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June 13, 2019

Vanessa Countryman
Acting Director, Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Securities Act Release No. 10619 (File No. S7-03-19)
Securities Offering Reform for Closed-End Investment Companies

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America ("TIAA"), through Nuveen, LLC ("Nuveen"), its investment management arm,[1] appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") proposal to adopt rule and form amendments to allow closed-end investment companies, including registered closed-end funds ("CEFs"), to use the registration, offering, and communications reforms the Commission adopted for operating companies in 2005 (the "Proposal").[2] As explained in further detail below, we generally agree that, consistent with the mandate of the Economic Growth, Regulatory Relief, and Consumer Protection Act ("Registered CEF Act"), the Proposal would provide CEFs parity with traditional operating companies. In particular, the Proposal would effect a much-needed modernization of the offering and proxy rules for CEFs and enable them to utilize already existing offering and communications rules that traditional operating companies have relied on since 2005.

Unlike traditional operating companies, CEFs are constrained in their ability to raise capital as a result of having to comply with Section 23(b)[3] of the Investment Company Act of 1940 (the "1940 Act"). Accordingly, we view the Commission's proposals to (i) permit certain CEFs to "forward incorporate" information in reports filed under the Securities Exchange Act of 1934 (the "Exchange Act") and (ii) allow certain CEFs to qualify as "well-known seasoned issuers," or "WKSIs," as being of particular importance not only in providing CEFs parity with traditional operating companies, but more critically in facilitating capital formation, lowering the cost of capital, and providing CEFs greater flexibility in raising capital. The ability to achieve WKSI status is especially critical for CEFs

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1 Nuveen is a wholly-owned subsidiary of TIAA. Nuveen's investment advisory subsidiaries collectively manage over $950 billion in assets, which include assets in the Nuveen and TIAA-CREF registered fund complexes. Nuveen is the leading sponsor of closed-end funds – as of March 31, 2019, Nuveen sponsored 74 closed-end funds with aggregate managed assets of $61.7 billion.

2 *Securities Offering Reform for Closed-End Investment Companies*, SEC Release No. 33-10619, 84 Fed. Reg. 14448 (Apr. 10, 2019), *available at*: https://www.federalregister.gov/documents/2019/04/10/2019-05776/securities-offering-reform-for-closed-end-investment-companies.

3 Section 23(b) of the 1940 Act generally prohibits a CEF from issuing its shares at a price below the fund's current net asset value. As a result of this restriction, a CEF often has a limited window of opportunity during which it can take advantage of opportunities to issue shares and raise capital.

because it would allow qualifying CEFs to fully utilize Rule 415 under the Securities Act through the automatic shelf registration process.[4]

We generally agree with the views set forth in the comment letter submitted by the Investment Company Institute[5] ("ICI"), but write separately to emphasize certain issues of particular importance to Nuveen and our investors. Most significantly, we set forth below an alternative standard for CEFs to qualify as WKSIs that is based on a five-year record of filing Exchange Act reports and a robust website. Further, we believe that if the Commission imposes a public float standard for CEFs to qualify as WKSIs, such public float standard should be derived using the same formula, discussed below, that was used when the SEC created the WKSI standard for operating companies in 2005.

I. Executive Summary

- We support the Commission's proposal to provide CEFs that meet certain requirements with the ability to utilize forward incorporation by reference. Since 2005, traditional operating companies have had the ability to forward incorporate by reference, which allows such companies to efficiently update their prospectuses and access capital markets without the expense and delay of filing post-effective amendments. We believe it would be appropriate to extend the benefits of forward incorporation to CEFs, which would be able to pass along such benefits to their shareholders.

- We agree that a CEF should be able to file a short-form registration statement if the CEF is "seasoned," that is: (1) it meets the registrant and transaction requirements of Form S-3; and (2) it has been registered under the 1940 Act for at least 12 calendar months immediately preceding the filing of the registration statement and has timely filed all reports required to be filed under Section 30 of the 1940 Act during that time. We further agree that these eligibility requirements provide parity for CEFs with traditional operating companies.

- We strongly support the Commission's proposal to allow CEFs that meet certain requirements to qualify as "well-known seasoned issuers," or "WKSIs." However, so that CEFs can take advantage of this reform in parity with traditional operating companies, we urge the Commission to consider the use of alternative attributes in lieu of public float for purposes of determining whether a CEF qualifies as a WKSI. Accordingly, we propose below that the Commission revise the WKSI definition to consider certain attributes that, if exhibited by a CEF, ensure that an extensive and appropriate amount of information about the CEF is provided to the marketplace. Should the Commission continue to believe that a public float standard is appropriate for CEFs, we believe a lower threshold of approximately $480 million should apply to CEFs to allow approximately 30% of listed CEFs to qualify as WKSIs, which would provide parity with operating companies and would be consistent with the result attained when the Commission adopted offering reforms for traditional operating companies in 2005.[6]

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[4] In revising Rule 415 in 1983, the Commission noted that "flexibility is the rule's most frequently cited benefit." *See Shelf Registration*, Release No. 33-6499 (Nov. 17, 1983) [48 FR 5289]. Indeed, "[c]ommentators stress that flexibility is important in today's volatile markets." *Id.* Flexibility is of particular importance for CEFs given the constraints of Section 23(b) of the 1940 Act.

[5] Comment Letter of Investment Company Institute (June 10, 2019) ("ICI Letter").

[6] *See Securities Offering Reform*, Securities Act Release No. 8591 (July 19, 2005) [70 FR 44721 (Aug. 3, 2005)] (the "2005 Release").

- We support the Commission's proposal to extend the safe harbors provided by Rules 172 and 173 under the Securities Act of 1933 (the "Securities Act") to CEFs.

- We generally support the Commission's proposal to amend Form N-2 to require CEFs to provide management's discussion of fund performance ("MDFP") in their annual reports to shareholders. We believe such a requirement should be consistent with the MDFP requirements already in place for mutual funds and exchange-traded funds ("ETFs").

II. Forward Incorporation and Short-Form Registration Statement on Form N-2

The Proposal would enable CEFs that meet certain requirements to file a short-form registration statement on Form N-2, which registration statement could be used, among other things, to register a shelf offering pursuant to Rule 415(a)(1)(x) under the Securities Act. A CEF would have the ability on such a registration statement to incorporate certain past and future Exchange Act reports by reference. We support this aspect of the proposal, which provides CEFs parity with traditional operating companies.

Currently, CEFs, unlike traditional operating companies, cannot forward incorporate into their registration statements information from subsequently-filed Exchange Act reports. This matters because when a CEF sells its securities, its registration statement must include all required information, including current financial information and thus any annual update required by Section 10(a)(3) of the Securities Act. Because CEFs are unable to utilize forward incorporation, CEFs must file a post-effective amendment to the registration statement to include the financial statement information required by Section 10(a)(3), which involves the substantial expense (including legal and audit fees) and potential delay associated with the CEF's preparation of the amendment and the SEC Staff's review and comment process. Absent relief, a CEF must wait for the SEC Staff to declare its post-effective amendment effective, and such a CEF could be required to interrupt its offering of shares if its financial statements become stale during that time.

In contrast, an operating company does not have to file a post-effective amendment to its registration statement because it simply files its annual report with the SEC, as the law requires, and the financial statements therein are automatically incorporated by reference in the shelf registration statement. Since 2005, traditional operating companies have had this ability to forward incorporate by reference, which allows such companies to efficiently update their prospectuses and access capital markets without the expense and delay of filing post-effective amendments. There are no additional legal or audit fees associated with a filing, and there is no additional time spent on the review process. We believe it would be appropriate to extend the benefits of forward incorporation to CEFs and therefore provide CEFs parity with traditional operating companies. Further, CEFs would be able to pass along the benefits associated with forward incorporation to their shareholders.[7]

A CEF would be able to file a short-form registration statement if the CEF is "seasoned," that is: (1) it meets the registrant requirements (*i.e.*, it timely filed all Exchange Act reports during the prior year) and transaction requirements (*i.e.*, it has a public float of $75 million or more) of Form S-3; and (2) it has been registered under the 1940 Act for at least 12 calendar months immediately preceding the filing of the registration statement and has timely filed all reports required to be filed under Section 30 of the 1940 Act during that time (*i.e.*, reports on Forms N-CSR, N-CEN, and N-PORT). We agree that these eligibility requirements provide parity for CEFs with traditional operating companies. To the extent a CEF has filed all reports required to be filed under Section 30 of the 1940

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[7] We note that a number of Nuveen and other CEFs have obtained no-action relief from the SEC Staff pursuant to Rule 486(b) under the Securities Act to file immediately effective post-effective amendments to their Form N-2 registration statements to bring financial statements up to date or make other non-material changes. It would nonetheless be more efficient if a CEF were able to rely on forward incorporation to update its registration statement rather than having to file a post-effective amendment in reliance on Rule 486(b).

Act for 12 calendar months, a significant amount of information regarding such CEF would be available to the public for review and scrutiny at the time the CEF relies on forward incorporation to update its registration statement.

III. Well-Known Seasoned Issuer Status

Under the Proposal, a CEF that qualifies as a "well-known seasoned issuer," or "WKSI," would be able to utilize an automatic shelf registration process whereby it can file shelf registration statements that become effective automatically without SEC Staff review and comment. We strongly support this aspect of the Proposal, as it would promote more efficient capital formation and provide CEFs parity with traditional operating companies, which have had the ability to qualify as WKSIs and use the automatic shelf registration process since 2005. Such a process would provide CEFs that qualify as WKSIs with significant flexibility to take advantage of market windows, structure terms of securities on a real-time basis to accommodate investor demand, and determine or change the plan of distribution in response to changing market conditions. This flexibility is particularly critical for CEFs as they can only issue new shares in compliance with Section 23 of the 1940 Act, which generally prohibits a registered CEF from issuing its shares at a price below the fund's current net asset value. Put another way, a CEF generally may only issue new shares during periods when its shares are trading at a premium to NAV, which periods can often be fleeting. As the Commission notes in its Proposal, the ability to file an automatically effective shelf registration statement would provide CEFs with greater flexibility to control the timing of their capital raising. As explained below, however, we believe the SEC should consider the use of alternative metrics in lieu of public float for purposes of determining whether a CEF qualifies as a WKSI.

Under the Proposal, for a CEF to qualify as a WKSI, the CEF must, among other things, have at least $700 million in public float. The Commission has proposed this public float requirement with a view to providing CEFs parity with traditional operating companies, which also must meet the $700 million public float requirement in order to qualify as a WKSI. Imposing such a requirement puts CEFs at a disadvantage relative to traditional operating companies, however, because it fails to take into account the differences between them. Accordingly, we recommend that the final rule adopt alternative metrics that are better suited to CEFs so that CEFs can take advantage of the benefits of WKSI status in parity with traditional operating companies.

As the Commission notes in the Proposal, compared to traditional operating companies, CEFs have limited analyst coverage; have relatively modest daily trading volumes; and do not account for significant percentages of capital raised, with CEFs (listed and non-listed) raising about two percent of the total capital raised in 2017 in registered securities offerings. From these observations, the Commission concluded in its Proposal that a lower public float threshold or alternative requirement to qualify as a WKSI would not be appropriate because a CEF would be unlikely to have a level of market following that would justify such a lower threshold or alternative requirement. We submit, however, that a more appropriate way to address these observations would be for the Commission to develop alternative ways to determine whether a CEF qualifies as a WKSI.

We respectfully recommend that the final rule take into account the Commission's rationale for creating the WKSI classification in the first place. In particular, the Commission has explained that issuers that qualify as WKSIs (1) are the most widely followed in the marketplace and therefore subject to the most scrutiny,[8] and (2) "have an Exchange Act record, a broad following of their Exchange Act filings, and the contemplated attention directed to their Exchange Act reports by the staff of the Division of Corporation Finance that will produce the greatest likelihood of Exchange Act reports that not only are reliable but also are broadly scrutinized by investors

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[8] *See* 2005 Release at 44726-44727. We refer the Commission to the discussion in the ICI Letter explaining that "[r]equiring a public float standard - and the related analyst scrutiny - is less meaningful for funds because they have a limited scope of business and are subject to the 1940 Act, which, among other things, requires funds to value their portfolio holdings and disclose these values in a standardized format."

and the markets."[9] We believe that CEFs that exhibit such characteristics can be better identified if the Commission revises the definition of WKSIs for CEFs to consider either of the following attributes:

1. **The length of time a CEF has been in existence and the resulting extent of its Exchange Act record.** As the Commission has explained, "[a] public issuer's Exchange Act record provides the basic source of information to the market and to potential purchasers regarding the issuer, its management, its business, its financial condition, and its prospects."[10] We believe a CEF's five-year record of filing Exchange Act reports[11] is sufficiently robust to provide the market and potential purchasers with adequate information to evaluate the CEF, its management, its business, its financial condition, and its prospects. A five-year filing record should therefore be sufficient for a CEF to qualify as a WKSI.

2. **Information about the CEF that is available to the public.** In creating the WKSI classification, the Commission explained that "the largest issuers are followed by sophisticated institutional and retail investors, members of the financial press, and numerous sell-side and buy-side analysts that actively seek new information on a continual basis."[12] We submit that this ongoing dialogue between an issuer and the marketplace is significantly less relevant for CEFs, which, relative to traditional operating companies, operate in a much more narrow line of business[13] (namely, investing in securities) and are subject to the valuation framework of the 1940 Act.[14] We therefore believe that, to the extent a CEF provides a specified set of information to the public via a website, such CEF should be able to qualify as a WKSI because it would in effect be providing to the marketplace the type of information that, for traditional operating companies, generally would have to be ascertained through ongoing dialogue with the analysts. In particular, such information should include:

    - Information about the CEF's holdings (for example, the number of holdings, types of holdings, top 10 holdings, sector allocations, and other characteristics the Commission may deem relevant);
    - Past total return performance over a variety of backward-looking periods as of a recent date,

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9 *See Securities Offering Reform*, Securities Act Release No. 8501 (Nov. 3, 2004) [69 FR 67392 (Nov. 17, 2004)].

10 *See* 2005 Release at 44726.

11 Section 30(a) of the 1940 Act provides that "[e]very registered investment company shall file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the 1934 Act and the rules and regulations issued thereunder." Every registered management investment company (other than a small business investment company) that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the 1934 Act is deemed to have satisfied this requirement by filing reports on Forms N-CSR and N-Q. *See* Rule 30d-1 under the 1940 Act (effective until May 1, 2020). Effective May 1, 2020, the requirement is met by filing on Form N-CSR. Id., as amended by Investment Company Reporting Modernization, IC-32314 (Oct. 13, 2016).

12 *See* 2005 Release at 44727.

13 Traditional operating companies typically engage in a multitude of activities, and the marketplace therefore must rely on analysts to cover them comprehensively to assess their operations. *See* ICI Letter at 7.

14 As is discussed in the ICI Letter, traditional operating companies often have assets (*e.g.*, intellectual property) and liabilities (*e.g.*, pension plan obligations) that involve highly subjective valuations and thus warrant further analyst scrutiny. CEFs, which must value their holdings in accordance with the valuation requirements of the 1940 Act and relevant accounting standards, generally do not present such issues.

- Information about the CEF's distributions; and
- The CEF's daily net asset value ("NAV").[15]

The type of information that would be provided in response to this proposed requirement is critical to analysts' and investors' ability to scrutinize the CEF. We therefore think it would be appropriate for a CEF to qualify as a WKSI to the extent it makes this type of information regularly available to the public via a website.[16]

If the SEC disagrees with us that the aforementioned criteria should substitute for a public float requirement for CEFs to qualify as WKSIs, we believe the Commission should reconsider the amount of public float required. In adopting this $700 million public float threshold for traditional operating companies, the SEC observed that approximately 30% of listed issuers would be able to qualify as WKSIs.[17] We believe it would be appropriate for the Commission to seek to achieve a similar 30% target under the Proposal. Based on a review of statistics published by the ICI, we believe a public float of common stock of $480 million would be appropriate to ensure 30% of listed CEFs are able to qualify as WKSIs. A CEF with a public float of at least $480 million is also likely to have a sufficient track record and a history of SEC filings to provide investors with sufficient information about the fund for it to qualify for WKSI status. The $480 million public float requirement could also be combined with the first criteria above, the five-year filing record, for a CEF to qualify as a WKSI.

IV. Final Prospectus Delivery Reforms

Under the Proposal, a CEF would be able to rely on Rule 172 under the Securities Act to satisfy its final prospectus delivery obligations by filing its final prospectus with the SEC. In addition, each underwriter or broker-dealer participating in an offering would be able to rely on Rule 173 under the Securities Act to satisfy its prospectus delivery obligations by furnishing a notice within two business days after a purchase stating that the sale was made pursuant to an effective registration statement or in a transaction pursuant to Rule 172. We support these aspects of the Proposal, which provide parity for CEFs consistent with the Registered CEF Act. These provisions would spare CEFs, and ultimately their shareholders, the potentially significant expense of delivering final prospectuses.

V. Disclosure and Reporting Parity Proposals

The Commission has proposed to amend Form N-2 to extend the MDFP disclosure requirements to all registered CEFs. We believe that such a requirement should closely resemble the requirements currently in place for mutual funds and ETFs, tailored as necessary to include any requirements that may be specific to CEFs. We further believe that it would be appropriate for any changes made now or in the future to the MDFP disclosure requirements for mutual funds and ETFs, including revisions regarding the use of benchmark indexes, to be applied in parallel to the MDFP disclosure requirements for CEFs.

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15 A daily NAV, calculated consistent with the requirements of the 1940 Act, provides a significant amount of information to investors, who can compare the NAV to the CEF's market price to determine how the market might perceive a fund. We submit that such daily dissemination of a CEF's NAV provides much more specific and objective information about value and relative value than a traditional operating company or analysts could typically provide to shareholders and investors. We note that many CEF websites already disclose the premium or discount at which a CEF is currently trading relative to its NAV, as well as historical information about the CEF's premiums and discounts.

16 Further, individual CEF websites are supplemented by industry-wide websites, most notably CEFConnect.com.

17 *See* 2005 Release at 44727.

We appreciate this opportunity to provide comment and input on the proposals and questions contained in the Proposing Release. If the Commission or its staff has any questions regarding our letter, please do not hesitate to contact me at [redacted].

Sincerely,

Gifford R. Zimmerman, CFA
Managing Director and Associate General Counsel
Nuveen, LLC

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman

Dalia Blass
Director, Division of Investment Management