13]

<u>Vanguard has established a clear, transparent, and accountable stewardship program focused on maximizing investment returns</u>. Each Vanguard-advised fund retains the authority to vote proxies with respect to the shares of equity securities it owns. The board of each Vanguard-advised fund has tasked Vanguard's investment stewardship team with discharging each fund's proxy voting rights, consistent with that fund's goals and objectives.[14] Given our core focus as a passive, index fund manager for retail investors, Vanguard's investment stewardship approach is derived from the principles above and seeks to promote high quality corporate governance practices that preserve and promote long-term shareholder returns.

When Vanguard's investment stewardship team votes proxies or engages with portfolio company directors and executives around that voting, it does so not to influence the operations or strategy of the portfolio company but to understand their approach to corporate governance and to share perspectives on practices associated with long-term investment returns. These include practices around board composition and independence, board oversight of strategy and risk, executive compensation, and shareholder rights. These discussions have no impact on fund investment decisions and Vanguard has not, and would not, submit a shareholder proposal, nominate a director, or seek to influence the corporate strategy or operations of an issuer.

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[13] The actively managed funds that we advise also have adopted each of these stewardship approaches.

[14] Because a majority of the actively managed funds Vanguard offers are advised by third parties with delegated stewardship authority, our stewardship methodology is the same for all funds we advise, the vast majority of which are index funds. As noted in the prior section, most of the actively managed funds Vanguard offers are managed by external third-party advisers. The boards of those funds delegated proxy voting and engagement authority to the unaffiliated third-party investment advisers who manage those funds in 2019.

As part of our commitment to transparency and accountability, each Vanguard-advised fund has adopted proxy voting policies and procedures that detail general positions of the fund on common proxy proposals that appear at public companies. These policies are informed by our research and analysis into corporate governance practices that we believe generate long-term investment returns at individual companies. When we encounter a ballot item that our proxy voting policies do not explicitly address, we determine the vote on a case-by-case basis consistent with the fund's proxy voting policies and stated investment objective. Vanguard's investment stewardship team has led the industry in ensuring that its stewardship activities are transparent to investors, regulators, and portfolio companies.[15]

Vanguard has been clear that external groups do not alter our approach to stewardship. The NOI asks several questions about the potential for investment companies to influence the behavior of public utilities through engagements, either with company management directly or through industry groups.[16] We recognize these concerns and appreciate the opportunity to address them from the perspective of a passive index fund steward.

As detailed in our annual investment stewardship report, Vanguard participates in certain external organizations and industry initiatives. We routinely assess participation in external organizations to ensure that they align with Vanguard's investment goals and mission and, as we note below, we are unafraid to change course when our involvement raises questions about the proper role of an investment company. Regardless of our participation in any trade association, external organization or industry initiative, Vanguard maintains its independence in company engagement activities and proxy voting decisions in accordance with our duty to our investors and with the goal of promoting long-term shareholder returns.[17]

Examples of this include Vanguard's decision to leave the Net Zero Asset Managers ("NZAM") initiative in 2022 and our decision not to join Climate Action 100+. Vanguard joined NZAM in 2021 as part of our efforts to promote investment returns by advancing good corporate governance practices, such as disclosure of material financial risks, including those arising due to climate change. Although Vanguard was explicit that the index funds it advises would be

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[15] The stewardship team provides regular disclosure of its engagement activities to inform investors of the meetings it conducts on behalf of the Vanguard-advised funds. This disclosure takes the form of an annual report that outlines engagement and voting for the year, quarterly reporting of significant votes, and articles designed to demonstrate the application of our policies with respect to voting and engagement. *See* Vanguard Investment Stewardship: About Our Program *available at* https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/perspectives-and-commentary/about_our_program_2023.pdf, at 13. Vanguard has also advocated for stronger disclosures in SEC Form NP-X. *See* Letter from John Galloway, Principal and Investment Stewardship Officer, Vanguard, to Vanessa A. Countryman, Secretary, SEC, dated December 14, 2021, *available at* https://corporate.vanguard.com/content/dam/corp/public-policy/pdf/Vanguard_Comment_Letter%20SEC_Proxy_Voting_Disclosure_N-PX_Proposal_12.14.2021.pdf.

[16] *See* NOI at 89350.

[17] *See* Vanguard Investment Stewardship: About Our Program *available at* https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/perspectives-and-commentary/about_our_program_2023.pdf, at 17.

excluded from the NZAM commitment and thus not be aligned to "net zero,"[18] we withdrew from NZAM to make clear that Vanguard speaks independently on matters of importance to our investors.

Vanguard, as an adviser and steward to passive index funds intentionally limits its use of shareholder tools. As noted in the table below, corporate shareholders have a host of tools they could use to control or influence companies. Vanguard, as a manager of passive funds, refrains from using the most powerful tools, and is limited in its use of those that remain. For example, Vanguard has not, and does not:

- Threaten to buy or sell shares to influence corporate strategy or operations;
- Nominate directors;
- Submit shareholder proposals; or
- Seek to influence company strategy or operations.

Vanguard was the first asset manager to empower individual, retail investors in the United States to actively participate in proxy matters, proportionate to their ownership. Although we are proud of our approach to stewardship, we also understand that different investors have different preferences and we have been taking steps to give underlying investors more voice in corporate governance. In 2023, Vanguard launched a first-of-its-kind pilot program that focused on enabling individual investors in certain equity index funds to have meaningful control over how proxies associated with their investments are voted. Our inaugural investor choice voting pilot empowered investors to choose from a selection of four proxy voting policy options that directed the funds' proxy vote for certain portfolio companies, proportionate to the investor's ownership.[19]

The initial iteration of our investor choice program demonstrated both the challenges and potential of providing index fund investors with choices related to proxy voting. We believe that some investors are interested in playing a larger role in determining how their votes are cast on some shareholder proposals. Vanguard continues to work through various operational challenges and hurdles that we identified in our inaugural pilot, and recently announced the expansion of the pilot to several additional funds.[20] Because investor choice empowers fund investors to direct voting decisions in line with *their* preferences and goals, we believe it shows promise as a credible, investor-focused solution to questions related to how index funds execute proxy voting.

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[18] *See* Net Zero Asset Managers Initiative – Initial Target Disclosure Report (May 2022), *available at* NZAM-Initial-Target-Disclosure-Report-May-2022-1.pdf (netzeroassetmanagers.org), at 76.

[19] Participation in the pilot was voluntary, and participating investors could choose among the following policies: (1) an option to vote with management's recommendation; (2) an option to vote according to a publicly-disclosed third-party policy with recommendations from an independent third-party provider; (3) an option to vote based on the Vanguard policy; or (4) an option to abstain. More information is available on Vanguard's website.

[20] These funds are being added to the current selection of three Vanguard equity index funds already offered as a part of our proxy voting pilot. Together, these funds will participate in our second iteration of our proxy voting pilot, which will span the 2024 proxy season.

We are committed to continued engagement and exploration of investor choice models, and other solutions, consistent with passive investment and the goals of long-term individual investors.

*C. FERC could adopt a non-control framework for index funds based on these passive investment practices, complemented by other reforms that reinforce passivity for index funds.*

The NOI notes that policymakers and industry observers have questioned whether investment companies, and index funds in particular, have used their holdings to influence or control public utilities.[21] These commentators have cited to a number of tools that certain investors have historically used to influence corporate behavior, including: (1) threatening to sell company shares (to depress the stock price) if corporate managers do not act in line with investor preferences; (2) nominating directors to a company's board; (3) proposing shareholder resolutions to implement new strategies; (4) using proxy votes to effect change in corporate strategy or operations; and (5) engaging with corporate managers to influence strategy.

As described above, the funds that Vanguard advises are different, passive, investors that simply do not use the tools that other investors may employ to influence corporate behavior. The table below summarizes the intentional passivity of the funds we advise and suggests that FERC could leverage this passivity, potentially in conjunction with additional reforms, to clarify the framework it uses to determine whether an index fund may have the ability to control a public utility.

[21] *See* NOI at 89350.

| Shareholder tools to influence corporate strategy or operations | Do Vanguard-advised funds use this tool? | Additional passivity measures that could inform FERC's non-control framework for funds |
|---|---|---|
| **Threatening to buy or sell stock** to influence a company's strategy or operations | **No**. Vanguard-advised funds never transact (or threaten to transact) to influence an issuer. The index funds we advise seek to track a third-party index and transact in response to external factors such as an investor's decision to buy or redeem shares, an index provider's decision to change the fund's benchmark index, or a company's decision that changes its weight in the index (such as a stock issuance, buyback, or merger). | Index funds cannot credibly threaten to buy or sell a security to influence corporate strategy because they would incur tracking error, and the actively managed funds we advise algorithmically pursue quantitative strategies. Accordingly, we do not believe additional reform is necessary. However, if FERC would like to reinforce this practice for fund applicants, we have no objection. |
| **Nominating directors** to a company's board [22] | **No.** Vanguard-advised funds do not, and have never, nominated directors for any portfolio company. | FERC could clarify that fund applicants can demonstrate passivity by committing to refrain from nominating directors to demonstrate non-control. |
| **Introducing proxy proposals**[23] | **No.** Vanguard-advised funds do not, and have never, introduced a shareholder proposal. | FERC could clarify that fund applicants can demonstrate passivity by committing to refrain from introducing any shareholder proposals to demonstrate non-control. |
| **Voting proxies to influence corporate strategy or operations** | **No.** Vanguard's investment stewardship team pursues no agenda beyond long-term investment returns and only votes proxies pursuant to the funds' published proxy voting policies.[24] | FERC could clarify that fund applicants can demonstrate non-control in their proxy voting by committing to establish transparent proxy voting policies designed to maximize long-term investment returns. FERC could further clarity that fund applicants can demonstrate passivity by committing not to coordinate their voting activities with other shareholders. |
| **Using corporate engagements to influence** corporate strategy or operations | **No.** Vanguard engages with companies only to promote investment returns. Vanguard's investment stewardship team only engages with portfolio companies to ask questions that inform voting in line with the fund's public policies, to provide clarity on our policy, and to promote good corporate governance practices (as described above). These engagements do not seek to influence company strategy or operations. | FERC could clarify that fund applicants can demonstrate passivity in their corporate engagements by: (1) disclosing its passivity at the outset of every engagement, (2) creating an ombudsman line to address concerns, and (3) retaining a summary/minutes of each engagement for periodic review by FERC. The index fund could enlist a third-party auditor to evaluate the company's passivity. |

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[22] In the 2023 and 2022 U.S. proxy seasons respectively, 13 and 17 proxy contests went to a vote, according to Debevoise & Plimpton's "2023 Proxy Season in Review", August 1, 2023. Vanguard-advised funds did not launch–and have never launched–any proxy contests.

[23] In the 2023 U.S. proxy season, the Vanguard-advised funds voted on 644 shareholder proposals (not including director election proposals).

[24] Vanguard-advised funds do not support shareholder proposals that dictate corporate strategy or operations even if there is an argument that it is aligned with long-term investment returns.

## II. Though we are proud of our approach, Vanguard supports reforms to clarify FERC's non-control standard and further ensure passivity of fund applicants, including index funds.

FERC's current approach to granting authorizations to investment companies on a case-specific basis has served ratepayers, utilities, and investors reasonably well, and it has advanced FERC's goal of encouraging investment in utilities by mutual funds. Although we do not believe that the process needs to change, there is a lack of clarity regarding which investment or stewardship activities give rise to control concerns at the Commission and this lack of clarity creates unnecessary uncertainty and may undermine FERC's goals.

Accordingly, we encourage the Commission to take two steps that we believe would improve the authorization process for investment companies, public utilities, and the Commission:

- Establish clearer expectations and a public framework for reviewing authorization applications; and
- Risk-align the review process.

<u>Establish clearer expectations and a public framework for reviewing authorizations</u>. The current process creates unnecessary uncertainty for investors and utilities about whether FERC will grant or renew an authorization and, in turn, introduces risks to public utilities, investment companies, and markets. FERC can improve this situation by providing more clarity about the standards it will apply when reviewing authorization requests and, more specifically, describing its expectations for passive investing in public utilities. Taking steps to clarify the authorization review process would reduce uncertainty and allow FERC to set standards designed to achieve its desired policy outcomes.

Currently, the authorizations that FERC has issued to investment companies emphasize that these firms must not "exercise control over public utilities."[25] We agree that passive investors should play no role in controlling, or even influencing, the day-to-day operations or strategy of any company in which they invest and we described above numerous behaviors that we believe characterize passive investors, including the funds we advise. We would find it helpful for the Commission to clarify the activities that it finds consistent with passive investing to give investment companies that seek an authorization a predictable framework to follow to demonstrate passivity and avoid actions that call their passivity into question.

In considering the development and implementation of a non-control framework, FERC may want to consider if different standards should apply to different types of investment companies. We believe index funds are a uniquely passive type of investment company that can serve markets and investors well even with tight constraints on their behavior, including restrictions that go beyond historical notions of passivity. Actively managed funds and their advisers may warrant a different standard. As noted above, actively managed funds have an important role to

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[25] *See* NOI at 89347.

play in price discovery and stewardship and we can appreciate good reasons why policymakers might want to assess authorization requests from active and index funds differently.[26]

The chart above outlines a host of the passive behaviors that we believe are consistent with passive index fund investing. FERC could incorporate some or all of these behaviors, repeated below, into a non-control framework to ensure that index funds that receive authorizations invest passively:

- The external publication of an investor's proxy voting policies and procedures;
- Restrictions on nominating directors or submitting shareholder proposals at a public utility;
- Restrictions from engaging or coordinating voting activities with other shareholders regarding a proposal at a utility company;[27]
- Providing a clear disclosure of passivity at the outset of any engagements with a utility company, clarifying the limits of the investment company's role (including that they do not seek to influence the strategy or operations of the company);
- Establishing an independent ombudsman that portfolio companies could contact should they have any questions or concerns regarding an engagement with an investment company;
- Drafting and maintaining "meeting minutes" of each engagement with a public utility, and making them available to the Commission upon request; or
- Enlisting a third-party auditor to periodically evaluate the investment company's engagements with public utilities and report to the board on the company's passivity.

Each of the measures above is designed to ensure transparency and further reinforce guardrails designed to ensure that passive index funds do not promote any agenda that conflicts with the public service mandates of, or otherwise seek to influence utility companies. Furthermore, these types of measures would allow investment companies to implement specific controls to demonstrate adherence to each measure through an auditable compliance regime. Moreover, these measures are fully consistent with promoting long-term investment returns for shareholders in public utilities.

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[26] As noted above, almost all of Vanguard's active funds are managed, and stewarded, by third-party fund advisers. Though we appreciate the policy goals associated with applying these passivity standards to Vanguard's stewardship, we suggest FERC consider treating these third-party active managers differently given the important role played by active manager stewards.

[27] An exception should be made in cases where the shareholder is the publicly named proponent of the proposal or the nomination. In those cases, an investment company should be able to engage with the shareholder proponent to discuss whether the proposal or nomination is in the best interests of the investment company's shareholders and their long-term investment returns. In addition, any restriction on coordinating voting activities should allow mutual funds to continue to allow their investors to have a voice in corporate governance (e.g., through an investor choice program).

Risk-align the review process. In addition to providing clarity regarding a review framework and FERC expectations, FERC could benefit from creating a streamlined authorization process for investment companies that commit to specific measures designed to ensure passivity and therefore would not present risk under FERC's non-control framework.

Theoretically, FERC could provide more certainty that investment companies would receive streamlined authorizations with respect to assets managed consistent with enumerated "passive practices," while firms that engage in more active approaches can continue to do so subject to the review framework. The Commission, of course, would retain the ability to audit and confirm the passivity of firms that adopt passivity practices.

Investment companies, utilities, and FERC each would benefit from greater clarity about the passivity standard applied when evaluating authorization applications. Greater clarity would enable investment companies to understand which activities FERC may find concerning and either (1) avoid these activities entirely, or (2) engage in these activities subject to the review framework. Utilities would benefit from greater certainty and stability in their investor base and from the assurance that they could continue to access deep, liquid, and efficient capital markets. Increased clarity and a streamlined authorization process also may benefit the Commission by helping it learn more about the activities of the firms seeking relief and allowing it to better target its resources toward firms that may seek to influence or control corporate strategies or operations.

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Vanguard appreciates the opportunity to work with the Commission. We would welcome the opportunity to discuss any of the host of passive investing practices that we currently apply or other reforms aimed at balancing the important public policy issues raised by the NOI.

If you have any questions or would like to discuss our views further, please contact Ricardo R. Delfin, Principal and Global Head of Regulatory and Public Policy at ricardo_delfin@vanguard.com, or John Galloway, Principal and Investment Stewardship Officer at john_galloway@vanguard.com.

Sincerely,

/s/ Gregory Davis

Gregory Davis
President and Chief Investment Officer
The Vanguard Group, Inc.