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February 1, 2021

April J. Tabor, Acting Secretary
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J)
Washington, DC 20580

Re: 16 CFR parts 801–803: Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules; Project No. P110014

Dear Ms. Tabor:

Vanguard[1] appreciates the opportunity to comment on the Federal Trade Commission's ("Commission") proposal to modernize the federal premerger notification program to focus agency resources on transactions that may harm competition.[2] Vanguard was founded in 1975 with the simple proposition that providing Main Street investors with high-quality, low-cost investment products allows them to reap the benefits of superior performance over time. Vanguard is owned exclusively by the funds it serves, which, in turn, are owned by their shareholders. This unique structure closely aligns Vanguard's interests with those of our clients and provides the foundation for our investor-focused mindset. Our core purpose to take a stand for all investors, treat them fairly, and give them the best chance for investment success drives everything we do. By offering a diverse selection of cost-effective, high-performing mutual funds, investment advice, retirement services, and investor-focused thought leadership, Vanguard helps more than 30 million investors secure a better retirement, pay for college, and achieve financial peace of mind.

In keeping with our history and our core purpose, we cannot support the proposal because it would raise the cost of investing and reduce investment returns for everyday investors without corresponding benefit. The proposal to require investment funds to aggregate their holdings with those of their associates—which we refer to as the "Aggregation Proposal"—is particularly concerning because it would vastly expand the filing obligations of mutual funds, resulting in potentially hundreds of millions of dollars of filing fees that would be borne by our investors and would reduce their investment returns.[3] The filing obligations imposed by the Aggregation Proposal also would hinder mutual funds', particularly index funds', ordinary course investment

[1] "Vanguard" refers to The Vanguard Group, Inc. and its subsidiaries. As of December 31, 2020, Vanguard managed approximately $7.1 trillion in assets globally.

[2] Premerger Notification; Reporting and Waiting Period Requirements, 85 Fed. Reg. 77053 (December 1, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-12-01/pdf/2020-21753.pdf ("Proposing Release").

[3] The Aggregation Proposal also would flood the Commission with filings that would raise no competitive issues but would tax already-strained Commission resources.

operations by placing temporary restrictions on the ability to buy securities thereby further affecting investors' returns.[4] We urge the Commission to avoid these harmful consequences by not applying the Aggregation Proposal to mutual funds.

We also have serious concerns with a separate aspect of the proposed amendments that would introduce the speculative concept of "common ownership" into the rules governing the premerger notification program. The common ownership concept is an unproven hypothesis that should, at a minimum, be studied in greater depth before becoming a part of the rules implementing the Hart-Scott-Rodino Act (the "HSR Rules").

Comments on the Aggregation Proposal

I. Our mutual funds pursue varied independent investment strategies and purchase securities solely for the purpose of investment.

Vanguard sponsors a wide variety of mutual funds that provide investors with exposure to the global securities markets through diverse, independent investment strategies.[5] Our mutual funds and their advisors are subject to extensive regulation in the U.S. and abroad, which ensures that our funds are managed in the interests of their shareholders, provide shareholders with adequate disclosure to make informed investment decisions, and engage in sound portfolio management activities. Vanguard provides these funds with corporate, administrative, distribution, and investment advisory services, subject to the oversight of each fund's board. Each Vanguard fund is overseen by a board that is obligated to act in the best interests of the fund.

Our mutual funds are organized as legal entities that are separate and distinct from Vanguard. Vanguard does not own our mutual funds rather they are owned by their shareholders, typically a widely dispersed group of individual investors. The assets of our mutual funds are held for the benefit of their owners, the fund shareholders, and are prohibited from being co-mingled with other assets.[6] The funds' shareholders participate in the investment returns of a Vanguard mutual fund on a *pro rata* basis. These investors may hold fund shares for any number of different reasons, including to save for retirement, college, or other long-term goals.

Every advisor to a Vanguard mutual fund must make investment decisions solely for the benefit of the fund, taking into consideration only the requirements of the fund's mandate and the interests of the fund's shareholders. The advisors do not make investment decisions for the Vanguard mutual funds in the advisors' own interests or in coordination with any other advisors or investors.

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[4] Throughout this letter, we use the term "mutual funds" to refer to open-end funds and exchange-traded funds that are institutional investors under 16 C.F.R. § 802.64 and related guidance. *See, e.g.*, 9803014 Informal Interpretation (March 1998), *available at* https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/9803014.

[5] Collectively, the Vanguard mutual funds hold equity interests in more than 11,000 issuers world-wide.

[6] *See generally* 15 U.S.C. § 80a-17(f) and the rules thereunder.

Our mutual funds may be classified into two broad categories: "Vanguard Index Funds" and "Vanguard Actively Managed Funds." Vanguard is the sole investment advisor for each Vanguard Index Fund. Third-party investment advisors manage many of the Vanguard Actively Managed Funds.

Each Vanguard Index Fund seeks to provide its investors with the performance of the fund's reference index. A reference index is a group of securities whose overall performance is used as a standard to measure the investment performance of a particular market. There are many types of indexes. Some represent entire markets, such as the U.S. stock market, while others cover market segments, such as small-capitalization stocks. As of December 31, 2020, more than 75% of our assets under management were invested in Vanguard Index Funds.

Third parties create and maintain each of the reference indexes tracked by the Vanguard Index Funds. The index sponsors determine the securities to include in the index and the relative weighting of each security in the index. Under normal circumstances, an index sponsor will rebalance an index on a regular schedule. These rebalances may add new securities to the index, remove securities from an index, or reweight securities within an index.

To meet its investment objective, a Vanguard Index Fund acquires a security in the fund's index in the approximate proportion to the security's weight in the index, which places substantial limits on the investment advisor's discretion to acquire securities. A Vanguard Index Fund will adjust its holdings in response to events that are outside of its control, including, but not limited to, changes to a reference index, net cash flows, or actions taken by issuers of securities included in the reference index. Any deviation in a Vanguard Index Fund's performance versus its reference index is known as "tracking error," which index funds seek to avoid.[7]

Vanguard Actively Managed Funds attempt to outperform a benchmark by buying and selling securities based on the research and expertise of their respective portfolio management teams. An advisor to a Vanguard Actively Managed Fund may acquire any security that aligns with the fund's investment objective, strategies, and limitations. A Vanguard Actively Managed Fund's performance is measured relative to the performance of its benchmark and other funds that pursue similar investment objectives.

All Vanguard mutual funds, whether index or actively managed funds, are passive investors in the companies in which they invest, meaning that they make investments exclusively for investment purposes—i.e., to participate in the change in market value of the securities and the income they generate.[8] The Vanguard mutual funds do not invest, individually or in the aggregate, to control or influence the day-to-day management or strategy of any issuer, or to

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[7] Many investors in index funds consider low tracking error to be an important factor in evaluating the efficacy of an index fund's advisor.

[8] Vanguard discloses the holdings of the Vanguard mutual funds on U.S. Securities and Exchange Commission ("SEC") Schedule 13G. *See* 17 C.F.R. § 240.13d-102. A person is only permitted to file on Schedule 13G if, among other things, the person has acquired securities "in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect…." *See* 17 C.F.R. § 240.13d-1(b)(1)(i).

participate in the basic business decisions of any issuer.[9] Moreover, there are regulations that impose practical limits on a mutual fund's ability to concentrate its investments in individual portfolio companies and, thus, control those companies.[10]

II. The Aggregation Proposal will increase costs for mutual fund investors, impact the performance of their funds, and undermine the Commission's objectives.

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") requires parties to certain proposed transactions to file notifications reporting those transactions to the Commission ("HSR Filings") and observe a pre-closing waiting period. HSR Filings enable the Commission to determine which acquisitions are likely to have competitive effects and to challenge such acquisitions before they occur. The HSR Act and the HSR Rules exempt various transactions from the HSR Filing and waiting period requirements.[11] The most relevant of these exemptions for the Vanguard mutual funds is the Institutional Investor Exemption. Under this exemption, an institutional investor such as a Vanguard mutual fund has no obligation to make HSR Filings for acquisitions of up to 15% of an issuer's voting securities so long as the acquisitions are made: (1) directly by the institutional investor; (2) in the ordinary course of business; and (3) "solely for the purpose of investment."

The Institutional Investor Exemption strikes an appropriate balance among the investment activities of passive investors like the Vanguard mutual funds, the orderly functioning of the securities markets, and the need for the Commission to review transactions that could raise competition concerns. When the Commission adopted the Institutional Investor Exemption, it determined that the "anticompetitive potential" of mutual fund transactions made in compliance with the exemption "is low."[12] The Commission explained that "[e]ntities such as broker-dealers and investment companies frequently engage in acquisitions that may meet the criteria of the [HSR Act], but they generally have no interest in affecting the management of the companies whose stock they buy."[13] The Commission adopted the Institutional Investor Exemption to "reduce the disruption of the securities markets that could result from requiring them to report and observe a waiting period before such acquisitions."[14] The rationale supporting the adoption

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[9] Letter from, John Galloway, Investment Stewardship Officer, Vanguard, to April J. Tabor, Acting Secretary, FTC, dated February 1, 2021.

[10] *See, e.g.*, 26 U.S.C. § 851(b) (imposing quarterly asset diversification tests that a regulated investment company generally must comply with to receive favorable tax treatment); 15 U.S. Code § 80a-5(b) (requiring "diversified" investment companies to limit investments in individual issuers). There are also a wide variety of other federal, state, and issuer ownership limitations that impose practical limits on the ability of investors to control certain issuers. *See, e.g.*, David Geffen and Kenneth Early, *Mutual Fund Investment Limitations Arising Outside of the Investment Company Act*, 16 The Investment Lawyer 6 (June 2009).

[11] *See* 16 C.F.R. § 802.64 (establishing the Institutional Investor Exemption); § 802.9 (permitting any person to acquire up to 10% of the voting securities of an issuer without making an HSR Filing so long as the acquisition is made "solely for the purpose of investment").

[12] *See* Premerger Notification; Reporting and waiting Period Requirements, 43 Fed. Reg. 33450, 33503 (July 31, 1978) ("Original Adopting Release").

[13] *Id.*

[14] *Id.*

of the Institutional Investor Exemption remains sound today, particularly with respect to passive institutional investors like our mutual funds.

Under the Aggregation Proposal, however, "investment funds"—a broad category of firms, including our passive mutual funds—would need to aggregate their holdings with those of their associates. Consequently, the ordinary course investment activities of the Vanguard mutual funds would routinely trigger HSR Filing requirements, even though the transactions themselves would pose no competitive risk. Such an outcome would harm mutual fund investors as well as the Commission and its staff. These burdens are unnecessary because investments by passive institutional investors—including our mutual funds—do not raise competitive concerns as outlined below. Accordingly, we respectfully request that the Commission exempt mutual funds from the Aggregation Proposal. This exemption also would advance the Commission's objective of using "their resources effectively to focus on transactions that may harm competition...while at the same time not receiving filings related to acquisitions that are very unlikely to raise competition concerns."[15]

A. The Aggregation Proposal would impose substantial costs on mutual fund investors and impact their investment outcomes.

Under current Commission guidance, the Aggregation Proposal could compel Vanguard to make approximately 1,200 initial HSR Filings with total filing fees exceeding $195 million.[16] We would likely have to renew many of these HSR Filings every five years and pay the accompanying fees.[17] These recurring fees would represent a remarkable increase over the significant legal and compliance expenses already borne by our mutual funds and their investors. The Aggregation Proposal would lower the investment returns of millions of our individual investors and diminish their ability to meet their long-term financial goals. In return, the Commission would receive information about our funds' passive investments that have no competitive significance.

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[15] Proposing Release at 77055.

[16] This estimate is an understatement because it only includes holdings of voting securities of issuers incorporated in the U.S. and not foreign issuers that may be subject to HSR Filing requirements. *See* 16 C.F.R. § 802.51. In addition, we are not currently able to identify every company with a broker-dealer or trust company in its structure. For example, there may be over 3,500 broker-dealers and 360 active trust companies operating in the United States, many of which could be subsidiaries of publicly traded companies held by our mutual funds. *See, e.g.*, 2020 FINRA Industry Snapshot at 13, *available at* https://www.finra.org/sites/default/files/2020-07/2020-industry-snapshot.pdf; Federal Financial Institutions Examination Council, National Information Center, Data Download *available at* https://www.ffiec.gov/npw/FinancialReport/DataDownload (accessed on December 11, 2020). This estimate also does not include ongoing filings that we may have to make over time or the separate HSR Filings that the third-party investment advisors of the Vanguard Actively Managed Funds may need to make. Finally, this estimate assumes that we would not be able to rebut the presumption that an investment in an issuer is not "solely for the purpose of investment" when an acquiring person holds more than 10% of the voting securities of a competitor of the issuer. S*ee* 18001003 Informal Interpretation (January 29, 2018), *available at* https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/18010003.

[17] *See* 16 C.F.R. § 802.21. Long-term investors would be especially impacted by these recurring fees. As of December 31, 2019, Vanguard's median retail household client has maintained an account with us for 14 years, meaning they would be expected to incur these costs approximately 3 times during their tenure with Vanguard.

As extraordinary as these regulatory costs would be, they only represent a portion of the significant additional expenditures that our mutual funds and their investors would incur to comply with the Aggregation Proposal. We would expect to increase headcount, build or acquire new technology, and obtain third-party services (legal advice, data licensing, etc.) to comply with the Aggregation Proposal despite not changing our investment approach and continuing to engage exclusively in passive transactions that do not raise competitive concerns.[18] These costs would fall on millions of everyday investors saving for their most important financial goals and would confer no commensurate benefit to competition.

In addition to bearing increased regulatory and compliance costs, our investors likely also would experience harmful impacts to fund performance under the Aggregation Proposal. Once a required HSR Filing is submitted, the parties to a proposed transaction generally must observe a waiting period of at least 30 days before completing the transaction. This waiting period will prevent the investment advisors of our mutual funds from making timely investment decisions in the interests of the funds and their shareholders. If the waiting period prevents a Vanguard Index Fund from purchasing securities as needed to track its reference index, the Vanguard Index Fund's performance will experience tracking error. Likewise, a Vanguard Actively Managed Fund may miss a desired investment opportunity for its shareholders, potentially resulting in underperformance. In both situations, ordinary mutual fund investors could experience reduced investment returns.

The investment advisors to our mutual funds would seek to reduce the potential for the HSR waiting period to affect investment returns by submitting filings early or obtaining desired exposure through other means, but it may not be possible to fully mitigate the waiting period's effects. As a result, our mutual funds might experience adverse performance impacts. These consequences could be particularly harmful for Vanguard Index Funds, which have limited discretion over their portfolio holdings and must make investment decisions in response to events outside of their control. Index providers, for example, typically provide less than 30 days' notice before adding a security to a reference index or changing a security's weighting within an index. Accordingly, Vanguard would not have an opportunity to submit an HSR Filing 30 days before the index provider takes these actions. We reviewed a small subset of index additions that occurred in 2020, focusing only on 13 newly issued securities that were added to indexes during the year. We found that if the Vanguard Index Funds were forced to observe the waiting period for these additions, shareholders of those funds would have lost $181 million in performance gains.

Combining the $195 million in filing fees with the $181 million in performance impacts, our mutual fund investors could have incurred nearly $400 million of additional costs if the Aggregation Proposal took effect in 2020. The Commission fails to account for these significant new costs and performance impacts in the Supporting Statement for Information Collection purposes. In that statement, the Commission projected that the Aggregation Proposal would result in an additional 846 HSR Filings.[19] This vastly underestimates the burdens of the Aggregation Proposal, even with respect to Vanguard alone, one firm among many that will face

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[18] *See* Original Adopting Release at 33503.

[19] *See* Proposing Release at 77065.

increased regulatory and compliance costs. Additionally, the supporting statement omits any consideration of the significant impacts to fund performance that could arise from the operation of the waiting period associated with making HSR Filings.

B. The Commission already has access to much of the information it would obtain through the Aggregation Proposal.

The Commission states that the Aggregation Proposal will help it "accurately assess the potential competitive impact" of investment fund transactions by requiring investment funds and their associates to provide the Commission with information about the economic stake a fund family may seek to acquire in an issuer.[20] Subjecting passive investments by mutual funds to the Aggregation Proposal, however, would not provide the Commission with substantially more information to assess the competitive impact of their transactions than is already available to the Commission today. The Commission has access to a significant amount of publicly available information disclosed by mutual funds and their asset managers.[21] These disclosures provide substantive information about the operations of mutual funds and provide valuable insight into the economic stake a fund family may acquire in an issuer.

If additional information would enhance the ability of the Commission to assess ownership by passive investors like our mutual funds, we respectfully request that the Commission work with the SEC to amend those filings already currently required of mutual funds. Working within the existing framework will relieve mutual fund investors from duplicative filing and administrative costs and provide them with more of their funds' investment returns.

C. The Commission also would be harmed by the Aggregation Proposal.

The adverse impacts of the Aggregation Proposal would not be limited to mutual fund investors. The Aggregation Proposal would likely have significant ramifications for the Commission as well. As noted above, under the Commission's current guidance, we anticipate that the Aggregation Proposal could require Vanguard to make approximately 1,200 new HSR Filings when it takes effect. These initial HSR Filings that Vanguard alone may be required to submit would represent transactions accounting for over 57% of the total HSR transactions reported

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[20] *Id.* at 77056.

[21] Most of the Vanguard mutual fund's holdings are held by investment companies registered under the Investment Company Act of 1940. Registered investment companies are required to prepare and disclose audited financial statements annually. Likewise, these funds are required to disclose detailed information, including portfolio holdings, to the SEC on a monthly basis. Information in a fund's quarter-end disclosures is generally made available to the public. Furthermore, many investment advisors are required to disclose on a quarterly basis detailed information about U.S. public equity securities over which they have investment discretion on Form 13F, which is similar to the aggregation concept embedded in the Aggregation Proposal. *See* 17 C.F.R. § 240.13f-1. Although disclosures on Form 13F do not cover the complete universe of issuers subject to the jurisdiction of the HSR Act and HSR Rules (e.g., private entities, certain foreign entities), most mutual fund investments in issuers subject to jurisdiction under the HSR Act would be disclosed on Form 13F because mutual funds primarily invest in public equity securities.

during fiscal year 2019.[22] Add to our filings the HSR Filings of other mutual fund advisors, and the Commission would likely be inundated with new HSR Filings for transactions that do not present competition concerns. This flood of unnecessary HSR Filings could impact the ability of the Commission to dedicate their resources to assessing "transactions that may harm competition."[23]

D. The Commission should exempt mutual funds from the Aggregation Proposal.

Importantly, the Commission does not suggest that investments by mutual funds raise competitive concerns. Indeed, we are not aware of any instance where the Commission has challenged a minority investment by a passive mutual fund for posing competitive effects. Nevertheless, we recognize that certain other types of investment vehicles may make acquisitions of voting securities to control or influence the competitive decision making of an issuer. Mutual funds bear little resemblance to these investment vehicles. Importantly, our mutual funds and their investment advisors: (1) do not invest to control or influence the day-to-day management, strategy, or policies of any issuer (i.e., they have no intention of participating in the formulation, determination, or direction of the basic business decisions of any issuer); (2) have a fiduciary duty to make independent investment decisions taking into consideration only the requirements of their investment mandates; (3) do not make investment decisions in coordination with any other investors; (4) are generally available to the public; and (5) are subject to extensive regulation. Therefore, to accomplish the objective of focusing its resources on transactions with a competitive effect, we respectfully urge the Commission to distinguish passive investments by mutual funds from investments by other, control-seeking investment vehicles.

The Commission could also make this distinction by exempting from the aggregation requirement any investment funds that are otherwise eligible to rely on the Institutional Investor Exemption.[24] This approach would ensure that the Commission receives aggregated information in HSR Filings from investment vehicles that invest for control because such entities generally would not be eligible to rely on the Institutional Investor Exemption. Exempting institutional investors from the Aggregation Proposal also would alleviate the unnecessary burdens that the proposal otherwise would confer on mutual fund investors.

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[22] *See* Hart-Scott-Rodino Annual Report for Fiscal Year 2019, *available at* https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-bureau-competition-department-justice-antitrust-division-hart-scott-rodino/p110014hsrannualreportfy2019_0.pdf. These filings also would account for approximately 70% of the average number of HSR transactions reported per year from fiscal year 2010 to fiscal year 2019. *Id.*

[23] *See* Proposing Release at 77055.

[24] If the Commission intends to reinterpret this 45 year-old exemption in a manner that would cause mutual funds and their investors to bear substantial new costs and performance impacts, they should clearly announce this change in policy and provide a rationale so that interested parties have adequate opportunity to comment on the proposed change and the Commission's basis for it. Otherwise, the Commission should exempt mutual fund transactions from the Aggregation Proposal.

Other Comment on the Proposing Release

The flawed and unsubstantiated common ownership hypothesis should not be incorporated into law.

Finally, we have serious concerns with a separate aspect of the Proposing Release, which would incorporate elements of the common ownership hypothesis into a new exemption from HSR filing requirements for small acquisitions. The common ownership hypothesis refers to the supposition that an investor's holdings of small, non-controlling stakes in competing firms in concentrated industries can have anti-competitive effects. Other governmental bodies that have reviewed or studied the common ownership hypothesis have deemed it too speculative to provide a basis for regulatory action.[25] The proposal acknowledges that the debate over the common ownership hypothesis "is not yet settled," but implies that the hypothesis merits action because "it has raised concerns" that "investors with small minority stakes may influence the behavior of an issuer."[26]

We urge the Commission not to incorporate this hypothesis into the HSR Rules absent further study, proof that common ownership harms competition, and careful balancing of the potential costs and benefits associated with regulatory action.[27] Not only has the research supporting the hypothesis been hotly contested, but the hypothesis itself rests on incorrect assumptions about the investment management industry. For example, the academic literature supporting the common ownership hypothesis frequently conflates asset ownership and asset management,

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[25] For example, following a study on specific aspects of common ownership by institutional investors in the European banking sector, the European Parliament recently concluded that "whether and in which circumstances common ownership is beneficial or deleterious for competition, innovation, and, ultimately, citizen welfare is still an open debate." *See* Simona Frazzani, Kletia Noti, Maarten Pieter Schinkel, Jo Seldeslachts, Albert Banalestanol, Nuria Boot, Carlo Angelici, *Barriers to Competition through Joint Ownership by Institutional Investors* (May 2020), *available at* https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652708/IPOL_STU(2020)652708_EN.pdf. The German Monopolies Commission also determined it would be "premature" to use competition law or regulatory action to address common ownership. *See* German Monopolies Commission, Summary: Competition 2018, 5 (July 2018), *available at* https://www.monopolkommission.de/images/HG22/HGXXII_Summary.pdf.

[26] *See* Proposing Release at 77061. The Investment Company Institute maintains a list of key papers on the common ownership hypothesis that shows the intense debate on the merits of the hypothesis. *See* Investment Company Institute, *Selected Papers on the Common Ownership Hypothesis* (April 2020), *available at* https://www.ici.org/pdf/18_common_ownership_papers.pdf. In addition, Vanguard economists have studied the merits of the common ownership hypothesis and authored a paper empirically assessing the link between common ownership and profitability as a proxy for market competition. The paper finds no evidence that common ownership is associated with industry-level profit margins. *See* Haifeng Wang, Jan-Carl Plagge, James J. Rowley Jr., and Roger A. Aliaga-Díaz, *Common Ownership and Industry Profitability: A Cross-Industry View* (August 17, 2019), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437129.

[27] In December 2018, the Commission held a day-long hearing on the common ownership hypothesis and the potential tradeoffs associated with regulating common ownership through antitrust laws. Panelists with a broad range of views agreed that it would be premature to address common ownership through rulemaking. *See* Transcript of the Public Hearing on Competition and Consumer Protection in the 21st Century (December 6, 2018) *available at* https://www.ftc.gov/system/files/documents/public_events/1422929/ftc_hearings_session_8_transcript_12-6-18_0.pdf.

effectively treating an investment advisor and its client as a single entity.[28] An unproven hypothesis that relies on inaccurate assumptions and conjectural harm should not be endorsed by official regulatory action.[29]

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Vanguard appreciates the opportunity to comment on the proposed amendments to the HSR Rules and encourages the Commission to adopt the modifications described above. If you have any questions or would like to discuss our views further, please contact Tara R. Buckley, Principal, at (610) 669-1955 or George Gilbert, Senior Policy Advisor and Counsel, at (202) 824-1293.

Sincerely,

/s/ Gregory Davis

Gregory Davis
Managing Director and Chief Investment Officer
The Vanguard Group, Inc.

/s/ Anne Robinson

Anne Robinson
Managing Director and General Counsel
The Vanguard Group, Inc.

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[28] For a more detailed explanation of the incorrect fundamental assumptions underlying the research supporting the common ownership hypothesis, *see* Letter from Sean Collins, Chief Economist, Investment Company Institute and Susan Olson, General Counsel, Investment Company Institute, to Donald S. Clark, Secretary, Commission, dated August 20, 2018, *available at* https://www.ici.org/pdf/18_ici_common_ownership_ltr.pdf.

[29] Moreover, the Commission provides no explanation of why the proposed one percent test would address the notional competitive effects potentially associated with common ownership, let alone any analysis of whether other thresholds might be more appropriate.