

**AGREEMENT AND ACKNOWLEDGEMENT OF UNDERTAKINGS BETWEEN THE
MASSACHUSETTS SECURITIES DIVISION
AND VANGUARD MARKETING CORPORATION**

WHEREAS, the Massachusetts Securities Division (the "Division") commenced an investigation into Vanguard Marketing Corporation's ("VMC") marketing practices in connection with investment minimum changes to Institutional Vanguard Target-date Retirement Mutual Funds (the "2022 Investigation");

WHEREAS, VMC is a Pennsylvania corporation with a principal place of business at 100 Vanguard Blvd., Malvern, Pennsylvania 19355, a broker-dealer registered in Massachusetts since July 31, 1981, and a wholly-owned subsidiary of The Vanguard Group, Inc.;

WHEREAS, VMC and its parent and affiliates, including the Vanguard Chester Funds, (collectively, "Vanguard") make up one of the largest investment management companies in the world with nearly 8 trillion dollars in assets under management;

WHEREAS, Vanguard target-date retirement mutual funds ("Vanguard TDFs") are structured with preset target retirement years—e.g., 2015, 2020, 2060—and designed to change an investor's asset allocation over time;

WHEREAS, VMC marketed and distributed both Investor and Institutional Vanguard TDFs;

WHEREAS, Vanguard markets target-date retirement funds as an "all-in-one" solution for hard-earned retirement savings;

WHEREAS, on December 11, 2020, VMC posted a statement that Vanguard would be reducing the investment minimum for Institutional Vanguard TDFs from \$100 million to \$5 million—effective immediately (the "December 11th Notice");

WHEREAS, after December 11, 2020, numerous investors with over \$5 million, but under \$100 million, held in Investor Vanguard TDFs redeemed shares to fund the acquisition of Institutional Vanguard TDFs;

WHEREAS, VMC knew or should have known that the investment minimum reduction could result in investors switching from Investor to Institutional Vanguard TDFs;

WHEREAS, the movement of investors from the Investor Vanguard TDFs to Institutional Vanguard TDFs contributed to Vanguard distributing higher than usual long and short-term capital gains to those investors who held Investor Vanguard TDFs in taxable accounts as of December 28, 2021, as compared to prior years;¹

¹ In addition to capital gains distributions attributable to the investment minimum change, 2021 capital gains distributions were also attributable to other factors including without limitation: (i) distributions from underlying funds that were passed through to the Investor Vanguard TDF; (ii) capital gains realized by the Investor Vanguard TDFs from fund rebalancing due to market activity; (iii) transaction activity independent of the reduction of the Institutional Vanguard TDFs investment minimums, including futures-related trading, which are required by law to be treated as

WHEREAS, Vanguard distributed long and short-term capital gains to at least 5,553 Massachusetts accounts;

WHEREAS, Massachusetts residents holding Investor Vanguard TDFs in self-directed taxable accounts at Vanguard received higher than usual capital gains distributions in 2021 relative to prior years;

WHEREAS, numerous Massachusetts residents holding Investor Vanguard TDFs in self-directed taxable accounts at Vanguard have paid or will pay taxes on account of the long and short-term capital gain distributions in varied amounts depending on their individual tax status (*e.g.*, tax bracket; offsetting other investment losses);

WHEREAS, in mid-February 2022, Vanguard merged the Investor and Institutional Vanguard TDFs;

WHEREAS, the Division and VMC desire to conclude the 2022 Investigation and resolve, with prejudice, any claims or issues that could have been brought or could be brought by or on behalf of the Division, and which may have arisen out of the 2022 Investigation, as to VMC, Vanguard, and any of its or their respective current or former employees, officers, directors, or trustees, and on this basis, VMC agrees to the undertakings below;

WHEREAS, this Agreement and the acts performed and documents executed in furtherance of or exchanged preceding this Agreement are solely for the purpose of settlement in order to resolve the 2022 Investigation, and are not intended to and may not be used by anyone for any other purpose; and

WHEREAS, the terms and conditions of this Agreement shall remain in effect from the date of signing this Agreement.

Now, therefore in order to ensure this goal, the parties agree as follows:

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sold by the end of the year; (iv) movement from the Investor TDFs to the Institutional TDFs based on reaching the minimum investment threshold of \$100 million in assets during the year; and (v) Investor Vanguard TDF holders who redeemed shares and did not reinvest such funds into the Institutional Vanguard TDFs (either because they left the Vanguard TDFs or left Vanguard entirely during this time period).

I. Establishment of the Massachusetts Vanguard TDF Fund.

Within twenty-one (21) days following the execution of this Agreement and without admitting any wrongdoing or liability, **VMC** agrees to establish a non-reversionary escrow account in the amount of \$5,500,000.00 (the “Massachusetts Vanguard TDF Fund”) which shall be used to make restitution payments to Massachusetts Holders who submit claims related to tax liabilities incurred as a result of capital gains distributions attributable to investment minimum changes to Institutional Vanguard TDFs occurring on or about December 11, 2020, and who otherwise are determined to qualify for payment pursuant to the individualized claims review process referenced below.

Massachusetts Holders shall mean all Investor Vanguard TDF shareholders with a primary address of record in Massachusetts who held Vanguard TDFs as of December 28, 2021, either in a taxable brokerage account at **VMC** or directly through The Vanguard Group, Inc. and who received taxable capital gains distributions in 2021 attributable to Investor Vanguard TDFs.

VMC shall, within fourteen (14) days following the execution of this Agreement, undertake to identify and retain an independent third-party claims administrator not unacceptable to the Division to provide notice of, review, evaluate, and process claims for Massachusetts Holders who elect to submit information for an individualized claims evaluation (the “Claims Administrator”).

VMC shall be responsible for the costs of the Claims Administrator and administration of the Massachusetts Vanguard TDF Fund, including any additional expert and administrative costs associated with administering the Massachusetts Vanguard TDF Fund. Within fourteen (14) days of retention of the Claims Administrator, and without admitting any wrongdoing or liability, **VMC** agrees to submit to an escrow account the amount of \$250,000.00 to cover such costs. **VMC** agrees that, to the extent costs reasonably incurred by the Claims Administrator and/or any expert, or as reasonably necessary for administration of the Massachusetts Vanguard TDF Fund, exceed this amount, **VMC** will be responsible for such additional costs.

In order to be eligible for review by the Claims Administrator, Massachusetts Holders must submit information to the Claims Administrator to demonstrate: (i) that they held Vanguard investor TDFs in self-directed non-tax-advantaged accounts as of December 28, 2021; (ii) proof of residency; and (iii) proof of capital gains distributions from any TDF in 2021 (e.g., 2021 Form 1099-B).

The Claims Administrator’s administration of the Massachusetts Vanguard TDF Fund shall also include an individualized review of a Massachusetts Holder’s attestation and documentation relative to taxable income and TDF capital gains distributions for 2021,

taxes paid or to be paid for 2021, 2021 tax filing status (e.g., married, qualifying widower, single, head of household), taxes that would have been paid eventually, regardless of the changes to the Institutional TDFs' investment minimum, any net investment income tax, alternative income tax or Kiddie Tax, use of third-party advisors, investment and tax sophistication and strategy, or any other special tax circumstances as necessary to process the claim.

Massachusetts Holders who choose to submit information for an individualized claims evaluation shall be required to sign a release in a form acceptable to **VMC** and not unacceptable to the Division, agreeing to waive any claims against **VMC**, Vanguard, and any of its or their respective current or former employees, officers, directors, or trustees.

Within a reasonable period not unacceptable to the Division, which shall not exceed forty-five (45) days following the date of the Agreement, the Claims Administrator shall propose a plan for the administration of the Massachusetts Vanguard TDF, which plan² shall not be unacceptable to the Division or to **VMC**.

The parameters of the administration of the Massachusetts Vanguard TDF Fund, including the review plan, calculation of individual payments, and individual payment amounts shall remain non-public, except pursuant to court order, as agreed to by the parties in writing, or otherwise required by law.

The calculation of any payment amount will be determined by the Claims Administrator and will be binding and non-appealable.

VMC shall provide a monthly accounting of all amounts distributed under the Massachusetts Vanguard TDF Fund and shall provide a final accounting to the Division within thirty (30) days from the conclusion of the administration of the Massachusetts Vanguard TDF Fund. All funds not distributed to Massachusetts Holders pursuant to the Massachusetts Vanguard TDF Fund shall be distributed to the Worker and Small Investor Protection Fund pursuant to M.G.L. ch. 10, sec. 68, at the direction of the Division, for, among other purposes, the dissemination of information to investors about the Massachusetts Uniform Securities Act.

Vanguard and the Division shall mutually cooperate in the administration of the Massachusetts Vanguard TDF Fund.

² This plan for administration is solely for purposes of this settlement.

II. Payment for the Division's Costs and Expenses.

Within five (5) business days of the signing of this Agreement, and without admitting any wrongdoing or liability, **VMC** shall cause a total amount of \$500,000.00 to be paid to the Commonwealth of Massachusetts in connection with the Division's investigative and administrative costs. Payment may be made via check payable to the Commonwealth of Massachusetts, and mailed to the Office of the Secretary of the Commonwealth, 17th Floor, One Ashburton Place, Boston, MA 02108, Attn: Anthony R. Leone or via wire per Division instructions. In addition, **VMC** shall provide the Division with notice twenty-four (24) hours prior to payment.

III. Extensions and Nature of Agreement.

At the request of **VMC**, the Division may extend, for good cause shown, any of the procedural dates set forth above. Such an extension will not be unreasonably withheld.

VMC neither admits nor denies any wrongdoing, liability, or the Division's positions discussed or described herein or elsewhere.³

This Agreement and Acknowledgement of Undertakings is made without any adjudication or findings of any issue of fact or law, and is not a final order that contains findings of violations of any law or regulation.

This Agreement resolves with prejudice all outstanding matters between the Division and **VMC** as of the date of acceptance in connection with any claims or issues which could have been brought or could be brought by or on behalf of the Division, and which may have arisen out of the 2022 Investigation, as to **VMC**, Vanguard, and any of its or their respective current or former employees, officers, directors, or trustees.

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³ Nothing in this paragraph or Agreement affects, in whole or in part, **VMC's**, Vanguard's, or any of its or their respective current or former employee's, officer's, director's, or trustee's, including current or former trustees of the Vanguard Chester Funds: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Division is not a party.

VANGUARD MARKETING CORPORATION

By: DocuSigned by:
Michael Rollings
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Michael Rollings, Vice President

Date: 07/04/2022

MASSACHUSETTS SECURITIES DIVISION

By: *Diane Young-Spitzer*
Diane Young-Spitzer, Director

Date: 7/6/22