

December 1, 2023

Via E-Mail to: NASAAComments@nasaa.org, kopletona@dca.njoag.gov,
stephen.bouchard@dc.gov

Re: Proposed Model Rule on Dishonest or Unethical Business Practices of Broker-Dealers and Agents

Dear Sir or Madam:

The Vanguard Group, Inc. (“Vanguard”) appreciates the opportunity to comment on the North American Securities Administrators Association (“NASAA”) proposed revisions to the model rule on Dishonest or Unethical Business Practices of Broker Dealers (the “Model Rule”).¹ Vanguard is one of the world’s leading asset managers and our unique investor-owned structure means the interests of our more than 50 million individual fund investors are at the center of everything we do.

Vanguard has long advocated for practices and policies that seek to protect individual investors and put investor interests first. Our mission is to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success. We further that mission in a variety of ways, including by offering low-cost, high-quality investments, advice,² or self-directed brokerage options,³ and providing investors with the insights they need to make well-informed investment decisions. Our unique structure, in which Vanguard’s U.S. shareholders own the funds which in turn own Vanguard, furthers that goal by aligning Vanguard’s interests with its investor-owners.

We agree with NASAA’s intention to update the Model Rule to reflect the SEC’s adoption of Regulation Best Interest (“Reg BI”). We also recognize NASAA’s concern about potential risks associated with the emergence of certain new technologies and believe that regulatory standards should encourage companies to deploy investor-facing technology, particularly retail-investor-facing technology, in ways that align with investor interests. However, we are concerned that certain proposed revisions to the Model Rule appear to conflict with Reg BI and could inadvertently harm investors by reducing their access to important tools and educational information. Specifically, we are concerned that the proposed revisions would expand the

¹ Proposed Revisions to NASAA’s Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule (Sept. 5, 2023).

² Vanguard’s advice services are provided by Vanguard Advisers, Inc., a SEC-registered investment adviser, or by Vanguard National Trust Company, a federally chartered, limited-purpose trust company.

³ Within the U.S., Vanguard Marketing Corporation (VMC) is the distributor and principal underwriter of the Vanguard Funds and registered with the Securities and Exchange Commission (“SEC”) as a broker-dealer (dba, Vanguard Brokerage Services®) that provides a self-directed brokerage platform for more than 9.1 million retail clients throughout the United States.

definition of what constitutes a “recommendation” well beyond the existing Reg BI standard and may chill a number of interactions that have significant *pro-investor* benefits, including interactions that educate investors about account types, investment products, or the ability to save more for retirement. To better protect pro-investor activity, we recommend that NASAA amend the proposed definition to ensure that pro-investor interactions and educational offerings are not inadvertently covered.

The Model Rule’s definition of “recommendation” could reduce pro-investor tools and interactions.

Vanguard believes that financial professionals should only make recommendations that are in the best interest of their clients. For that reason, we supported the SEC’s proposal and adoption of Reg BI, which the agency carefully designed to promote this objective.⁴ However, the Model Rule goes beyond Reg BI and risks defining many, if not all, investor interactions as “recommendations”—subjecting them to a best interest analysis that will likely chill even those interactions designed to support investors’ education or goal setting. As a result, investors could lose access to many pro-investor interactions offered by firms like Vanguard, including basic investor information and education.

Under Reg BI, a communication is considered a recommendation if it could reasonably be deemed a “call to action” and “reasonably would influence an investor to trade a particular security or group of securities.”⁵ Investor interactions that are deemed recommendations trigger Reg BI and require that a firm act in the best interest of the retail customer without placing financial (or other) interests of the firm ahead of the interest of the retail customer. This definition works because it appropriately balances investor protection and the ability of firms to provide useful investor educational materials and tools. The Model Rule appears to expand the scope of investor interactions deemed recommendations and would require that firms perform a best interest analysis if a broker-dealer used any “...means, method or mechanism to feature or promote an account type, specific security or investment strategy to a retail customer...”⁶ Imposing a best interest analysis on such interactions would prove unworkable because companies likely have not yet collected the necessary client data to perform such analysis and many self-directed clients are unlikely to be willing to provide the requisite detailed information simply to receive general investment information. As a result, firms will likely need to limit or discontinue a number of interactions that provide real benefit to investors, including basic investment education and access to tools.

⁴ See Letter from Mortimer J. Buckley, President and Chief Executive Officer, Vanguard, to Brent J. Fields, Office of the Secretary, U.S. Securities and Exchange Commission (August 7, 2018), available at <https://www.sec.gov/comments/s7-07-18/s70718-4186466-172736.pdf>

⁵ See Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 FR 33318 (September 10, 2019).

⁶ See Model Rule at 7.

Consistent with our mission, Vanguard's self-directed brokerage businesses engages with investors in a variety of ways to help them understand financial products and generally take an active role in their financial wellness. We provide three examples of pro-investor practices below, each of which could be deemed a recommendation under the Model Rule and therefore create a host of unintended consequences.

Mutual Fund v. Exchange-Traded Fund (“ETF”) campaign. This email campaign sought to educate clients about ETFs and mutual funds, while also raising a unique opportunity some clients had to reduce costs. Due to the unique ETF structure offered by Vanguard, some clients were eligible to convert their mutual fund shares to the same fund’s lower cost ETF class. By educating eligible clients about this opportunity, we sought to improve investor outcomes by lowering their cost to invest even though the potential client action could have resulted in less revenue to Vanguard. For the initial pilot of this email campaign, we found clients receiving this communication were over five times more likely to convert to the *lower cost* ETF share class than those that did not receive it.

Educational engagements designed to boost retirement success. For our self-directed clients who rely on IRAs to save for retirement, we offer educational materials encouraging clients to consider basic investment concepts such as diversification, compounded return, and tax-deferred investment. Our clients are undeniably better off as a result of this information. Approximately 14,000 IRA clients acted after Vanguard communicated with them, boosting their retirement savings by \$50 million.

Educational engagement with recently onboarded clients. Our research showed that a large population of Vanguard clients who opened a brokerage account deposited money into their account but did not purchase any securities. As a result, their cash remained in a default short-term settlement vehicle. Vanguard informed these clients that their cash was sitting in the default settlement option, asked them to consider their investment goals, and provided a link to a web page where clients could explore their different investment options. This information resulted in over \$250 million being invested through our clients’ own choices instead of in the default fund.

Each of these examples helped improve investor outcomes by providing investors with important information to lower their costs, increase their retirement savings, or better align with their own investment goals. None would be considered a “recommendation” pursuant to Reg BI, but all are potentially subject to the Model Rule. This change would raise costs — and potentially chill — a broad range of beneficial investor interactions, leaving investors to navigate myriad investment options without important and helpful tools. We fear the net effect of such a broad approach could be less investor education, a less personalized experience, and worse investor outcomes.⁷ For these reasons, we urge NASAA to modify any final model rule text to ensure that

⁷ Our research shows that there is a critical need to connect low-income workers with the capital markets so they can reduce their projected retirement readiness gap. See “The Vanguard Retirement Outlook: A national perspective on retirement readiness” available at https://corporate.vanguard.com/content/dam/corp/research/pdf/the_vanguard_retirement_outlook.pdf

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educational tools and pro-investor interactions remain available under the existing regulatory standards.

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Vanguard appreciates the opportunity to comment on the proposal. If you have any questions or would like to discuss our views further, please contact Mike Rowden, Senior Manager, Government Relations, at michael_rowden@vanguard.com.

Sincerely,

/s/ Matthew Benchener

Matthew Benchener
Managing Director, Personal Investor
The Vanguard Group, Inc.