

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11359 / January 17, 2025

INVESTMENT ADVISERS ACT OF 1940
Release No. 6830 / January 17, 2025

INVESTMENT COMPANY ACT OF 1940
Release No. 35453 / January 17, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22435

In the Matter of

The Vanguard Group, Inc.,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against The Vanguard Group, Inc. (“Vanguard” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting

Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that

Summary

1. These proceedings arise out of misleading statements by Vanguard concerning potential tax consequences to investors in the Vanguard Investor Target Retirement Funds (“Investor TRFs”). In November 2020, Vanguard made a recommendation to lower the minimum initial investment amount for a separate series of Vanguard target date retirement funds designed for institutional investors (“Institutional TRFs”) that resulted in historically larger capital gains distributions and tax consequences for certain retail investors in the Investor TRFs who held them in taxable accounts.

2. The Investor TRFs’ prospectuses that were effective and distributed in 2020 and 2021 by Vanguard were materially misleading. These prospectuses stated that the funds’ distributions may be taxable as ordinary income or capital gains, and that capital gains distributions may vary considerably from year to year as a result of the funds’ “normal” investment activities and cash flows. But these representations, which were prepared by Vanguard for the funds, failed to disclose the potential for increased capital gains distributions resulting from the redemptions of fund shares by newly-eligible investors switching from the Investor TRFs to the Institutional TRFs to benefit from the lower expense ratios of the Institutional TRFs as a result of the lowered minimum investment. Vanguard also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder with respect to the accuracy of the funds’ disclosures.

Respondent

3. **Vanguard** is a registered investment adviser with its principal place of business in Malvern, Pennsylvania. Vanguard has been registered with the Commission since August 23, 1976. Vanguard is one of the largest investment advisers in the world and reported in its Form ADV dated October 24, 2024 that it had approximately \$7.9 trillion in regulatory assets under management. Respondent provides investment advisory, corporate management, administrative, marketing, and distribution services to over two hundred index and actively managed funds. These services include, among other things, preparing and distributing the prospectuses and other disclosures for

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

the funds. Vanguard is owned by its U.S. mutual funds and provides services to the funds at Vanguard's cost of operations.

Other Relevant Entities

4. **Vanguard Chester Funds** ("Trust") has been organized as a Delaware statutory trust since 1998. The Trust is registered with the Commission under the Investment Company Act as an open-end management investment company. Each of the target retirement funds ("TRFs") relevant to this matter is a series of the Trust and a fund of funds that invests in a portfolio of Vanguard index funds. The Trust's trustees and officers are also directors and employees, respectively, of Vanguard.

5. The Trust has offered the following Investor TRFs each as a series of the Trust: the **Vanguard Target Retirement Income Fund (VTINX)**, **Vanguard Target Retirement 2015 Fund (VTXVX)**, **Vanguard Target Retirement 2020 Fund (VTWNX)**, **Vanguard Target Retirement 2025 Fund (VTTVX)**, **Vanguard Target Retirement 2030 Fund (VTHRX)**, **Vanguard Target Retirement 2035 Fund (VTTHX)**, **Vanguard Target Retirement 2040 Fund (VFORX)**, **Vanguard Target Retirement 2045 Fund (VTIVX)**, **Vanguard Target Retirement 2050 Fund (VFIFX)**, **Vanguard Target Retirement 2055 Fund (VFFVX)**, **Vanguard Target Retirement 2060 Fund (VTTSX)**, and **Vanguard Target Retirement 2065 Fund (VLXVX)**.

6. Beginning in 2015, the Trust offered the following Institutional TRFs for certain institutional investors each as a separate series of the Trust: the **Vanguard Institutional Target Retirement Income Fund (VITRX)**, **Vanguard Institutional Target Retirement 2015 Fund (VITVX)**, **Vanguard Institutional Target Retirement 2020 Fund (VITWX)**, **Vanguard Institutional Target Retirement 2025 Fund (VRIVX)**, **Vanguard Institutional Target Retirement 2030 Fund (VTTWX)**, **Vanguard Institutional Target Retirement 2035 Fund (VITFX)**, **Vanguard Institutional Target Retirement 2040 Fund (VIRSX)**, **Vanguard Institutional Target Retirement 2045 Fund (VITLX)**, **Vanguard Institutional Target Retirement 2050 Fund (VTRLX)**, **Vanguard Institutional Target Retirement 2055 Fund (VIVLX)**, **Vanguard Institutional Target Retirement 2060 Fund (VILVX)**, and **Vanguard Institutional Target Retirement 2065 Fund (VSXFX)**. These funds were merged with the Investor TRFs in 2022 as described further below.

Background

7. The Trust first offered and sold TRFs in 2003 to retirement plan participants and individual investors as low-cost, comprehensive, and diversified products for retirement savings. At the time, there were six series (or vintages) of TRFs, a group of mutual funds that separately invested in other Vanguard funds. Each vintage of a TRF was designed for investors who planned to retire close to the target year indicated in the fund's name. For example, the Vanguard Target Retirement 2025 Fund was designed for investors who planned to retire in or around 2025. Each TRF has an asset allocation strategy that follows a glide path to become more conservative or to have less risk by, for example, investing more in bond funds than stock funds as the target retirement date draws closer.

8. By 2019, the Trust had offered two separate groups of TRFs: the Investor TRFs for investors with assets of less than \$100 million, including small- and medium-sized retirement plans and individual investors; and the Institutional TRFs for institutional investors (primarily larger retirement plans) with assets greater than \$100 million. Each group offered twelve vintages of TRFs with different target retirement dates. The asset allocation strategies of each vintage of the Investor and Institutional TRFs were substantially similar.

9. Among the key differences between the Investor and Institutional TRFs were the acquired fund fees and expenses (“AFFEs”), which formed the annual operating expenses of each fund as a percentage of the fund’s average net assets (“expense ratios”), and the minimum investment amounts to invest in the TRFs. The Investor TRFs had an average expense ratio of 0.14%, and the Institutional TRFs had an expense ratio of 0.09% across all vintages. The minimum investment amount was \$1,000 to invest in the Investor TRFs, and \$100 million to invest in the Institutional TRFs.

10. As disclosed in the TRFs’ prospectuses for the offering of fund shares to investors and potential investors, each TRF distributed to shareholders virtually all of its net income and net short- or long-term capital gains realized from the sale of its holdings or received from the TRFs’ underlying funds. The prospectuses also stated that investors holding the TRFs in taxable accounts should be aware that, among other things, capital gains distributions are taxable as short- or long-term under federal and state law, and capital gains distributions may vary considerably from year to year as a result of the TRFs’ normal investment activities and cash flows.

The Growth in Vanguard TRF Assets Created a Gap in Fund Pricing and Expenses

11. As part of the services provided to the TRFs, Vanguard monitors the TRFs’ expense ratios, which consist only of the AFFE from the underlying funds, relative to the allocated expenses that Vanguard incurs to service the TRFs and the TRFs’ direct expenses. Under authority delegated to Vanguard by the Trust’s Board of Trustees, Vanguard periodically reviews the TRFs’ expense ratios and Vanguard’s expenses to ensure that any difference between the expense ratios and expenses does not exceed certain guidelines.

12. By mid-2019, investor demand for TRFs had increased, and the Investor TRFs’ assets had grown substantially, to approximately \$276 billion in assets under management. This growth was mainly driven by increased investments by small- and medium-sized retirement plans, which combined held approximately \$100 billion in Investor TRF assets. The growth in assets resulted in economies of scale that lowered Vanguard’s expenses in servicing the Investor TRFs, creating a gap between the expense ratios and Vanguard’s expenses described above.

Vanguard Formed a Working Group to Address the Gap in Fund Pricing and Expenses

13. To reduce the gap between the expense ratios and Vanguard’s allocated expenses for the Investor TRFs, and to return value to shareholders, in early 2020 Vanguard formed a Pricing Working Group (“Working Group”) to analyze and recommend options to Vanguard’s Global Investment Committee, comprised of Vanguard’s senior management, and ultimately to the Trust’s Board of Trustees. The Working Group comprised various employees of Vanguard’s

business groups representing institutional client-facing groups as well as finance, legal, and portfolio management. Vanguard's retail client-facing groups were not represented in the Working Group, though they had the opportunity to review the Working Group's final recommendation.

14. From early to mid-2020, the Working Group considered several options to return value to Investor TRF shareholders and evaluated those options using the following criteria: the ability to reduce the gap between the Investor TRFs' expense ratios and allocated expenses; the ability to provide adequate time before further expense reduction measures would be required; the cost and revenue impact to Vanguard; client and business implications; and operational support. Using those criteria, the Working Group considered, among other options, lowering the minimum investment of the Institutional TRFs from \$100 million to \$5 million, expense reductions, and merging the Investor and Institutional TRFs.

15. One reason why the Working Group considered lowering the minimum investment for the Institutional TRFs was to allow small- and medium-sized retirement plans, which had over \$100 billion in combined assets and had contributed to the Investor TRFs' growth, to switch to the Institutional TRFs. This option met several of the criteria considered by the Working Group. Switching from the Investor TRFs to the Institutional TRFs immediately reduced expenses for these small- and medium-sized plans from 0.14% to 0.09%, which had the benefit of both returning value to investors and enhancing Vanguard's competitiveness among other mutual fund companies offering target date retirement funds with expense ratios of 0.09% or lower. Additionally, switching better aligned Vanguard's expenses and revenue concerning those plans, and would also reduce the gap between the Investor TRFs' expense ratios and Vanguard's allocated expenses.

Vanguard Failed to Adequately Consider Potential Capital Gains and Tax Consequences for Investor TRF Investors in Taxable Accounts

16. By March 2020, the Working Group determined that the movement of investors switching from the Investor TRFs to Institutional TRFs could result in potential capital gains impacts, not just for investors who switched but also for investors who purchased or continued to purchase Investor TRFs. Investors would realize capital gains because the Investor TRFs and Institutional TRFs were separate funds and not separate share classes of the same fund. To switch from an Investor TRF to an Institutional TRF required the redemption of the Investor TRF shares and the subsequent purchase of Institutional TRF shares. If those redemption requests outpaced new investments in the Investor TRFs, the Investor TRFs would have to satisfy redemption requests from their available cash or the sales of underlying fund assets. The Working Group understood that the redemptions likely would generate capital gains distributions for Investor TRF shareholders remaining in the funds because of the likelihood of selling underlying fund assets that had increased in value.

17. The Working Group also incorrectly concluded that, while capital gains impacts were likely, they were not a significant factor for their recommendation for several reasons. First, because most of the Investor TRF investors held the funds in tax-advantaged accounts, such as employer-sponsored retirement plans or individual retirement accounts, they would not experience any capital gains or tax consequences.

18. Second, the Working Group estimated that approximately 5.79% or \$17 billion of Investor TRFs' assets were held by investors in taxable accounts at Vanguard, and those investors—who were all retail investors—would have capital gains and tax consequences. Approximately 40%, or \$110 billion, of all Investor TRF assets were held in non-Vanguard accounts. The Working Group failed to fully consider whether any of those non-Vanguard accounts were taxable and might also realize capital gains and tax consequences.

19. Third, the Working Group underestimated the potential capital gains impact on taxable investors. The Working Group observed that, through early 2020, accumulated realized capital gains in the Investor TRFs averaged 0.5%, consistent with historical numbers. However, this observation was based on evaluations of capital gains during a one-month period between late February and March 2020. Because the financial markets had declined substantially at the time due to consequences from the COVID-19 pandemic, the Working Group assumed that capital gains would continue to be modest for Investor TRFs in the foreseeable future. The Working Group also assumed that newly-eligible investor redemptions from the Investor TRFs to purchase the Institutional TRFs would be staggered over time, moderating any potential realization of capital gains. The Working Group planned to make its recommendations to the Global Investment Committee and the Trust's Board of Trustees in the fall of 2020. The Working Group did not reevaluate the market conditions and potential impacts on accumulated capital gains between March and the fall of 2020, when the Working Group ultimately made its recommendation. By the third quarter of 2020, the markets had rebounded significantly and as a result the accumulated capital gains as a percentage of net asset value in the Investor TRFs had increased from 0.5% to 1.4%. However, the Working Group did not consider whether continued market appreciation in 2021 could impact its evaluation of potential capital gains or tax consequences resulting from investors switching from Investor TRFs to Institutional TRFs.

20. Based on these limited evaluations, by March 2020 the Working Group determined that potential capital gains and tax consequences to the small percentage of Investor TRF investors holding the funds in taxable accounts did not “present a hindrance” to recommending the lowering of the minimum investment for the Institutional TRFs.

Vanguard Recommended Lowering the Minimum Investment for Institutional TRFs to Allow Certain Retirement Plans to Switch from Investor TRFs to Institutional TRFs

21. Based on the analysis described above, the Working Group determined that the best option to reduce the gap between the expense ratios and allocated expenses for the Investor TRFs was to lower the minimum investment of the Institutional TRFs from \$100 million to \$5 million, and also to lower the Investor TRFs' expense ratios by 0.01% to 0.02%. Lowering the minimum investment would allow the small- and medium-sized retirement plans with \$5 million or more in assets to switch from the Investor TRFs to the Institutional TRFs and immediately lower their expense ratio from 0.14% to 0.09%. Lowering the Investor TRFs' expense ratios by 0.01% to 0.02% would result in lower expenses for new or existing investors in the Investor TRFs who had less than \$5 million in assets and were not eligible to invest in the Institutional TRFs.

22. The Working Group also considered and rejected recommending the option of merging the Investor and Institutional TRFs as a single group of funds. Although merging the funds would have eliminated the gap between the Investor TRFs' expense ratios and Vanguard's allocated expenses, and could have been achieved with no capital gains or tax consequences for taxable investors, the Working Group decided not to recommend this option to the Global Investment Committee because it would result in an immediate reduction of approximately \$148 million in Vanguard's revenue from the Investor TRFs—more than the other options considered—and would impair Vanguard's ability to make expense reductions in other products. In contrast, the Working Group estimated that lowering the minimum investment for the Institutional TRFs would result in a reduction of approximately \$61 million in revenue to Vanguard over two to three years, which was more favorable for Vanguard's U.S. funds than giving up substantially more revenue by merging the Retail and Institutional TRFs.

23. The Working Group determined that the combined solution of lowering the Institutional TRF minimum investment and lowering the Investor TRF expense ratios would materially reduce the gap between the Investor TRFs' expense ratios and allocated expenses. This solution also had the additional benefit of minimizing an immediate, negative impact to Vanguard's revenue and of strengthening Vanguard's competitiveness among other mutual fund companies in attracting small- and medium-sized retirement plans to the Institutional TRFs.

24. In October 2020, the Working Group made its recommendation to the Global Investment Committee based on its prior analyses from February and March 2020. By this time, the financial markets had recovered from the pandemic lows in March and April 2020 and reached record highs, but the Working Group did not further consider potential capital gains or tax consequences if a substantial number of small- and medium-sized retirement plan investors in the Investor TRFs switched to the Institutional TRFs in a rising market. The Global Investment Committee approved the recommendation and directed Vanguard to recommend the solution to the Trust's Board of Trustees.

25. In November 2020, Vanguard recommended that the Trust's Board of Trustees reduce the minimum investment for the Institutional TRFs from \$100 million to \$5 million. Vanguard did not recommend lowering the expense ratios of the Investor TRFs because that decision did not require the Trustees' approval, though Vanguard advised the Trustees that it intended to lower the Investor TRF expense ratios in 2021. Vanguard, in fact, did not lower the Investor TRF expense ratios because, as discussed below, it later recommended the merger of the Investor and Institutional TRFs in 2021.

26. Vanguard did not disclose to the Trustees the Working Group's evaluation of potential capital gains and tax consequences to Investor TRF investors resulting from investors redeeming Investor TRFs to purchase Institutional TRFs

27. The Trustees approved Vanguard's recommendation and on December 11, 2020 the Trust and Vanguard announced in a supplement to the Institutional TRFs' prospectuses and a press release that the minimum investment for the Institutional TRFs would be lowered from \$100 million to \$5 million effective immediately. The Investor TRFs' prospectuses and the press release did not mention any potential capital gains and tax consequences to Investor TRF investors in

taxable accounts that could result from the lowering of the minimum investment for the Institutional TRFs, and the anticipated movement of a substantial number of Investor TRF investors to the Institutional TRFs.

Substantial Redemptions of Investor TRFs Caused Historically Higher Capital Gains and Tax Consequences for Investor TRF Investors in Taxable Accounts

28. During the first half of 2021, a substantial number of small- and medium-sized retirement plan investors in the Investor TRFs redeemed fund shares to switch to the Institutional TRFs due to the lower minimum investment amount and lower expense ratio. To meet these redemptions, the Investor TRFs had to sell underlying assets at elevated prices due to the rising financial markets that had rebounded from pandemic lows and reached new highs.

29. From December 2020, when Vanguard and the Trust announced the lowering of the minimum investment for the Institutional TRFs, to October 2021, redemptions in the Investor TRFs totaled approximately \$130 billion, compared with approximately \$41 billion in redemptions in the prior period from November 2019 to October 2020. Capital gains distributions for the Investor TRFs as a percentage of net asset value from November 2020 to October 2021 averaged 9.69%, nearly seven times larger than the 1.39% average from November 2019 to October 2020.

30. As a result, Investor TRF investors who held the funds in taxable accounts at Vanguard and at other firms realized unexpected, historically high capital gains distributions and tax consequences for 2021. These capital gains distributions accelerated the investors' incurrence of tax liability and deprived them of the potential compounding growth of their investments in the Investor TRFs through retirement.

31. In early 2021, continued improvement in market conditions generated excess revenue for Vanguard compared to 2020. This also contributed to a persistent gap between the Investor TRFs' expense ratios and Vanguard's allocated expenses. To return additional value to investors, better align the expense ratios to allocated expenses, and further enhance Vanguard's competitiveness among other mutual fund companies in the target date retirement fund business, in September 2021 Vanguard recommended to the Trust's Board of Trustees to merge the Investor TRFs and Institutional TRFs—the option that Vanguard did not recommend in 2020—and to lower the expense ratios for all of the combined TRFs to 0.08%. The Trustees approved the recommendation later that month, and the Trust merged the Investor and Institutional TRFs in February 2022.

Vanguard's Inadequate Representations Concerning Potential Capital Gains Consequences

32. Vanguard was responsible for preparing all disclosures of the Trust, including prospectuses for the Investor and Institutional TRFs, and distributing the prospectuses to investors. The Investor TRFs' prospectuses that were effective and distributed by Vanguard in 2020 and 2021 for the continuous offers and sales of fund shares in this period stated that the funds' distributions "may be taxable as ordinary income or capital gain[]" and "[c]apital gains distributions may vary considerably from year to year as a result of the Funds' *normal* investment activities and cash flows" (emphasis added).

33. These disclosures were materially misleading because they described certain normal investment activities and cash flows that could affect capital gains, but failed to disclose, when discussing capital gains distributions, what Vanguard and the Trust knew or should have known was likely to be unusually large capital gains distributions for Investor TRF investors holding the funds in taxable accounts, resulting from the lowering of the minimum investment for the Institutional TRFs and the redemptions from the Investor TRFs.

34. Specifically, Vanguard was aware that lowering the minimum investment for Institutional TRFs was designed to attract a substantial number of retirement plans to switch from the Investor TRFs to Institutional TRFs. Vanguard was also aware, and the Trust should have been aware, that those retirement plans' redemptions of their Investor TRF holdings to switch to the Institutional TRFs would cause potential capital gains and tax consequences to those remaining Investor TRF investors who held their investments in taxable accounts. Vanguard was further aware, and the Trust should have been aware, that such redemptions were not normal investment activities and cash flows of the Investor TRFs, but extraordinary redemptions that resulted from Vanguard's goal to lower expenses for those retirement plans that provided economies of scale and generated increased revenue for Vanguard in servicing the Investor TRFs.

35. As a result, the disclosures to Investor TRF investors were materially misleading.

Vanguard's Inadequate Compliance Policies and Procedures

36. During 2020 and 2021, Vanguard did not have in place, adopt, or implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder. Specifically, Vanguard never had in place, adopted, or implemented written policies and procedures to address the accuracy of disclosures with respect to the Trust, such as those concerning potential capital gains and tax consequences resulting from fund decisions and initiatives that may not be directly related to the Investor TRFs' normal investment activities. As a result, Vanguard's written policies and procedures were inadequate.

Violations

37. As a result of the conduct described above, Vanguard caused the Trust to violate Section 17(a)(2) of the Securities Act, which makes it unlawful for any person in the offer or sale of securities to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make statements made not misleading. A violation of Section 17(a)(2) may rest on a finding of negligence; scienter is not required. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

38. As a result of the conduct described above, Vanguard willfully² violated Section 206(4) of the Advisers Act, and Rule 206(4)-8 promulgated thereunder, which make it unlawful for

² "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act "means no more than that the person charged with the duty knows what he is doing." *Wonsover*

any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, or otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect, to any investor or prospective investor in the pooled investment vehicle. A violation of Section 206(4) or Rule 206(4)-8 may rest on a finding of negligence and scienter is not required. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

39. As a result of the conduct described above, Vanguard further willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules by the adviser and its supervised persons.

40. As a result of the conduct described above, Vanguard caused the Trust to violate Section 34(b) of the Investment Company Act, which makes it unlawful for any person to make any untrue statement of a material fact in any registration statement, or other document filed or transmitted pursuant to the Investment Company Act, or for any person so filing or transmitting to omit to state therein any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading. Establishing a violation of Section 34(b) does not require proof of scienter. *Fundamental Portfolio Advisors, Inc.*, Advisers Act Rel. No. 2146, 2003 WL 21658248, at *8 (July 15, 2003) (Comm. Op.).

Cooperation and Remediation

41. In determining to accept the Offer, the Commission considered cooperation afforded the staff and remedial acts undertaken by Vanguard since the commencement of the Commission's investigation. These acts include providing Commission staff with factual summaries and key documents and augmenting its policies and procedures concerning fund initiatives and its compliance program.

42. Further, Respondent enhanced fund prospectus disclosures to disclose the risk of movement across Vanguard products that may result from the launch of competing funds or the reduction of expenses in other products.

v. *SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

**Vanguard's Settlements With the Office of the New York State Attorney General and
North American Securities Administrators Association**

43. Vanguard, including through its affiliates, has entered into settlement agreements with the Office of the New York State Attorney General (“NYAG”) and members of the North American Securities Administrators Association (“NASAA”) concerning substantially the same facts as alleged herein.

44. Under those settlements, Vanguard has agreed to resolve certain charges and pay \$135 million in remediation within 10 days of the effective date of the settlements for the benefit of harmed investors of the Investor TRFs in taxable accounts who received historically high capital gains distributions in 2021. According to those settlements, Vanguard is entitled to an offset to the \$135 million by (a) the amount of \$40 million for Vanguard’s settlement of a class action against it and certain related parties pending in the U.S. District Court for the Eastern District of Pennsylvania captioned, *In re Vanguard Chester Funds Lit.*, Case No. 2:22-cv-955-JFM, under a Stipulation of Settlement submitted by plaintiffs for preliminary and final Court approval (“Class Action Settlement”), and (b) the amount of \$2.09 million for Vanguard’s settlement of certain individual investor arbitration claims filed or threatened to be filed before the Financial Industry Regulatory Authority.

45. The total amount of remediation inclusive of these offsets is \$92.91 million, which Vanguard shall, under the NYAG and NASAA settlement agreements and pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002 (“SOX”) pay to a Fair Fund established by the Commission for the benefit of investors as described below in paragraph IV.E. Under the settlement agreements with the NYAG and NASAA, in the event Vanguard does not pay the \$40 million under the Class Action Settlement, as a result of the termination or withdrawal of the Stipulation of Settlement or the Court’s rejection of the Class Action Settlement, Vanguard will be obligated to pay the \$40 million into the Commission’s Fair Fund pursuant to Section 308(b) within 10 days of such termination or rejection.

46. Further, under the NYAG and NASAA settlement agreements, Vanguard will pay a penalty in the amount of \$13.5 million, which will be deemed satisfied by the payment of the penalty ordered by the Commission below in paragraph IV.D.

Disgorgement, Prejudgment Interest, Remediation, and Civil Penalties

47. The disgorgement and prejudgment interest ordered below in paragraph IV.C is consistent with equitable principles and does not exceed Vanguard’s net profits from its violations. The funds collected under the NYAG and NASAA settlement agreements as described in paragraphs 43 to 46 above and the civil money penalty ordered in paragraph IV.D below will be distributed to harmed investors to the extent feasible. The Commission will hold all funds paid in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that

are infeasible to return to investors, may be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Vanguard's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(e) and 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Vanguard cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder, and Section 34(b) of the Investment Company Act.

B. Vanguard is censured.

C. Vanguard is ordered to pay disgorgement in the amount of \$14,700,000 and prejudgment interest thereon in the amount of \$3,500,000. These amounts will be deemed satisfied upon Vanguard's payment of \$92,910,000 in remediation into the Fair Fund under the settlement agreements with the NYAG and NASAA as described in paragraphs 43 to 46 above.

D. Vanguard shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$13,500,000 to the Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying The Vanguard Group, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Corey

Schuster, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

E. Pursuant to Section 308(a) of SOX, a Fair Fund is created for the penalty referenced in paragraph IV.D above. The proceeds for remediation under Respondent's settlement agreements with the NYAG and NASAA shall be received and accepted by the Commission for the Fair Fund under SOX 308(b) as described above in paragraphs 43 to 46. Amounts ordered to be paid as a civil money penalty pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary