

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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WASHINGTON, DC 20515-6216

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July 6, 2023

Mr. Tim Buckley
Chairman and Chief Executive Officer
The Vanguard Group, Inc.
100 Vanguard Boulevard
Malvern, PA 19355

Dear Mr. Buckley:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because The Vanguard Group Inc. (Vanguard) has potentially violated U.S. antitrust law by entering into agreements to “decarbonize” its assets under management and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask Vanguard to produce relevant documents and information.

Vanguard is the world’s second-largest asset manager, with roughly \$7.2 trillion of assets under management as of December 22, 2022.² As of the end of 2021, Vanguard owns 9.7% of the shares and casts 12.0% of the votes of the entire Standard and Poor’s (S&P) 500.³ Together with BlackRock, Inc. and State Street Corporation, Vanguard is one of the so-called “Big Three” asset managers that own a combined 21.9% and vote a combined 24.9% of the shares of the S&P 500.⁴

Until recently, Vanguard was a member of the Net Zero Asset Managers initiative (NZAM).⁵ Through NZAM, Vanguard appears to have colluded with other asset managers to “[w]ork in partnership with asset owner clients on decarbonisation goals, consistent with an ambition to reach net zero emissions by 2050 or sooner across all assets under management.”⁶

¹ See generally Rules of the House of Representatives R. X (2023).

² Vanguard, *Vanguard in a Nutshell 2* (2023),

<https://www.ch.vanguard/content/dam/intl/europe/documents/en/vanguard-in-a-nutshell-eu-en.pdf>.

³ Scott Hirst & Lucian Bebchuk, *Big Three Power, and Why It Matters*, 102 B.U. L. Rev. 1547, 1556, 1558 (2022).

⁴ *Id.* at 1552.

⁵ See Vanguard, *An Update on Vanguard’s Engagement with the Net Zero Asset Managers Initiative (NZAM)* (Dec. 7, 2022), <https://corporate.vanguard.com/content/corporatesite/us/en/corp/articles/update-on-nzam-engagement.html>.

⁶ NZAM, COMMITMENT, <https://www.netzeroassetmanagers.org/commitment/>.

These collusive agreements to “decarboni[ze]” and reduce emissions to net zero by 2050⁷ would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁸ 94% for oil, and 86% for fossil fuels overall.⁹ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”¹⁰ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.¹¹ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.¹² Horizontal output restrictions are per se illegal,¹³ but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹⁴ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹⁵ This holds true whether or not there is “an effect on prices”¹⁶ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁷ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁸

Accordingly, to help the Committee better understand Vanguard’s role in entering into agreements to “decarbonize” assets under management and reduce emissions to net zero, please produce, for the period from January 1, 2020, to the present:

1. All documents and communications referring or relating to the need for Vanguard to advance decarbonization and net zero emissions goals, including Vanguard’s decisions to join and withdraw from NZAM;

⁷ *Id.*

⁸ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁹ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 8 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

¹⁰ INTERNATIONAL ENERGY AGENCY, *supra* note 8.

¹¹ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

¹² See 15 U.S.C. § 1.

¹³ See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹⁴ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹⁵ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹⁶ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁷ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁸ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

Mr. Tim Buckley

July 6, 2023

Page 3

2. All documents and communications referring or relating to how Vanguard developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM;
3. All documents and communications referring or relating to how Vanguard and other asset managers can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, sponsoring, supporting, opposing, or voting for directors and stockholder proposals, and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+ and NZAM;
4. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among Vanguard, other asset managers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
5. All documents and communications referring or relating to how Vanguard's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect or affected output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on July 20, 2023.

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

Mr. Tim Buckley

July 6, 2023


Page 4

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust