Dechert LLP

VIA E-MAIL

August 14, 2020

Office of Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549
IMshareholderproposals@sec.gov

Re: Shareholder Proposal Submitted by Kani Ilangovan and Mary Lou Rosczyk for Inclusion in the Vanguard Funds' 2020 Proxy Materials

Dear Sir or Madam:

This letter responds to the August 3, 2020 letter from Eric Cohen (the "Proponent Letter") concerning our July 27, 2020 letter ("Initial Request Letter") on behalf of our client, the Vanguard Funds listed on Appendix A of the Initial Request Letter ("Vanguard Funds"). The Initial Request Letter seeks confirmation that the staff of the Division of Investment Management will not recommend enforcement action to the U.S. Securities and Exchange Commission if the Vanguard Funds exclude a shareholder proposal (the "Proposal") submitted by Kani Ilangovan and Mary Lou Rosczyk (the "Proponents") for inclusion in the Vanguard Funds' 2020 proxy statement and form of proxy (the "Proxy Materials").

As discussed in the Initial Request Letter, we continue to believe that the Vanguard Funds have substantially implemented the Proposal consistent with the criteria required under Rule 14a-8(i)(10) in order to omit the proposal from its Proxy Materials. The Vanguard Funds' board of directors has considered the best way to address investments in companies that raise human rights concerns, and subsequently developed a formal procedure to identify and monitor portfolio companies whose direct involvement in crimes against humanity or patterns of egregious abuses of human rights would warrant engagement or potential divestment.

Pursuant to the Staff guidance on Rule 14a-8, a proposal need not be implemented completely or precisely as presented for the Staff to determine that the subject of the proposal has been acted upon favorably by management. Instead, the company's actions must address the essential objectives of the proposal.[1] Because the Vanguard Funds have already implemented procedures to address the most egregious violations that substantially contribute to genocide or crimes against humanity, including the possibility of divestment, the Funds have substantially

[1] SEC Release No. 20091 (August 16, 1983).

implemented the Proposal.

The Proponent Letter acknowledges that Vanguard has already established a formal procedure to identify and monitor portfolio companies whose direct involvement in crimes against humanity, or patterns of egregious abuses of human rights, would warrant engagement or potential divestment. But the Proponent Letter argues that this policy of monitoring such companies, and assessing whether engagement or divestment is appropriate, is not enough to satisfy the requirements of the Proposal. Instead, according to the Proponent Letter, the Proposal requires a specific action to be taken by Vanguard — avoid recommending or investing in the specific companies targeted by the Proponents. This response demonstrates that the Proposal, as construed by the Proponent Letter, actually is designed to micromanage the Vanguard Funds by requiring a specific method for implementing a complex policy—and thus is separately excludable pursuant to Rule 14a-8(i)(7).

In the Initial Request Letter, we explained that the Proposal may be properly omitted from the Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal "deals with a matter relating to the [Vanguard Funds'] ordinary business operations." Specifically, we argued that the Proposal would micromanage the Vanguard Funds by seeking to impose specific selection criteria in making (or recommending) investment decisions on behalf of the Vanguard Funds, including avoiding investments in (or divesting from) specific categories of companies disfavored by the Proponents. We noted that the staff of the Division of Corporation Finance just last year concluded that JPMorgan Chase & Co. could omit a nearly identical shareholder proposal from its proxy materials, concluding that "the Proposal micromanages the Company by seeking to impose specific methods for implementing complex policies," and thus was excludable under Rule 14a-8(i)(7).[2]

In response, the Proponent Letter argues that "the Proposal represents a significant social policy issue," and cites several no-action letters issued on or before 2014 that allowed the inclusion of similar proposals in proxy materials.[3] Importantly, however, the Proponent Letter does not account for the Commission staff's most recent public interpretations on the scope of Rule 14a-8(i)(7). Specifically, whether the Proposal addresses a significant policy issue is irrelevant under the micromanagement consideration underlying Rule 14a-8(i)(7).[4] Staff Legal Bulletin No. 14I, published on November 1, 2017 ("SLB 14I"), stated:

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[2] *See* JPMorgan Chase & Co., SEC No-Action Letter (pub. avail. March 13, 2019) ("JPM 2019 Letter").

[3] The Proponent Letter also makes reference to a March 29, 2018 letter to J.P. Morgan rejecting application of Rule 14a-8(i)(7), but that letter concerned a request for a "Report on Investments Tied to Genocide," not a request to avoid investing in or recommending specific categories of companies. *See* JPMorgan Chase & Co., SEC No-Action Letter (pub. avail. March 29, 2018). Accordingly, that letter is not relevant to the current Proposal.

[4] *See* JPM 2019 Letter.

> "The Commission has stated that the policy underlying the 'ordinary business' exception rests on two central considerations. The first relates to the proposal's subject matter; the second, the degree to which the proposal 'micromanages' the company. ***Under the first consideration***, proposals that raise matters that are 'so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight' may be excluded, ***unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote***." (emphasis added) (footnotes omitted).

Staff Legal Bulletin No. 14J, issued on October 23, 2018 ("SLB 14J"), then stated that, "[u]nlike the first consideration, which looks to a proposal's subject matter, the ***second consideration*** looks only to the degree to which a proposal seeks to micromanage." (emphasis added).

Accordingly, whether the Proposal addresses a significant policy issue has no bearing on whether the Vanguard Funds may exclude the Proposal under Rule 14a-8(i)(7) under the "micromanagement" consideration.

SLB 14I noted the Commission's view that the micromanagement consideration "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or ***methods of implementing complex policies***."[5] The Proposal, as it is construed in the Proponent Letter, micromanages the Vanguard Funds by seeking to impose a specific method for implementing complex policies — namely, divesting from, or avoiding making or recommending investments in, the specific companies disfavored by the Proponents. In addition to imposing a specific method for implementing complex policies, the Proposal imposes a time frame for doing so, evidenced by the Proponent Letter's conclusion that the Vanguard Funds' policy does not compare favorably with the Proposal because the Funds did not take the specific action desired within the Proponent's desired time frame.

The Proponent Letter acknowledges that the staff of the Division of Corporation Finance — applying the updated guidance in SLB 14I and SLB 14J — most recently concluded that a nearly identical proposal resulted in micromanagement of the company and thus was excludable under Rule 14a-8(i)(7). The Proponent Letter then suggests that the considerations in that case may be different, since JPMorgan is a bank and not an investment company. However, the fact that the Vanguard Funds are in the business of investing only enhances the argument that the Proposal interferes with Vanguard's ordinary business operations. Indeed, the staff of the Division of Investment Management has repeatedly recognized that "the ordinary business operations of an

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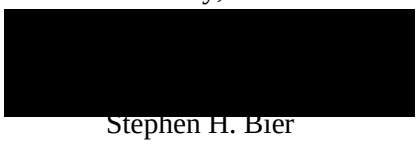
[5] *See SLB 14I* (emphasis added). *See also* Securities Exchange Act Release No. 40018 (May 21, 1998).

investment company include buying and selling portfolio securities."[6] Thus, by specifically interfering with the Funds' investment decision making process, the Proposal is fundamentally aimed at micromanaging an investment company's ordinary business operations.

For the foregoing reasons and those discussed in the Initial Request Letter, the Vanguard Funds respectfully submit that Vanguard's existing, board-approved human rights policies already have substantially implemented the Proposal, and thus the Proposal is excludable under Rule 14a-8(i)(10). To the extent the Proposal requires more specific methods for implementing complex policies, as envisaged by the Proponent Letter, the Proposal micromanages the Funds, and thus is excludable under Rule 14a-8(i)(7). We accordingly request that the staff confirm that it will not recommend any enforcement action to the Commission if the Vanguard Funds exclude the Proposal from their 2020 Proxy Materials. Please note that we have concurrently sent copies of this correspondence to the Proponents. Should you have any questions regarding any aspect of this letter or require any additional information, please contact the undersigned at 212-698-3889 or stephen.bier@dechert.com.

Sincerely,



Stephen H. Bier

cc: Kani Illangovan
Mary Lou Rosczyk

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[6] *See* College Retirement Equities Fund, SEC No-Action Letter (pub. avail. May 3. 2004) ("2004 CREF Letter"); *see also*, Morgan Stanley Africa Investment Fund, Inc.; SEC No-Action Letter (pub. avail. Apr 26, 1991) ("Morgan Stanley Letter") (noting that an investment company's ordinary business operations include "the purchase and sale of securities and the management of the fund's portfolio securities"); State Street Corp., SEC No-Action Letter (pub. avail. Feb. 24, 2009).