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May 4, 2015

Delivered by Email

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario

Dear Sirs/Mesdames:

Re: OSC Staff Consultation Paper 15-401 - Proposed Framework for an OSC Whistleblower Program (the "Program")

Vanguard Investments Canada Inc. ("Vanguard") is a wholly owned indirect subsidiary of The Vanguard Group, Inc. and manages $4.7 billion (CAD) in assets as of March 31, 2015. The Vanguard Group, Inc. is one of the world's largest investment management companies and a leading provider of company-sponsored retirement plan services. The Vanguard Group, Inc. manages more than $3.2 trillion (USD) in global assets as of March 31, 2015 and has offices in the United States, Canada, Europe, Australia and Asia.

Vanguard leverages the scale, experiences and resources of our established businesses for the benefit of our investors. Our comments below are influenced by our experiences in the United States and our familiarity with the U.S. Securities and Exchange Commission's ("SEC") Whistleblower Program.

We are respectful of and share the OSC's goals of investor protection, registrant accountability and deterrence. With full appreciation of our mutual goals, we have the following comments and/or concerns with respect to the key elements of the proposed program as listed below:

Impact of an OSC Whistleblower Program on Internal Compliance Procedures

We appreciate that the OSC values the importance of effective internal compliance systems to identify, support and self-report misconduct as the first line of action in promoting compliance with securities laws for the benefit of the investing public. We also appreciate that the OSC has anticipated concerns from issuer and registrant firms about the possible impact of its Program on the operation of internal compliance systems.

Notwithstanding the OSC's reliance on a U.S. study suggesting that the SEC's Whistleblower Program has had no negative impact on the willingness of employees to report internally first, our concerns regarding unintended consequences for our rigorous and fulsome compliance program remain.

In particular, though the OSC's Whistleblower Program encourages individuals to report misconduct internally to an issuer or registrant, it does not so require where, subjectively and without substantive evidence, an individual considers internal reporting mechanisms to be defective or where they, again, subjectively and without substantive evidence, fear retaliation.

The OSC has asked the following question in its request for comments:

Do you agree that individuals should not be required to report misconduct to their organizations' internal compliance programs in order to be eligible for a whistleblower award?

We believe that all whistleblowers should be required to report potential misconduct to compliance departments or internal whistleblower programs first and may do so while maintaining anonymity. Irrespective of the U.S. study cited, we remain concerned that the OSC's proposed Program encourages whistleblowers to bypass our internal compliance process and will negatively impact our ability to properly address and detect any potential securities violations.

Our compliance systems cannot work effectively if our employees do not properly make us aware of any potential securities law violations. In addition, our culture of compliance is undermined if we are deprived of opportunities to demonstrate that we do not tolerate legal and compliance violations and unethical conduct because individuals have elected to go to the OSC for financial reward rather than report conduct to us.

Therefore, we suggest that the OSC Whistleblower Program require all individuals, including employees of a registrant, to report possible violations internally and that registrants have an opportunity to investigate the violation before any whistleblower complaint is investigated by the OSC. Generally, at least 180 days should be provided to the registrant to complete an internal investigation before any whistleblower may approach the OSC for further investigation. Similarly, in the event that the OSC receives a whistleblower's allegation, it should notify the registrant of the allegation (which may be done with anonymity of the whistleblower preserved) and provide it with a reasonable opportunity to investigate the allegation and report its findings to the OSC.

The above suggestions are provided with the purposes and goals of the OSC Whistleblower Program in mind. The purpose of the OSC's Whistleblower Program is to provide high quality information regarding serious breaches of Ontario securities law that might otherwise be difficult or impossible for the OSC to obtain on a timely basis. Another stated objective is to increase the number and efficiency of complex securities law cases. The OSC wishes to save significant time and staff resources in conducting an investigation aimed at serious securities law misconduct. A requirement to approach a registrant first assists the OSC in filtering through information received in error or bad faith, thereby allowing the OSC to focus its efforts on substantive violations.

a) Credit for Cooperation

In light of the comments above, we also urge the OSC to include in its contemplated Whistleblower Program, an explicit statement that it will give registrants full credit for co-operation if, after being notified by the OSC of a whistleblower complaint, the registrant investigates the matter appropriately and reports its findings, including appropriate remediation efforts, accordingly.

Whistleblower Eligibility

a) Proposed Ineligibility due to Professional Duties

We support several of the circumstances in which the OSC Whistleblower Program currently prohibits the eligibility of a whistleblower for a financial award. In particular, we support the exceptions for compliance, audit and legal functions. For the same policy reasons as apply to current exceptions, we believe they should be expanded to include any control functions and therefore any personnel involved in risk management at a registrant. This would involve any individuals whose duties require them to monitor for and address a firm's compliance policies and regulatory requirements. Similarly, the exceptions should also be expanded to include anyone in a supervisory position, which in turn, should be defined broadly to include individuals who have supervisory responsibility

pursuant to the *Securities Act* (Ontario), National Instruments, and any rules, regulations, guidelines or policies issued by either the OSC or the self-regulatory organizations within its jurisdiction.

b) Proposed Ineligibility due to Culpability

We note that the OSC has specifically sought comment on this issue. For ease of reference, pursuant to the proposed framework for the OSC's Whistleblower Program, the OSC would not automatically exclude an individual with some culpability from qualifying as a potential whistleblower. Rather, the level of culpability would be a consideration in determining whether an award is made and the amount of the award.

We share the OSC's concern that allowing culpable individuals whistleblower awards sends an inappropriate message to the market and harms the overall integrity of the OSC Whistleblower Program.

In particular, we are concerned that the culpability of a whistleblower in respect of the misconduct in issue does not invariably disqualify a whistleblower for a financial award. The circumstances in which a whistleblower is ineligible for a financial award due to misconduct should be expanded to include any individual or employee who:

- violates the policies and procedures of a registrant in requiring any employee to report misconduct internally;
- falsely certifies to a registrant in attestations or representations that they are unaware of any misconduct;
- refuses to co-operate with a registrant's internal investigation or provides inaccurate and incomplete information in that investigation or otherwise obstructs that investigation;
- was involved in, knew about or could have prevented the misconduct;
- directed, planned or initiated the misconduct; and
- is in violation of any law or self-regulatory policy or rule.

As noted previously in this letter, individuals should also be ineligible for an award if they prematurely go to the OSC without reporting to the issuer or registrant first and without respecting the time the OSC Whistleblower Program should permit for an internal investigation to occur.

We appreciate and support the fact that the OSC may choose to take enforcement action against a whistleblower who is guilty of misconduct.

Whistleblower protection

In connection with the question raised regarding whether culpable whistleblowers should also potentially be entitled to anti-retaliation protection, we believe the OSC should consider, amongst others, the following two issues:

a) Employment Issues

It is not unforeseen for employees who suspect that they are at risk of an adverse personnel action to submit a whistleblower report in an attempt to forestall the action or create a protected status for themselves. As a result, their complaints can be without merit and in bad faith. Whistleblower status cannot be a guarantee of continued employment especially for individuals who were themselves involved in the misconduct. In our view, the anticipated legislative amendments should clearly stipulate that:

- filing a whistleblower report does not protect an individual from discipline or termination if the individual was involved in or was in any way untruthful about the misconduct described in the report; and

- personnel actions against individuals for appropriate reasons other than whistleblowing, such as violation of firm policies and procedures, including any obstruction of internal compliance investigations, continue to be permitted.

b) Double Dipping

The reporting of violations of securities law forms part of an individual's or registrant's public duty to the integrity of the market as opposed to a "get rich quick scheme". We believe it to be contrary to the public interest for whistleblowers to be rewarded in a variety of forums based upon the same violation they reported to the OSC. In our view, the OSC's Whistleblower Program should expressly prohibit a whistleblower being:

- paid by a third party to provide the information or similar information relating to a violation of securities laws; and
- a plaintiff in any civil litigation that is based on the information that has been provided to the OSC.

Summary

By way of overview, we provide the following in brief answers to some of the further questions raised by the OSC, the reasoning for which is expanded further in this submission, or as per below:

1. Are any of the eligibility criteria or exclusions problematic?

   Yes.

2. Are there additional eligibility or exclusions we should consider?

   Yes.

3. Should individuals culpable in the conduct being reported be eligible for a whistleblower award?

   No.

4. One of the eligibility criteria is that information provided by a whistleblower must lead to a completed enforcement outcome. Should we consider instead using an alternate trigger such as the information leading to a Statement of Allegations issued by Staff?

   No. Allegations remain unproven and may be dismissed by a Panel as unsubstantiated, thereby resulting in no serious or other breach of securities law.

5. Should the Compliance Officer or equivalent position be ineligible for a whistleblower award?

   Yes.

Other General Consultation Questions

In addition to the specific questions listed above, you have also asked general consultation questions which include the following:

1. Do you think the OSC should proceed with an OSC Whistleblower Program on the terms as described?

2. Are there other issues that we have not identified that should be considered?

With recognition that the OSC is focused on serious breaches of Ontario securities law, we believe the proposed Program would benefit from including a specific materiality requirement in any "original information" provided by a whistleblower along with a specific requirement that any whistleblower act in good faith. With respect to the materiality component, the definition of original information should exclude any securities violations that have already been remedied such that a whistleblower should be unable to profit in that regard.

Conclusion

The OSC has also asked, in its request for comments, whether there is potential for whistleblowing reporting to be a motivating factor for market participants in reporting misconduct. Vanguard approaches any and all regulatory obligations or expectations with the utmost seriousness and good faith. That said and by way of conclusory comments, we do not wish to see a whistleblower program which inadvertently creates a "race to report" that will result in the OSC receiving a flood of reports regarding either technical, minor or non-violations.

We thank you for the opportunity to comment on this paper.

Yours truly,

"*Atul Tiwari*"

Atul Tiwari
Managing Director
Vanguard Investments Canada Inc.