Amy M. O'Brien
Senior Managing Director |
Head of Responsible Investing

730 3rd Avenue
New York, NY 10017
T: (212) 916-5178
E: amy.obrien@nuveen.com

Yves P. Denizé
Senior Managing Director |
Division General Counsel

730 3rd Avenue
New York, NY 10017
T: (212) 916-6261
E: yves.denize@nuveen.com

May 5, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Email: rule-comments@sec.gov

Re: Request for Comments on Fund Names, Release Nos. IC-33809; File Number S7–04–20

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to submit this comment in response to the U.S. Securities and Exchange Commission's (the "SEC" or "Commission") request for public comment on the framework for addressing names of registered investment companies and business development companies (collectively referred to herein as "funds") that are likely to mislead investors about a fund's investments and risks pursuant to section 35(d) of the Investment Company Act of 1940, rule 35d–1 thereunder (the "Names Rule" or the "Rule"), and the antifraud provisions of the federal securities laws (the "Request for Comment").[1] We appreciate the SEC's ongoing efforts to improve the investor experience by modernizing the regulatory safeguards that help to ensure investors are not misled by a fund's name. As the Commission acknowledges in the Request for Comment, fund names are an important issue for investors, and we believe it is crucial for the Commission to ensure that the Names Rule is as effective as possible in prohibiting funds from using materially deceptive or misleading names.

The Request for Comment includes a number of questions on how the Names Rule operates today and how it might be improved, including whether the Rule should apply to funds with names that include terms such as "ESG" [2] or "sustainable." This topic is particularly important to us, as TIAA and our investment management arm Nuveen, LLC ("Nuveen") offer a number of funds with terms such as "ESG," "green," "impact" and "social choice" in their name. In our view, the Names

[1] *Request for Comments on Fund Names*, 85 Fed. Reg. 13221 (Mar. 6, 2020), *available at*: https://www.govinfo.gov/content/pkg/FR-2020-03-06/pdf/2020-04573.pdf.

[2] As used herein, the term "ESG" refers to "environmental, social and governance."

Rule, as it currently applies, works well to protect investors from deceptive or misleading fund names, and we do not believe the Rule's application should extend to funds that are branded with terms such as "ESG." Instead, we recommend that the SEC issue fund disclosure guidance that requires any fund using terms such as "ESG," "sustainable," "green," "clean," "environmental," "ecological," "impact," "responsible," "low carbon," or "social" (referred to collectively herein as "ESG-related terms") in its name to provide fulsome prospectus[3] disclosures describing the investment strategies and methodologies used to justify the inclusion of such terms in the fund's name. We discuss this recommendation in more detail below.

I. **About TIAA and Nuveen.**

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over its century-long history, TIAA's mission has always been to aid and strengthen the institutions and participants it serves and to provide financial products that meet their needs. To carry out this mission, TIAA has evolved to include a range of financial services, including asset management and retail services. Today, TIAA's investment model and long-term approach serve more than five million retirement plan participants at more than 15,000 institutions. With its strong nonprofit heritage, TIAA remains committed to its mission of serving the financial needs of those who serve the greater good.

Nuveen offers a comprehensive range of outcome-focused investment solutions designed to secure the long-term financial goals of institutional and individual investors. The Nuveen organization includes investment advisers that collectively manage or recordkeep over $1 trillion in assets,[4] including in the Nuveen and TIAA-CREF registered fund complexes, as well as in private funds, institutional separately managed accounts, and structured vehicles. Nuveen and its affiliates offer deep expertise across a comprehensive range of traditional and alternative investments through a wide array of vehicles and customized strategies. Nuveen is also responsible for executing TIAA's responsible investing policy[5] across the enterprise, and is a top-10 manager among ESG mutual funds, exchange-traded funds, and variable insurance managers.[6]

TIAA has over five decades of experience in responsible investing, beginning with its offering of one of the very first dedicated ESG products, the CREF Social Choice Account. Launched over 20 years ago, the CREF Social Choice Account was one of the first balanced annuities to incorporate ESG criteria into its investment process. Drawing on TIAA's years of expertise, Nuveen has established itself as a leader in the responsible investing space, and is dedicated to promoting the financial well-being of its investors while also advancing global economic, social,

---

3 In this letter, we use to term "prospectus" to refer to the entirety of a fund's registration statement under Form N1-A.

4 As of March 31, 2020.

5 *See* TIAA Policy Statement on Responsible Investing, 7th Edition, *available at*: https://www.tiaa.org/public/pdf/ri_policy.pdf.

6 Based on rankings sourced from Morningstar Direct as of December 31, 2019.

and environmental well-being. With a perspective informed by our decades of experience, we respectfully offer the thoughts and recommendations below in response to the SEC's Request for Comment.

II. **The SEC should consider not extending the Names Rule to funds that use ESG-related terms in their name.**

The Names Rule generally requires a fund with a name that suggests a particular investment emphasis to invest in a manner consistent with its name.[7] For example, the Rule would require a fund with a name that suggests a focus on a particular type of security (*e.g.*, the "XYZ Bond Fund") to invest at least 80% of its assets in the type of security indicated by its name.[8] The Commission states in the Names Rule adopting release that the Rule does not apply to fund names "that connote types of investment strategies as opposed to types of investments," but notes that the SEC's Division of Investment Management will continue to scrutinize fund names that are not covered by the Rule.[9] SEC staff offered further interpretive guidance regarding the application of the Names Rule in a set of frequently asked questions last updated in 2001.[10] It is our longstanding view that the Names Rule does not apply to fund names using ESG-related terms, because such terms refer to an investment strategy, rather than a type of investment. In particular, we believe these terms are more akin to descriptors like "growth" or "value," which, as the SEC recognized in the Names Rule adopting release, "connote types of investment strategies as opposed to types of investments."[11]

The Request for Comment asks a series of questions about funds that use one or more ESG-related terms in their name (referred to herein as "ESG-branded funds"), including (i) whether the Names Rule should apply to fund names that include ESG-related terms; (ii) whether investors perceive these terms to refer to a type of investment made by the fund, or to an investment strategy taken by the fund; and (iii) whether other limits should be placed on a fund's ability to characterize its investments as ESG or sustainable.[12] While we applaud the SEC's focus on this issue, we would urge the Commission not to extend the Rule's application to ESG-branded funds as part of its efforts to update the Rule. As further explained below, we believe it would not be workable or appropriate to apply the Names Rule to ESG-branded funds. We do, however, think

---

7 *Investment Company Names*, 66 Fed. Reg. 8509 (Feb. 1, 2001), *available at*: https://www.govinfo.gov/content/pkg/FR-2001-02-01/pdf/01-1967.pdf.

8 *Id*. at 8510.

9 *Id*. at 8514.

10 *Frequently Asked Questions about Rule 35d-1 (Investment Company Names),* Division of Investment Management, *available at*: https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm.

11 66 Fed. Reg. at 8514.

12 85 Fed. Reg. at 13224.

it would be helpful for the Commission to provide additional guidance with respect to disclosure standards applicable to ESG-branded funds.

As the SEC notes in the Request for Comment, a growing number of funds are choosing to include ESG factors in their investment strategies. These funds often reference such strategies by including ESG-related terms in their name. TIAA and Nuveen offer a number of such funds, and we work hard to ensure that our fund names are supported by the use of a robust and carefully designed investment methodology that is clearly disclosed in our fund prospectuses. Without this disclosure, there can be a disconnect between the ESG-related terms used in a fund's name and the ESG characteristics of the fund's investment strategies. Insufficient disclosure around a fund's investment strategies can make it difficult for investors to evaluate the fund's ESG or sustainability characteristics.

We appreciate that currently applicable law provides ESG-branded funds with the flexibility to include ESG-related terms in their name without those terms being subject to the 80 percent test under the Names Rule. We believe this level of flexibility is appropriate, and should not be curtailed by applying the Names Rule to these funds. We would, however, welcome additional guidance from the SEC around fund disclosures directing ESG-branded funds to include clear, detailed disclosures in their fund prospectuses explaining how their underlying investment strategies are consistent with the fund's name. We discuss this recommendation in more detail in Section III below.

We believe that SEC guidance around fund disclosure, rather than application of the Names Rule to ESG-branded funds, is particularly appropriate given investors' evolving understanding of the meaning of ESG-related terms as they relate to a fund's investment strategies. While there has always been debate around the meaning of these terms, that debate has changed over time as global attitudes toward ESG issues have evolved. Investor expectations of ESG products have also changed over time. For example, while ESG products have historically excluded investments in weapons manufacturers and tobacco companies, investors today might also expect an ESG product proactively to include companies that are working to address climate change (*e.g.*, by promoting energy efficiency or reducing waste) or advance social priorities (*e.g.*, workplace diversity or gender equality) in a way that aligns with long-term performance and/or the reduction of risk. Given the evolution and expansion of ESG approaches over time, we think it would be difficult, if not impossible, for the SEC to apply the Names Rule to ESG-branded funds in a way that would be helpful to investors. In particular, we question how the SEC could apply the 80 percent test to a fund's investments when there is no uniform approach to determining how specific investments can qualify as "ESG."

To illustrate this point, we refer the Commission to the *2018 Report on US Sustainable, Responsible and Impact Investing Trends* (the "Report") published by US SIF: The Forum for Sustainable and Responsible Investment ("US SIF"), the 13th and most recent such report published since 1995.[13] The Report presents extensive data on funds that use sustainable

---

13 *2018 Report on US Sustainable, Responsible and Impact Investing Tools*, US SIF: The Forum for Sustainable and Responsible Investment.

investment strategies, and identifies a range of significant ESG issues that investors may wish to consider. Appendix 2 of the Report provides a list of registered funds that incorporate ESG criteria in their investment strategies, many of which use ESG-related terms in their names, including “ESG,” “sustainable,” “green,” “ethical,” “impact,” “ecological,” “environmental,” “socially responsible,” and “social awareness.”

Among other things, the Report illustrates that there exists significant variation in the names of funds incorporating ESG factors in their investment strategies, reflecting the wide variety of implementation approaches funds employ. Figure 2.10 of the Report divides the various types of ESG investment strategies into the following five broad types (with brief descriptions of each taken from the Report):[14]

	Investment Strategy	**Description**
1.	ESG Integration	The systematic and explicit inclusion by investment managers of ESG risks and opportunities into traditional financial analysis.
2.	Negative/Exclusionary	The exclusion from a fund or plan of certain sectors or companies based on specific ESG criteria.
3.	Positive/Best in Class	Investment in sectors, companies, or projects selected for positive ESG performance relative to industry peers.
4.	Impact Investing	Targeted investments, typically made in private markets, aimed at solving social or environmental problems.
5.	Sustainability Themed Investing	The selection of assets specifically related to sustainability in single- or multi-themed funds.

Each of these strategies focuses on different priorities and goals, and we believe it is important for investors to understand the type of strategy or strategies a given fund has adopted. But given the many ESG-related terms a fund may use in its name, and the multiple ESG investment approaches a fund may choose to employ (even as part of a single overarching strategy), it may be difficult for investors to understand how an ESG-branded fund invests simply by considering the fund’s name. We do not believe, however, that applying the Names Rule to ESG-branded funds would help resolve this issue. Without industry-wide consensus on how a fund’s name should equate to any particular type of investment, we question whether the 80 percent test could successfully be applied to funds using an array of ESG-related terms in their name. We believe that clear, detailed disclosure of a fund’s investment objective and strategies would be far more helpful for investors, and would be easier for SEC staff examiners to evaluate – and as such, we urge the SEC to consider providing guidance reiterating and clarifying the disclosure requirements applicable to ESG-branded funds.

---

14 *Id*. at page 26.

We would also note that in our experience, investors and intermediaries are increasingly interested in understanding how funds' specific investment strategies correspond to the ESG-related terms in their names. Thus, funds are already under pressure to provide fulsome prospectus disclosures regarding their ESG investment strategies. The SEC can further encourage funds to provide this important information to investors by issuing additional prospectus disclosure guidance.

III. The SEC should consider providing guidance directing ESG-branded funds to provide clear, detailed prospectus disclosures explaining how their names are supported by their investment strategies and methodologies.

While we do not support extending the application of the Names Rule at this time to ESG-branded funds, we would support the issuance of SEC guidance that emphasizes the need for funds to clearly and prominently disclose in their prospectuses how their investment strategies and methodologies support the use of ESG-related terms in their name. Such guidance should direct funds to prominently disclose with specificity how ESG factors influence their investment objective and strategy. We would welcome further engagement with the SEC on this topic, as we believe our experience and perspective could help inform the Commission's efforts to draft relevant guidance.

By issuing guidance on this topic, rather than applying the Names Rule to ESG-branded funds, the SEC would permit funds to retain the necessary flexibility to pursue a wide range of investment approaches that reflect investors' values and goals, while also accommodating the expansion of responsible investing approaches within the asset management industry. This approach would also help investors better understand the investment strategies of ESG-branded funds. Additionally, investors would be more empowered to compare options and effectively engage with an ESG-branded fund if they question or disagree with some aspect of the fund's investment strategies. SEC examiners would also benefit, as they would only need to focus on whether a fund's disclosures are accurate, clear, and prominent, rather than trying to determine whether a fund's investments are sufficiently "ESG" or "green" or "sustainable" to meet the 80 percent test under the Names Rule.

IV. Conclusion.

We appreciate the opportunity to comment on the SEC's potential modernization of the Names Rule. In light of the ever-shifting industry debate around ESG issues, as well as growing investor interest in ESG-focused investment products, it is important that the Commission continue to consider how the current regulatory framework might be updated to reflect the current state of ESG investing. While we would not support an extension of the Names Rule to ESG-branded funds at this time, we do believe the SEC can and should play a greater role in encouraging funds to better inform investors about their ESG-related investment strategies, as described above. We welcome the opportunity to engage further on any aspect of this letter.

Sincerely,

Amy M. O'Brien
Senior Managing Director, Head of Responsible Investing
Nuveen, LLC

Yves P. Denizé
Senior Managing Director, Division General Counsel
Nuveen, LLC