

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907)269-8140

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
3 DIVISION OF BANKING AND SECURITIES

4 **ORDER NO. 23-25-S**

4 IN THE MATTER OF:)
5 VANGUARD MARKETING)
6 CORPORATION)
7 (CRD No. 7452), and THE VANGUARD)
8 GROUP, INC. (CRD No. 105958))
9 Respondents.)
10 _____)

**ADMINISTRATIVE CONSENT
ORDER**

11 Pursuant to the authority granted to the Department of Commerce Community and
12 Economic Development, Division of Banking and Securities (the “Administrator”) under the
13 Alaska Securities Act, Alaska Statute (“AS”) 45.56 *et seq* (“Securities Law”), and after
14 investigation, careful review, and due consideration of the facts and statutory provisions set
15 forth below, the Administrator hereby finds that there is good cause, and it is in the public
16 interest to enter into a Consent Order (the “Consent Order”) with Vanguard Marketing
17 Corporation and The Vanguard Group, Inc. (together, “Vanguard” or “Respondents”), which
18 hereby agree to resolve any and all issues in controversy regarding the specific conduct
19 described herein on the terms set forth in this Consent Order.

20 WHEREAS The Vanguard Group Inc. (“VGI”) (CRD No. 105958) is registered with
21 the United States Securities and Exchange Commission (the “SEC”) as an investment adviser.
22 VGI is one of the largest investment advisers in the world, is owned by its U.S. mutual funds,
23 and provides services to the funds at Vanguard’s cost of operations;

24 WHEREAS, Vanguard Marketing Corporation (“VMC”) (CRD No.7452), with a main

1 address of 100 Vanguard Blvd., Malvern, Pennsylvania 19355, has been registered with the
2 State of Alaska as a broker-dealer since September 23, 1977. VMC does not maintain any
3 branch offices in the State of Alaska. As an institutional brokerage firm, VMC offers portfolio
4 management, financial planning and advisory services. VMC is a wholly-owned subsidiary of
5 VGI;

6 WHEREAS, parallel to a concurrent investigation conducted by the SEC, the North
7 American Securities Administrators Association (“NASAA”), with Connecticut, New Jersey,
8 and New York among five other states, conducted an investigation into the circumstances
9 surrounding the recommendation of VGI to the Vanguard Chester Funds (the “Trust”) to lower
10 the investment minimum of its Institutional Target Retirement Funds (“TRFs”), effective
11 December 11, 2020, and the resulting capital gains tax distributions in December 2021 to
12 shareholders of Investor TRFs (“Investor TRFs”) who held the funds in taxable accounts;

13 WHEREAS, Vanguard has agreed to resolve the Investigation upon the terms specified
14 in the Settlement Term Sheet executed as of January 15, 2025, between Vanguard and the
15 participating NASAA jurisdictions, with all participating states and territories identified in
16 Appendix A to the Settlement Term Sheet (each, a “Jurisdiction” and collectively, the
17 “Jurisdictions”);

18 WHEREAS Vanguard consents to the form, content, and entry of this Consent Order;
19 and

20 WHEREAS Vanguard neither admits nor denies the findings of fact contained herein;

21 NOW, THEREFORE, the Director, as administrator of the Securities Law, hereby
22 enters this Consent Order:

23 **I. FINDINGS OF FACT**

24 1. The Trust has been organized as a Delaware statutory trust since 1998. The Trust

1 is registered with the SEC under the Investment Company Act as an open-end management
2 investment company.

3 2. Except as otherwise expressly stated, the conduct described herein occurred during
4 the approximate time period of December 1, 2019, to December 31, 2021 (the “Relevant Time
5 Period”).

6 **A. Reduction of the Institutional TRF Investment Minimum**

7 3. Vanguard markets and distributes the TRFs to investors who hold TRF shares in
8 qualified accounts that offer special tax treatment, including deferred taxes, as well as to investors
9 who hold TRF shares in taxable accounts.

10 4. The TRFs are mutual fund investments designed for investors who plan to retire
11 close to the target year indicated in the fund’s name. As an investor approaches the target
12 retirement age, the TRFs’ asset allocation strategy moves toward more conservative investments.

13 5. During the Relevant Time Period, Vanguard marketed and distributed two suites of
14 TRFs on behalf of the Trust: Institutional TRFs and Investor TRFs. Each suite offered 12 vintages
15 of TRFs with different target retirement years. Each vintage of the Institutional and Investor
16 TRFs distributed to shareholders virtually all of its net short- and long-term capital gains realized
17 from the sale of its holdings or received from the TRFs’ underlying funds.

18 6. During the Relevant Time Period, the Institutional TRFs had lower expense ratios
19 than the Investor TRFs. Prior to December 2020, the investment minimum for the Institutional
20 TRFs was \$100 million and the investment minimum for the Investor TRFs was \$1,000.

21 7. VGI recoups the expenses it incurs for its investment advisory services to the Trust
22 from the expense ratios paid by TRF shareholders. VGI monitors the TRFs’ expense ratios to
23 ensure that any difference between the expense ratios and the costs VGI incurs to service the
24 funds does not exceed certain guidelines.

1 8. By the middle of 2019, due in part to increased investments by small- and medium-
2 sized retirement plans, Investor TRF assets had grown substantially. The growth in assets resulted
3 in economies of scale that lowered VGI’s expenses in servicing the Investor TRFs, creating a gap
4 between the expense ratios and VGI’s expenses. As a result, in early 2020 Vanguard formed a
5 Pricing Working Group (the “PWG”) to reduce the gap between the expense ratios and VGI’s
6 expenses for the Investor TRFs, and to return value to shareholders.

7 9. VGI tasked the PWG with analyzing various options to return value to shareholders
8 and to recommend solutions to VGI’s Global Investment Committee (the “GIC”), which would
9 in turn make a recommendation to the Trust’s Board of Trustees. The PWG concluded its analysis
10 in March 2020. At the time the PWG performed its analysis, the financial markets had suffered
11 substantial losses due to the Covid-19 pandemic.

12 10. The PWG considered several options, but in October 2020 ultimately recommended
13 to the GIC lowering the minimum investment of the Institutional TRFs from \$100 million to \$5
14 million, and also to lower the Investor TRFs’ expense ratios by 0.01% to 0.02%. In November
15 2020, the GIC recommended the investment minimum reduction to the Trust’s Board of Trustees,
16 which approved the change.

17 11. The PWG failed to update its March 2020 analysis regarding potential capital gains
18 impacts or consider whether significant market appreciation could impact its evaluation of
19 potential capital gains or tax consequences from investors redeeming Investor TRF shares in
20 2021, when it made its recommendation to the GIC in October 2020. Thus, the GIC and the Board
21 of Trustees relied on outdated data in approving the lowering of the Institutional TRF investment
22 minimum. Accordingly, in making its recommendation to the GIC and ultimately to the Board
23 of Trustees, the PWG failed to account for the significant market rebound that occurred between
24 March and October 2020, and the potential for continued market appreciation, in its analysis of

1 potential capital gains impacts to the Investor TRFs. As a result, the size of the capital gains
2 distributions from the Investor TRFs in December 2021 was significantly larger than the PWG
3 anticipated it would be based on market conditions in March 2020.

4 12. On December 11, 2020, Vanguard announced, via press release and Institutional
5 TRF prospectus supplement, the lowering of the investment minimum in Institutional TRFs from
6 \$100 million to \$5 million, effective immediately.

7 13. After the December 11, 2020, announcement, and through the first half of 2021, a
8 substantial number of small- and medium-sized retirement plan investors in the Investor TRFs
9 redeemed fund shares to switch to the Institutional TRFs due to the lower expense ratio. To meet
10 these redemptions, the Investor TRFs had to sell underlying assets at elevated prices due to the
11 rising financial markets that had rebounded from pandemic lows and reached new highs. As
12 compared to prior years, the redemptions resulted in large capital gains distributions to investors
13 holding the Investor TRFs in taxable accounts in December 2021.

14 14. In 2020, for example, Investor TRF shareholders holding the funds in taxable
15 accounts at Vanguard received long and short-term capital gains distributions of approximately
16 \$290 million. At the end of 2021, after VGI lowered the investment minimum for Institutional
17 TRFs, Investor TRF shareholders holding the funds in taxable accounts at Vanguard received
18 approximately \$2.5 billion in long- and short-term capital gains distributions. The TRFs
19 distributed long and short-term capital gains to more than 674 Alaska accounts.

20 15. In February 2022, the Trust merged the Investor and Institutional TRFs.

21 **B. VMC's Supervisory System During the Relevant Time Period**

22 16. The members of the PWG comprised individuals from various business groups
23 within Vanguard, including certain FINRA registered VMC agents. Among the options explored
24 by the PWG was reducing the investment minimum of the Institutional TRFs, expense

1 reductions, and merging the Institutional and Investor TRFs.

2 17. By March 2020, the PWG had identified that lowering the investment minimum
3 of the Institutional TRFs could potentially result in capital gains and tax consequences for
4 shareholders holding the Investor TRFs in taxable accounts. The PWG estimated that
5 approximately 5.79% or \$17 billion of Investor TRF assets were held by investors in taxable
6 accounts at Vanguard. The PWG further estimated that approximately 40% of total Investor TRF
7 assets were held by investors in non-Vanguard brokerage accounts. Additionally, the PWG
8 assumed that redemptions from the Investor TRFs would be staggered over time, potentially
9 reducing the sale of assets to meet redemptions and related capital gains.

10 18. Merging the Institutional and Investor TRFs would have eliminated the gap
11 between the Investor TRFs' expense ratios and Vanguard's expenses, and could have been
12 achieved with no capital gains or tax consequences for taxable investors, but the PWG decided
13 not to recommend this option to the GIC because it would result in an immediate reduction in
14 Vanguard's revenues that was significantly larger than the other options considered, and would
15 impair Vanguard's ability to make expense reductions in other products. The PWG determined
16 that the potential capital gains and tax consequences to investors holding the Investor TRFs in
17 taxable accounts did not "present a hindrance" to lowering the investment minimum of the
18 Institutional TRFs.

19 19. In March 2020, the PWG, including the FINRA registered VMC agents, settled
20 on the recommendation to reduce the Institutional TRF investment minimum from \$100 million
21 to \$5 million and to also lower the Investor TRFs' expense ratios.

22 20. On October 5, 2020, the PWG recommended to the GIC to lower the investment
23 minimum of the Institutional TRFs from \$100 million to \$5 million and to lower the Investor
24 TRF expense ratios by 0.01% to 0.02%. The VMC agents who served on the PWG, however,
failed to disclose to the GIC the risk that reducing the investment minimum of the Institutional

1 TRFs could cause significant redemptions from the Investor TRFs, potentially resulting in high
2 capital gains distributions and tax consequences for investors who held the Investor TRFs in
3 taxable accounts.

4 21. VMC, through its registered agents, knew or should have known that reducing the
5 investment minimum for the Institutional TRFs could result in significant redemptions of shares
6 from the Investor TRFs, and potential tax impacts in the form of historically large capital gains
7 distributions to Investor TRF shareholders who held the funds in taxable accounts.

8 22. VMC's supervisory system was not reasonably designed to ensure that the
9 registered VMC agents who served on the PWG would disclose to the GIC the risk that Investor
10 TRF shareholders holding the funds in taxable accounts could potentially receive higher than
11 usual capital gains distributions as a result of lowering the investment minimum for Institutional
12 TRFs.

13 **C. VGI's Failure to Disclose the Potential Capital Gains Tax Consequences**

14 23. VGI prepared the prospectuses for the Investor and Institutional TRFs and
15 distributed the prospectuses to investors.

16 24. In the TRF prospectuses, VGI represented to investors that "Capital gains
17 distributions may vary considerably from year to year as a result of the Fund's normal investment
18 activities and cash flows," and that "funds with high turnover rates may be more likely to generate
19 capital gains."

20 25. However, VGI recommended lowering the Institutional TRF investment
21 minimum in order to reduce expenses for a substantial number of small- and medium-sized
22 retirement plans that would redeem Investor TRF shares to move to lower-cost Institutional
23 TRFs. The resulting surge of redemptions in Investor TRFs, and historically high capital gains
24 distributions, were not "normal investment activities and cash flows."

1 26. Despite VGI’s knowledge that retail investors holding approximately 5.79% of
 2 Investor TRF assets could potentially experience substantially higher than normal capital gains
 3 distributions and taxes on those distributions, Vanguard failed to disclose this risk to investors,
 4 including in the Investor TRFs’ prospectuses and the December 11, 2020, press release.

5 **II. CONCLUSIONS OF LAW**

6 27. The preceding paragraphs are incorporated by reference as though set forth
 7 verbatim herein.

8 28. Pursuant to AS 45.56.440(d)(9), it is a violation of the Securities Law for a
 9 registered broker-dealer firm to fail to establish and maintain a system to reasonably supervise
 10 its agents.

11 29. Pursuant to AS 45.56.330, certain members of the PWG were registered agents of
 12 VMC. The VMC registered agents knew or should have known of the risk that reducing the
 13 investment minimum for the Institutional TRFs could potentially result in higher than usual
 14 capital gains distributions to investors holding the Investor TRFs in taxable accounts and
 15 potentially cause adverse tax impacts on those investors.

16 30. VMC failed to have an adequate supervisory system to ensure that its agents
 17 sufficiently communicated to the GIC the risk that investors holding the Investor TRFs in taxable
 18 accounts could potentially receive significant capital gains distributions and related tax
 19 obligations.

20 31. These failures by VMC constitute a failure to enforce a reasonably designed
 21 supervisory system, in violation of AS 45.56.440(d)(9).

22 32. VGI’s decision to lower the investment minimum of the Institutional TRFs and
 23 the resulting surge of redemptions from the Investor TRFs, and historically high capital gains
 24 distributions to shareholders of the Investor TRFs, were not normal investment activities and

1 cash flows of the TRFs. VGI’s failure to disclose the potential for higher capital gains
2 distributions from lowering the investment minimum of the Institutional TRFs was materially
3 misleading to investors holding Investor TRFs in taxable accounts.

4 33. Pursuant to AS 45.56.500(2), it is a violation of the Securities Law to “omit to
5 state a material fact necessary in order to make the statements made, in light of the circumstances
6 under which they were made, not misleading to investors in connection with the offer and sale
7 of securities.”

8 **IV. ORDER**

9 On the basis of the Findings of Fact, Conclusions of Law, and Vanguard’s consent to the
10 entry of this Order,

11 IT IS HEREBY ORDERED:

12 34. Vanguard shall permanently cease and desist from conduct in violation of the
13 Alaska Securities Act, as described herein.

14 35. On about January 15, 2025, Vanguard entered into the following settlement
15 agreements: (i) the Settlement Term Sheet; (ii) the Order Instituting Administrative and Cease-
16 and-Desist Proceedings against Vanguard Group, Inc., Admin. Proc. File No. 3-22435 with the
17 SEC (the “SEC Order”); and (iii) the Assurance of Discontinuance, No. 25-003, with the
18 Attorney General of the State of New York (together, the “Settlement Agreements”).

19 36. Under the Settlement Agreements, Vanguard agreed to pay \$135 million in
20 remediation to the SEC Fair Fund for the benefit of Harmed Investors (the “Remediation
21 Payment”). “Harmed Investors” includes certain shareholders who held Investor TRFs as of
22 December 28, 2021, in a taxable brokerage account at VMC, a taxable account directly through
23 the VGI, or a taxable account through a third-party broker-dealer, and who received taxable
24

1 capital gains distributions in 2021 attributable to the Investor TRFs.¹ Under the Settlement
2 Agreements, Vanguard is entitled to receive the following offsets to the Remediation Payment:

- 3 i. the amount of \$40 million for Vanguard’s and/or its affiliates’ settlement of a
4 class action against VGI and certain related parties pending in the U.S. District
5 Court for the Eastern District of Pennsylvania captioned, *In re Vanguard*
6 *Chester Funds Lit.*, Case No. 2:22-cv-955-JFM, under a Stipulation of
7 Settlement submitted by plaintiffs for preliminary and final Court approval
8 (“Class Action Settlement”), and
9 ii. the amount of \$2.09 million for Vanguard’s settlement of certain individual
10 investor arbitration claims filed or threatened to be filed against Vanguard or
11 its affiliates before FINRA.

12 37. The total amount of remediation inclusive of the offsets in paragraph 36 is \$92.91
13 million, which Vanguard paid into the Fair Fund on or about January 24, 2025.

14 38. In the event Vanguard does not pay the \$40 million under the Class Action
15 Settlement, as a result of the termination or withdrawal of the Stipulation of Settlement or the
16 Court’s rejection of the Class Action Settlement, Vanguard shall pay the \$40 million into the Fair
17 Fund within 10 days of such termination or rejection.

18 39. On or about January 24, 2025, Vanguard paid an administrative penalty of
19 \$13,500,000 into the SEC Fair Fund for distribution to Harmed Investors (the “Penalty”).

20 40. Pursuant to the terms of the SEC Order, Vanguard will pay disgorgement in the
21 amount of \$14,700,000, plus prejudgment interest in the amount of \$3,500,000 into the SEC Fair

22 ¹On July 6, 2022, the Massachusetts Securities Division and VMC entered into the Agreement and
23 Acknowledgment of Undertakings (the “Agreement”), where the parties agreed to conclude and resolve, with
24 prejudice, Massachusetts’s investigation into VMC’s “marketing practices in connection with investment minimum
changes to Institutional Vanguard Target-date Retirement Mutual Funds.” Under the terms of the Agreement, VMC
agreed, in part, to “establish a non-reversionary escrow account” to make restitution payments to Massachusetts
Investor TRF shareholders “with a primary address of record in Massachusetts who held [Investor TRFs] as of
December 28, 2021, either in taxable brokerage accounts at VMC or directly through the Vanguard Group, Inc.”
The Agreement does not preclude Massachusetts investors who purchased through a broker dealer other than VMC
from submitting claims to the SEC Fair Fund for the benefit of Harmed Investors and consistent with the SEC Order.

1 Fund for distribution to Harmed Investors. These amounts in this paragraph 40 will be deemed
2 satisfied by Vanguard’s payment of the amounts in paragraphs 35-39 above.

3 41. Payment of the full Remediation Payment and the Penalty by Vanguard, less any
4 offsets or credits to which Vanguard is entitled, concludes the investigation by the Administrator
5 into any other action that the Administrator could commence against Vanguard and its officers,
6 directors, and present or former employees under the Alaska Securities Law on behalf of Alaska
7 as it relates to the Findings of Fact and Conclusions of Law herein, provided however, that
8 excluded from and not covered by this paragraph 41 are any claims by the Administrator arising
9 from or relating to Respondents’ failures to comply with the undertakings contained herein.

10 42. If Respondents fail to comply materially with any of the terms set forth in this
11 Order, the Administrator may institute an action to have this Order declared null and void. In the
12 event that a Jurisdiction believes that Respondents have defaulted in the performance of any
13 obligation set forth in this Settlement, the Jurisdiction will provide written notice of such default
14 to the designated representative of Respondents. Respondents shall then have fourteen (14) days
15 to respond and an additional thirty (30) days to certify that any default has been cured, which
16 periods may be extended by the Jurisdiction (“Response and Cure Period”). Unless the
17 Jurisdiction in its sole discretion determines that exigent circumstances exist, the Jurisdiction will
18 not initiate any civil action or other proceeding to enforce or for violations of this Settlement
19 until after the expiration of the Response and Cure Period. Upon issuance of an appropriate
20 order, after a fair hearing, a Jurisdiction may reinstitute the actions and investigations referenced
21 in this Settlement Term Sheet.

22 **IV. CONSTRUCTION AND DEFAULT**

23 43. This Order shall not (a) form the basis for any disqualifications of Respondent
24 from registration as a broker-dealer, investment adviser, or issuer under the laws, rules, and

1 regulations of any state, or for any disqualification from relying upon the securities registration
2 exemptions or safe harbor provisions to which Respondent or any of its affiliates may be subject
3 under the laws, rules, and regulations of the settling states; or (b) form the basis for any
4 disqualifications of Respondents under the laws of any state, the District of Columbia, Puerto
5 Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities
6 regulator of self-regulatory organizations; or under the federal securities laws or the Commodity
7 Exchange Act, including but not limited to, § 3(a)(39) of the Securities Exchange Act of 1934,
8 Rule 262 of Regulation A and Rules 504 and 506(d) of Regulation D under the Securities Act of
9 1933 and Rule 503 of Regulation CF or safe harbor provisions; this Order is not a final order of
10 any court; or (c) form the basis for disqualification of Respondent under the FINRA rules
11 prohibiting continuance in membership or disqualification under other SRO rules prohibiting
12 continuance in membership.

13 44. Except in an action by the Administrator to enforce the obligations in
14 this Order, this Order is not intended to be deemed or used as (a) an admission of, or evidence
15 of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b)
16 an admission of, or evidence of, any such alleged fault or omission of Respondents in any civil,
17 criminal, arbitration, or administrative proceeding in any court, administrative agency, or other
18 tribunal. Nothing in this Order affects Respondents' testimonial obligations or right to take legal
19 positions in litigation in which the Bureau is not a party. Evidence of any compromise offers
20 and negotiations of the parties related to the Order, including the Order and its terms and any
21 conduct or statements made during compromise negotiations, should not be used as evidence
22 against any Party in any proceeding to prove or disprove the validity or amount of a disputed
23 claim except in an action or proceeding to interpret or enforce the Order.

24 45. This Order shall be binding upon Respondents and their successors and assigns,

1 as well as to successors and assigns of relevant affiliates, with respect to all conduct subject to
2 the provisions above and all future obligations, responsibilities, undertakings, commitments,
3 limitations, restrictions, events, and conditions.

4 46. This Order and any dispute related thereto shall be construed and enforced in
5 accordance with, and governed by, the laws of Alaska without regard to any choice of law
6 principles.

7 **IT IS SO ORDERED.**

8 Julie Sande, Commissioner
9 Department of Commerce, Community and
10 Economic Development

11 DATED: 04/14/2025

12 /s/ Robert H. Schmidt
13 Robert H. Schmidt, Director
14 Division of Banking and Securities

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The Vanguard Group, Inc.

By: /s/ Jaliya Faulkner
Jaliya Faulkner
Principal, Deputy General Counsel

Dated: 04/09/2025

Vanguard Marketing Corporation

By: /s/ Jaliya Faulkner
Jaliya Faulkner
Authorized Signatory

Dated: 04/09/2025