



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE
GENERAL COUNSEL

November 26, 2019

Anne E. Robinson, Esq.
Managing Director, General Counsel and Secretary
The Vanguard Group, Inc.
400 Devon Park Drive
Wayne, PA 19087

Dear Ms. Robinson:

This is in response to your request for a determination that The Vanguard Group, Inc., Malvern, Pennsylvania,¹ and its subsidiaries and affiliates (collectively, "Vanguard"), may acquire up to 25 percent of any class of voting securities of a bank holding company, bank, savings and loan holding company, or savings association² (each a "Regulated Company") without being deemed to have acquired control of the Regulated Company under the Bank Holding Company Act ("BHC Act") or Home Owners' Loan Act ("HOLA"). This letter also responds to your request for a determination that Vanguard may acquire up to 15 percent of any class of voting securities of a bank holding company, savings and loan holding company, or state member bank without having to file a notice under the Change in Bank Control Act ("CIBC Act").

Board staff previously determined (the "2013 Letter") that Vanguard may acquire up to 15 percent of any class of voting securities of a Regulated Company

¹ The Vanguard Group is not, and is not affiliated with, a bank holding company or a savings and loan holding company.

² The terms bank holding company and bank have the same meanings as set forth in the BHC Act and the Board's Regulation Y. The terms savings and loan holding company and savings association have the same meanings as set forth in the HOLA and the Board's Regulation LL.

without Board staff recommending that the Board find that the acquisitions would cause Vanguard to control that institution under the BHC Act, HOLA, or the CIBC Act under certain circumstances.³

Vanguard currently holds Regulated Company shares through a variety of investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard (collectively, the “Vanguard-Advised Entities” and together with Vanguard, the “Vanguard Parties”). Vanguard represents that, due to growth in its U.S. assets, particularly in funds that track the performance of a securities index, it may cross the 15 percent threshold of ownership in one or more Regulated Companies if it continues to use its current investment strategies. In connection with the requested determinations, Vanguard has requested amendments to the conditions and commitments imposed in connection with the 2013 Letter, as described herein.

For purposes of the BHC Act, a company controls another company if the first company (i) directly or indirectly or acting in concert through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the second company; (ii) controls in any manner the election of a majority of the directors of the second company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the second company.⁴ HOLA includes a substantially similar definition of control.⁵ The Board’s Regulation Y and Regulation LL also set forth several rebuttable presumptions of control.⁶ Based on the limits on ownership and director representatives under the proposal, Vanguard would only be deemed to control a Regulated Company under the BHC Act or HOLA, as applicable, if the Board were to find that Vanguard exercises a controlling influence over the management or policies of a Regulated Company.

³ See Letter from Scott G. Alvarez, General Counsel of the Board, to Satish M. Kini, Esq., dated April 11, 2013.

⁴ 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e), 238.2(e).

⁵ 12 U.S.C. § 1467a(a)(2); 12 CFR 238.2(e). Additionally, Vanguard will be deemed to control a company under HOLA if Vanguard has contributed more than 25 percent of the capital of the company. 12 U.S.C. § 1467a(a)(2)(B); 12 CFR 238.2(e)(2).

⁶ 12 CFR 225.31(d), 238.21(d).

For purposes of the CIBC Act, the Vanguard Parties are presumed by Regulation Y or Regulation LL to control a bank holding company, savings and loan holding company, or state member bank if, individually or collectively, “immediately after the transaction ... [they] will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution” and either the institution has registered securities or no other person owns or controls a greater percentage of the same class of voting securities of the institution.⁷ Under the proposal, the Vanguard Parties would, from time to time, acquire in excess of 10 percent of a class of voting securities of a bank holding company, savings and loan holding company, or state member bank, and therefore in some circumstances would be presumed to have acquired control for purposes of the CIBC Act, absent relief.

Vanguard proposes several conditions and commitments to ensure that the Vanguard Parties would not exercise a controlling influence over a Regulated Company for purposes of the BHC Act and HOLA, and to rebut the presumption of control for purposes of the CIBC Act. In particular, the Vanguard Parties collectively would not own or control 25 percent or more of any class of voting securities, or control the election of a majority of the directors of, any Regulated Company. In addition, the Vanguard Parties would not acquire 15 percent or more of any class of voting securities of a Regulated Company without receiving the Board’s prior nonobjection under the CIBC Act. Moreover, neither Vanguard nor any Vanguard-Advised Entity would individually own or control more than 10 percent of any class of voting securities of a Regulated Company.

Furthermore, Vanguard has made a number of commitments designed to mitigate the ability of the Vanguard Parties to control a Regulated Company. Among these commitments, Vanguard has committed that, whenever the Vanguard Parties own or control, in the aggregate, 10 percent or more of any class of voting securities of a Regulated Company, the Vanguard Parties will not, individually or collectively:

- 1) take any action to control the Regulated Company within the meaning of the BHC Act or HOLA, as applicable;
- 2) have more than one director interlock with the Regulated Company;

⁷ 12 CFR 225.41(c).

- 3) have any officer or employee interlocks with the Regulated Company;
- 4) except in the context of a tender offer or in certain other specified transactions, dispose of voting shares of the Regulated Company (i) to any person seeking control over the institution or (ii) in block transactions exceeding 5 percent of any class of voting shares of the institution; or
- 5) threaten to dispose of voting shares in any manner as a condition of specific action or non-action by the Regulated Company.⁸

The commitments described herein differ from the commitments made by Vanguard in connection with the 2013 Letter (the “2013 commitments”) in two ways. First, the 2013 commitments required Vanguard to use its best efforts to vote shares in excess of 10 percent of any class of voting securities in proportion to the vote taken on all other shares (i.e., to “mirror” the vote of the other shares voted), or, in the event that such efforts to provide for mirror voting are unsuccessful, to abstain from voting. Second, the 2013 commitments prohibited Vanguard from seeking to place a director on the board of any Regulated Company in which it invests. The commitments described herein would eliminate the mirror voting requirement, and permit Vanguard to seek to place up to one director on the board of any Regulated Company in which it invests. These revisions would more closely align the Vanguard commitments with traditional passivity commitments, and staff believes that the revised commitments have the potential to improve the corporate governance of Regulated Companies.

In addition to considering the commitments made by Vanguard, Board staff has considered the nature of Vanguard and its proposed investments. Vanguard operates and provides investment advice to the Vanguard-Advised Entities. The proposed acquisitions in Regulated Companies would not be proprietary investments by Vanguard. Rather, they would be investments made by Vanguard-Advised Entities and on behalf of the beneficial owners of the Vanguard-Advised Entities. The Vanguard-Advised Entities are not operating companies, and Vanguard does not lend to the Vanguard-Advised Entities or to

⁸ For a complete list of the revised commitments that Vanguard has made to the Board, see the Appendix. These revised commitments would replace the existing commitments Vanguard made to the Board in connection with its prior request, as described in the 2013 Letter.

their portfolio companies. Moreover, Vanguard is not in the business of operating or controlling Regulated Companies, or other companies. The proposed acquisitions will be made for investment purposes with the expectation of resale and not for the purpose of exercising a controlling influence over the management or policies of any Regulated Company.

In light of the nature of Vanguard's business and proposed investments, staff believes that the amended commitments that Vanguard has executed in connection with this letter are appropriate to mitigate concerns about whether Vanguard will exercise a controlling influence over Regulated Companies.

In view of the commitments made by Vanguard and the facts described in this letter, Board staff would not recommend that the Board find that acquisitions made within the parameters, and subject to the conditions, set forth in this letter would cause Vanguard or any of the Vanguard-Advised Entities: (i) to control a bank holding company or bank for purposes of the BHC Act; (ii) to control a savings and loan holding company or savings association for purposes of the HOLA; or (iii) to control a bank holding company, savings and loan holding company, or state member bank for purposes of the CIBC Act.⁹

⁹ To the extent Vanguard were to make acquisitions outside the parameters of this letter, or contrary to the conditions and commitments described herein, Vanguard would be required to comply with all other applicable filing requirements, including the filing of applications or notices, respectively, under the BHC Act, HOLA, and the CIBC Act.

The preceding opinions are based expressly on the facts and circumstances of this case as they have been described to Board staff, and any change in these facts or circumstances may result in a different opinion. In addition, this letter expresses no opinion as to whether a CIBC Act notice would be required for transactions involving direct investments in national banks, state non-member banks, or savings associations. If you have any questions about this matter, please contact Jay Schwarz (202) 452-2970 or Greg Frischmann (202) 452-2803 of the Board's Legal Division.

Sincerely,

A handwritten signature in cursive script, reading "Mark Van Der Weide". The signature is written in dark ink and is centered below the word "Sincerely,".

cc: Federal Reserve Bank of Philadelphia

APPENDIX

Commitments of Vanguard to the Board

Aggregate investments by Vanguard and the Vanguard-Advised Entities in 10 percent or more of any class of voting securities of a bank holding company, bank, savings and loan holding company, and savings association (each, a "Bank") will be conducted in accordance with the commitments and restrictions listed below.

1. Vanguard and the Vanguard-Advised Entities in the aggregate:
 - a. will not acquire 25 percent or more of any class of voting securities of any Bank without receiving the Board's prior approval under the Bank Holding Company Act, or the Home Owners' Loan Act, as applicable; and
 - b. will not acquire more than 15 percent of any class of voting securities of any bank holding company, savings and loan holding company, or state member bank, without receiving the Board's prior nonobjection under the Change in Bank Control Act.
2. Neither Vanguard nor any Vanguard-Advised Entities will, directly or indirectly, individually or in the aggregate:
 - a. take any action to cause a Bank or any of its subsidiaries to become a subsidiary of Vanguard or any Vanguard-Advised Entity for purposes of the BHC Act;
 - b. unless agreed to by the Federal Reserve Board or its staff, and permitted by applicable law, seek or accept representation of more than one director on the board of directors of any Bank or its subsidiaries;
 - c. have or seek to have any representative of Vanguard or any Vanguard-Advised Entity serve as an officer, agent or employee of any Bank or its subsidiaries;

- d. propose a director or slate of directors in opposition to any nominee or slate of nominees proposed by the management or board of directors of any Bank;
 - e. exercise or attempt to exercise a controlling influence over the management or policies of any Bank or any of its subsidiaries;
 - f. attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of any Bank or any of its subsidiaries;
 - g. enter into any agreement with a Bank or any of its subsidiaries that substantially limits the discretion of the Bank's management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
 - h. solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of a Bank or any of its subsidiaries; or
 - i. dispose or threaten to dispose (explicitly or implicitly) of equity interests of a Bank or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by Bank or any of its subsidiaries.
3. Neither Vanguard nor any Vanguard-Advised Entity will dispose of voting securities of a Bank:
- a. to any person if Vanguard or the Vanguard-Advised Entity knows that such person seeks to change the control of the Bank in any manner; or
 - b. to any person whom Vanguard or the Vanguard-Advised Entity knows (i) has made a filing with the U.S. Securities and Exchange Commission or other federal agency with respect to the ownership of

more than 5 percent of the Bank's voting securities, or (ii) would be required to do so as a result of the purchase from Vanguard or a Vanguard-Advised Entity; or

- c. in an amount of more than 5 percent of the Bank's voting securities in any single transaction;¹⁰

provided that notwithstanding paragraphs (a) through (c) above, Vanguard and the Vanguard-Advised Entities may dispose of their stock in a Bank in the following circumstances:

- (i) in a cross trade between two Vanguard-Advised Entities in compliance with the rules governing such cross trades under the Investment Company Act of 1940, as amended (the "1940 Act");
- (ii) in a sale by Vanguard or a Vanguard-Advised Entities to the Bank or one of its subsidiaries;
- (iii) in a tender or exchange offer for voting stock of the Bank; or
- (iv) in a widespread public distribution effected on a stock exchange or otherwise (which may include a sale to one or more broker-dealers acting as market makers or otherwise intending to resell the shares sold to it or them in accordance with its or their normal business practices).

- 4. Neither Vanguard nor any Vanguard-Advised Entity will individually own, control, or hold with power to vote more than 10 percent of any class of voting securities of a Bank.

Vanguard and the Vanguard-Advised Entities understand that these commitments constitute conditions imposed in writing in connection with the Board's findings and decisions related to acquisitions of voting securities of Banks, and, as such, may be enforced in proceedings under applicable law.

¹⁰ A single transaction includes a bunched trade effected by two or more Vanguard-Advised Entities in compliance with the rules governing bunched trades under the 1940 Act.