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Via Electronic Submission

May 5, 2020

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

*Attention: Request for Comments on Fund Names, RIN 3235-AM72 (File No. S7-04-20)*

Dear Ms. Countryman:

The Vanguard Group, Inc. (Vanguard)<sup>1</sup> appreciates the Securities and Exchange Commission's (Commission) ongoing efforts to improve the investor experience and modernize current regulatory approaches, including its request for comment on fund names.<sup>2</sup> Vanguard has long advocated for strong and effective disclosure regulation in the interests of investors, regulators, and the industry. We continue to believe it is important for the Commission to support evolving methods of disclosure so that Main Street investors understand product offerings and can navigate disclosure as they research, analyze, purchase, and sell funds.<sup>3</sup>

In its Request for Comment, the Commission seeks input in assessing whether Rule 35d-1 under the Investment Company Act of 1940 (Names Rule) is effective in prohibiting funds from using names that are materially deceptive or misleading, and whether there are alternatives that the Commission should consider. The Commission acknowledges – and we agree – that there has been significant evolution in the ways that investors consume information and tremendous growth in the diversity of products available to investors since the Names Rule was adopted in 2001. Vanguard supports disclosures that provide investors with clear and objective standards against which they

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<sup>1</sup> Vanguard is one of the world's leading investment management companies, offering a diverse selection of low-cost investment products—including mutual funds and exchange-traded funds—advice and related services. As of March 31, 2020, we managed approximately \$5.3 trillion in assets globally on behalf of more than 30 million investors.

<sup>2</sup> See Request for Comments on Fund Names, SEC Release Nos. IC-33809 (Mar. 2, 2020), available at <https://www.sec.gov/rules/other/2020/ic-33809.pdf> (Request for Comment).

<sup>3</sup> See, e.g., Letter from Anne Robinson, General Counsel and Managing Director, Vanguard, to Mr. Brent Fields, Secretary, SEC, dated October 31, 2018, available at <https://www.sec.gov/comments/s7-12-18/s71218-4593932-176327.pdf>.

can evaluate funds.<sup>4</sup> Broadly speaking, we believe the Names Rule continues to serve investors and asset managers well to the extent it focuses on terms with objective standards that can be uniformly applied. For example, the rule requires that a fund using a name that suggests it invests in stocks, bonds, or tax-exempt investments invest 80% of its assets accordingly. Elimination of the Names Rule and the 80% test would be a setback for investors in these types of products as asset managers would be left without clear guidance for fund names and corresponding asset-test investment thresholds. This could result in varying approaches taken by asset managers and frustrate the principles of clear and consistent disclosures to investors.

Fund names, however, are only one aspect of the Commission’s disclosure regime. In new and rapidly evolving product markets that are not yet well-defined by objective standards, such as products incorporating environmental, social, and governance (ESG) considerations, we encourage a principles-based approach to regulation. Continuing to engage in a two-way dialogue with investors and the industry will help the Commission advance regulation that enables innovation, effective disclosure, and investor education and protection in the ESG product market. Our comments focus on this issue.

### **Investors Choose Funds Incorporating ESG Factors for a Variety of Reasons**

ESG investors do not share a single objective. Some investors may be interested in investing in line with their particular value preferences. Other investors may seek to effect some manner of societal change through their investments. Still others may believe that focusing on certain ESG factors can generate financial benefit. This variety in investor preference has led to a proliferation of funds with ESG-related investment mandates. As a result, investors need accurate information to enable them to evaluate which products align to their particular goals and that information may not be able to be succinctly captured in a fund’s name.

The use of ESG or other related terms by themselves often does not convey enough information to allow an investor to efficiently compare one fund with another before making investment decisions. As the Commission has stated, “[a]n investment company’s name, like any other single piece of information about an investment, cannot tell the whole story about the investment company.”<sup>5</sup> This is particularly true with a category like ESG, where the product landscape is rapidly changing and the industry has yet to coalesce around common definitions. Indeed, we believe it is critical that rules and other measures deployed by the Commission with respect to ESG encourage investors to look beyond the fund’s name to understand whether a fund is suited to their particular goals.

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<sup>4</sup> See, e.g., Letter from Chris McIsaac, Managing Director, Vanguard, to Mr. Kevin O’Neill, Deputy Secretary, SEC, dated June 9, 2014, available at <https://www.sec.gov/comments/s7-12-10/s71210-105.pdf>.

<sup>5</sup> See Investment Company Names, SEC Release No. IC-24828 (Jan. 17, 2001), available at <https://www.sec.gov/rules/final/ic-24828.htm> (Adopting Release).

## **Funds Use ESG to Describe a Variety of Strategies and Investments**

The growing number and diversity of ESG products also illustrates the challenge of applying the Names Rule to these types of funds and the benefits of requiring each fund to adequately and reasonably define the terms for investors. Many of these terms, such as “ESG,” “Clean,” “Responsible,” and “Social,” do not necessarily connote a particular type of investment or strategy.

The ESG market is continuing to evolve as portfolio managers explore different strategies to incorporate ESG considerations that may or may not be indicated by a term in the fund’s name. Some funds may use screens to exclude or underweight sectors, countries, and companies that do not meet certain ESG criteria. Other funds may use screens to include sectors or companies with higher ESG ratings than their industry peers. Some funds are focused on generating a positive societal or environmental impact and a financial return. Others may focus investing on specific sectors of the sustainable economy. Still others regularly include ESG factors alongside traditional investment analysis performed by active managers.

Given the continued evolution of ESG-focused funds and the lack of a uniform taxonomy, we believe it would be premature for the Commission to subject these terms to the Names Rule or otherwise define these terms for funds and investors. As the industry’s understanding of material ESG factors continues to evolve and disclosure improves, portfolio managers will continue to innovate ways to integrate this information into their strategies. Imposing prescriptive rules on ESG funds would unnecessarily constrain managers’ ability to develop products that best serve investors’ interests and demands in this space. Further, application of the Names Rule might have the unintended consequence of discouraging funds from using descriptive names.

Critically, even when the Names Rule does not apply, the Commission has the ability to protect investors from misleading names. Funds are expected to provide reasonable definitions of terms used in their names that describe their investment objectives and strategies to enable investors to make informed decisions,<sup>6</sup> and the Commission has the authority to determine whether a particular name is misleading. With respect to ESG and related terms, the Commission should focus on ensuring investors have accurate, meaningful information to enable them to evaluate which strategies and funds align to their particular goals.

## **Funds Should Be Required to Define ESG Terms and Describe ESG Strategies**

Rather than tying a term such as ESG in a fund’s name to a particular investment or strategy, we recommend the Commission require funds using ESG and related terms to explain those terms to investors. The flexibility to define terms is an approach the

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<sup>6</sup> See Adopting Release n. 43 (“As a general matter, an investment company may use any reasonable definition of the terms used in its name and should define the terms used in its name in discussing its investment objectives and strategies in the prospectus.”)

Commission already uses. For example, the Commission has given funds flexibility to reasonably define terms, such as “small-, mid-, or large-cap” and names that suggest a bond portfolio’s duration.<sup>7</sup> Funds should be similarly permitted to define ESG and the related terms funds use in their names, investment objectives, and strategies. Likewise, to ensure the disclosure is meaningful, funds should be encouraged to consider relevant references<sup>8</sup> in developing these definitions as ESG terminology continues to evolve.

Further, given changes in the ways investors consume information, funds should be encouraged to share information on their websites and mobile applications that allow investors to easily access definitions and descriptions of investment strategies. In the Name Rule’s Adopting Release, the Commission noted that the Names Rule would “enable investors to more efficiently compare one fund with another before making investment decisions . . . and reduce the time that investors must spend searching for an investment company that meets their particular needs.”<sup>9</sup> Most funds provide information on their websites to help investors more easily differentiate among these strategies. The Commission should encourage this type of disclosure. This approach would allow the Commission to protect investors from misleading fund names by requiring funds to use reasonable definitions while providing investors with the information necessary to best determine which products are most likely to help them achieve their goals.

In sum, Vanguard does not support application of the Names Rule to fund names containing ESG and similar terms. We believe that attempting to standardize a broad category of products would not provide investors with the information they need to evaluate which products align to their particular goals. We recommend the Commission require funds to use reasonable definitions of the terms used in their names in discussing investment objectives and strategies.

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Vanguard appreciates the opportunity to offer our perspectives on the Names Rule. If you have any questions or would like to discuss our views further, please contact Jaliya Faulkner at [REDACTED] or [REDACTED].

Sincerely,

/s/ Anne Robinson

Anne Robinson  
Managing Director and General Counsel  
The Vanguard Group, Inc.

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<sup>7</sup> See, e.g., Frequently Asked Questions about Rule 35d-1(Investment Company Names), Questions 6 & 12, available at <https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm>.

<sup>8</sup> See *id.*

<sup>9</sup> See Adopting Release III (discussing the costs and benefits of the rule).

cc: The Honorable Jay Clayton  
Chairman  
Securities and Exchange Commission

The Honorable Hester M. Peirce  
Commissioner  
Securities and Exchange Commission

The Honorable Elad L. Roisman  
Commissioner  
Securities and Exchange Commission

The Honorable Allison Herren Lee  
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Dalia O. Blass  
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