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Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090
Submitted Electronically

Re: Modernization of Beneficial Ownership Reporting, File No. S7-06-22

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America ("TIAA") and its wholly-owned subsidiary Nuveen, LLC ("Nuveen") welcome the opportunity to submit this comment in response to the Securities and Exchange Commission's ("SEC" or the "Commission") proposed amendments to the rules governing beneficial ownership reporting (the "Proposal").[1] We appreciate the SEC's efforts to modernize the current regulatory framework governing the reporting of beneficial ownership positions. We also recognize that the Commission has designed the Proposal to reflect recent technological developments that may impact filers' ability to report beneficial ownership information on Schedules 13D and 13G on a shorter timeline, as well as potential gaps in reporting of beneficial ownership information that may harm investors. However, while we support some of the SEC's proposed changes, we believe certain aspects of the Proposal would be far more burdensome than beneficial, and are not justified by any compelling policy concern. Specifically, the SEC's proposed changes to the 13G filing requirements for Qualified Institutional Investors ("QIIs") are, in our view, unreasonable, impractical, and out of line with Congress's and the Commission's historical position on 13G filers. For these reasons, we recommend that the Commission carve out QIIs reporting on Schedule 13G from the proposed new reporting requirements. We would also urge the Commission to clarify its position on the beneficial ownership reporting requirements that apply with respect to the securities underlying cash-settled derivatives beneficially owned by Schedule 13D and 13G filers. We discuss these positions, as well as other views we have on the proposal, in more detail below.

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[1] *Modernization of Beneficial Ownership Reporting*, 87 Fed. Reg. 13846 (Mar. 10, 2022), *available at*: https://www.federalregister.gov/documents/2022/03/10/2022-03222/modernization-of-beneficial-ownership-reporting.

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 our mission of serving the financial needs of those who serve the greater good.

As TIAA's asset management arm, Nuveen offers a wide range of specialized investment solutions through several investment advisory affiliates. The Nuveen organization includes investment advisers that collectively manage over $1 trillion in assets, including two separately branded fund groups: the TIAA-CREF Fund Complex, which includes mutual funds and variable annuities registered as open-end funds, and the Nuveen Fund Complex, which includes mutual funds, exchange-traded funds, closed-end funds ("CEFs") and interval funds registered as CEFs. Nuveen funds that are regulated under the Investment Company Act of 1940 (the "regulated funds"), as well as Nuveen affiliates registered as investment advisers, meet the QII definition under Rule 13d-1(b) of the Securities Exchange Act of 1934 (the "Exchange Act") – meaning they are eligible to file on Schedule 13G when they acquire beneficial ownership of more than five percent of a covered class of equity securities in the ordinary course of their business, with no intent to change or influence control of the issuer of those securities. In almost all cases, Nuveen's regulated funds and their investment advisers file beneficial ownership reports on Schedule 13G, because they do not as a practice seek to acquire beneficial ownership of more than five percent of a covered class of securities with the goal of controlling or exerting influence over the issuer.

In addition to filing beneficial ownership reports on Schedule 13G, our CEFs also use Schedule 13D data filed by other entities. The current beneficial ownership reporting requirements apply to owners of CEF shares, which qualify as covered equity securities under the current reporting regime. Getting data from entities that have acquired significant beneficial ownership positions of five percent of more of a CEF's shares is vitally important for CEFs and their boards, as such information gives CEFs insight into attempts by investors – including activist investors who may be planning to wage a hostile campaign – to exert influence or control. Based on Nuveen's experience as both a Schedule 13G filer and a user of Schedule 13D data, we offer our thoughts on the Proposal, as well as recommendations to improve it, below.

II. **The SEC should carve out QIIs filing on Schedule 13G from the proposed reporting requirements, which are impractical, overly burdensome, and not justified by any compelling policy concern.**

With respect to Schedule 13G, the Proposal would amend Rule 13d-1(b) under the Exchange Act to shorten the filing deadline for QIIs from 45 days after the end of the year in which the filer's beneficial ownership exceeds five percent of a covered class of equity securities, to five business days after the end of the *month* in which beneficial ownership exceeds five percent.[2] Additionally, the Proposal would amend Rule 13d-2(b) to shorten the timeline for filing amendments to Schedule 13G from 45 days after the end of the year in which any change occurs, to five business days after the end of the *month* in which any *material* change occurs (including a material increase or decrease in the percentage of covered securities beneficially owned).[3] The Proposal would also significantly shorten the filing timeline for QIIs that acquire beneficial ownership of more than 10% of a covered class of equity securities, from within 10 days after the month on which such ownership threshold is exceeded to within five days after the *date* on which it is exceeded, or after a 5% increase or decrease in the filer's level of beneficial ownership.[4]

The proposed amendments would shorten the reporting deadlines for QIIs filing on Schedule 13G dramatically, forcing QIIs to incur materially greater filing costs and resource burdens. In our view, there is no compelling policy justification to support such a significant change. In defense of the proposed new filing timelines, the SEC cites the existence of potential reporting gaps, arguing that "QIIs in particular may be able to amass sizeable amounts of beneficial ownership without reporting such positions" under the current reporting regime.[5] Specifically, the SEC is worried about a situation where a "QII may beneficially own in excess of 5% of a covered class for the entire year, sell down its position to 5% or below on the last day of the calendar year and bypass having to report at all under the current regulatory framework assuming that its beneficial ownership continues to be held in the ordinary course of business, without a disqualifying purpose or effect, and does not exceed 10% of a covered class."[6] While we acknowledge that such a scenario is possible, the SEC offers no evidence that this situation is occurring, or has occurred in the past, with any notable frequency, leaving us to believe that the Commission's concern may be largely theoretical. The possibility that some QIIs may be going out of their way to avoid beneficial ownership reporting requirements, without further evidence, certainly does not justify shortening the 13G filing timeline to such a great extent, in our view. Given that QIIs filing on Schedule 13G may often accrue beneficial ownership positions of more than 5% of a covered class of securities as part of their ordinary course investment activity, we do not believe the current filing timeline causes any significant information asymmetry that is harmful for investors. And if the SEC wishes to so dramatically shorten reporting deadlines for QIIs on the basis of the concerns described above, we would

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[2] *Id*. at 13847.

[3] *Id*.

[4] *Id*.

[5] *Id*. at 13856.

[6] *Id*.

urge the Commission to provide evidence that such concerns are occurring, and with sufficient frequency to justify the proposed changes.

As further support for the Proposal's changes to the filing deadlines for Schedule 13G, the SEC points to the development of new technology, noting that technological advances such as the ability to submit filings electronically through the EDGAR system and the use of modern information technology in financial markets have led to calls for a reassessment of the current filing deadlines.[7] Looking back at the decades-old history of Rule 13d-1(c), the Commission notes that investors at the time "may not have had reasonable access to advanced technologies to make more immediate filings possible." Investors today, on the other hand, "not only have gained valuable experience complying with these reporting provisions, but also have ready access to the necessary filing technology," which supports "a reconsideration and recalibration" of the current filing deadlines, according to the SEC.[8] With respect, we fail to see why the existence of these new filing technologies means QIIs should be subject to Schedule 13G filing requirements that are so much shorter than the ones currently in place. The SEC makes a general statement about "use of modern information technology in financial markets," but does not provide data showing that QIIs have as a standard matter adopted the type of technological improvements that would make it easier for them to prepare these filings on such a short timeline. Even if QIIs had adopted such technology on a widespread basis, there are still parts of the filing process that are complex, time-intensive, and simply cannot be expedited by improved technology. In any event, we do not believe the widespread adoption of new technology would be a sufficient justification for shortening the filing timeline to such a significant extent. Just because QIIs technically *can* file Schedule 13G reports on an extremely short deadline (which we do not concede) does not mean it is necessary or advisable for them to do so – especially given the heavy burdens involved.

In addition to imposing significant and unjustified expenses and burdens on QIIs, we are concerned that shortening the deadline for Schedule 13G reporting from a yearly to a monthly basis could result in competitors attempting to copy or trade ahead of QIIs' investment strategies and engage in other manipulative trading practices, to the detriment of advisers, funds, investors, and the market as a whole. The requirement to publish information about investment strategies on such an abbreviated timeline puts investment advisers – particularly active advisers – at a real competitive disadvantage. The more visibility into their positions and proprietary investment strategies advisers are forced to provide the market, the easier it will be for other investors to copy the investment strategies of high-performing advisers. Providing Schedule 13G data on a monthly instead of yearly basis may also enable an adviser's competitors to trade ahead of the adviser's strategy, using a more short-term investment timeline that particularly disadvantages advisers trying to build a long-term strategy for the benefit of their investors. Ultimately, requiring investment advisers to disclose their beneficial

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[7] *Id*. at 13849.

[8] *Id*.

ownership positions so frequently may put the value and potential performance of their proprietary investment strategies at risk.

The Proposal's shortened timeframe for QIIs filing on Schedule 13G, and the Commission's concerns motivating those changes, are also inconsistent with past SEC commentary on the topic. The Commission's discussion in the 1998 adopting release making the short-form Schedule 13G available to so-called "passive investors" (the "1998 Adopting Release")[9] underscores the fact that the current 13G filing requirements for QIIs were thoughtfully designed to reflect their structure and standard investing practices. The SEC explains in the 1998 Adopting Release that QIIs "are permitted greater flexibility in filing amendments in recognition of the fact that [they] routinely buy and sell securities in the ordinary course of business and are less likely to abuse the process."[10] The Commission also concluded in the 1998 Adopting Release that "Schedule 13G strikes an appropriate balance between furnishing disclosure to the market and the burdens placed on [reporting] institutions."[11] In our view, there is no change that has occurred in the market or technological development in recent decades that would justify the SEC deviating so significantly from the longstanding and very reasonable position it took in the 1998 Adopting Release on QIIs reporting on Schedule 13G.

For all the reasons stated above, we urge the Commission to carve QIIs filing on Schedule 13G out of the proposed new reporting requirements, and allow them to continue submitting their Schedule 13G reports under the reporting timeframes currently in place. Given that QIIs are required to certify on Schedule 13G that the covered securities in question were acquired and held in the ordinary course of business, and not for the purpose of, or with the effect of, changing or influencing the control of the issuer, we do not think it is appropriate or advisable to subject them to the significantly shorter reporting timeframes set forth in the Proposal. Meeting these new requirements would force QIIs to spend a great deal more time and effort preparing and submitting Schedule 13G filings, and we simply do not see any potential investor benefit that could possibly justify this imposition of additional expense and burden. Worse, we believe the new Schedule 13G filing requirements may actually harm QIIs, investors, and the market by encouraging competitors to engage in abusive trading practices. We believe the current reporting regime for QIIs filing on Schedule 13G is more than sufficient to ensure transparency and protect investor interests, and we recommend that the SEC allow it to remain in place.

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9 *Amendments to Beneficial Ownership Reporting Requirements,* 63 Fed. Reg. 2854 (Jan. 16, 1998), *available at*: https://www.govinfo.gov/content/pkg/FR-1998-01-16/pdf/98-1084.pdf.

10 *Id*. at 2855.

11 *Id.* at 2856.

III. **The SEC should eliminate the proposed amendments to Rule 13d-3 that would deem certain holders of cash-settled derivatives securities as beneficial owners of the referenced covered class of equity securities.**

Under the current version of Rule 13d-3(d) of the Exchange Act, a person shall be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership of the security within 60 days, including through the exercise of any option, warrant or right, or the conversion of a security, among other methods.[12] The Proposal would amend Rule 13d–3 to provide in subsection (e)(1) that a holder of a cash-settled derivative security shall be deemed the beneficial owner of the referenced covered securities if the person holds the derivative security *with the purpose or effect of changing or influencing the control of the issuer* of the reference securities, or in connection with or as a participant in any transaction having such purpose or effect.[13] The Proposal specifies that the term "derivative security" does not include security-based swaps. Explaining its reasoning behind this provision, the SEC notes that an investor in a cash-settled derivatives security "may be positioned, by virtue of its commercial relationship with a counterparty, to acquire any reference securities that the counterparty may acquire to hedge the economic risk of that transaction," which "may, therefore, result in a rapid accumulation of a covered class by a counterparty similar to the types of accumulations that prompted Congress to enact Section 13(d)."[14] The Commission also warns that "the use of cash-settled derivative securities in the change of control context also may serve as a catalyst for related acquisitions of beneficial ownership by institutional counterparties that ultimately could contribute to a shift in corporate control," as holders of cash-settled derivatives also have incentive "to influence or control outcomes at the issuer of the reference security just as they would if they directly owned the reference security outright."[15] The proposed changes to Rule 13d–3 are meant to provide investors with greater transparency into this type of scenario (which we believe may be purely theoretical), and close a potential reporting gap that the SEC believes may currently exist.

We do appreciate that the SEC has carved security-based swaps out of this provision, which we believe is an appropriate exclusion. However, we believe investors should be deemed beneficial owners of the reference securities underlying cash-settled derivatives only in very limited circumstances – and the Proposal's attempt at defining those circumstances is overbroad and poorly conceived, in our view. On this point we echo the concerns expressed by the Investment Advisers Association ("IAA") in their comment letter in response to the Proposal. We are concerned that the Proposal essentially equates the economic exposure a derivatives investor has to the instrument's reference securities to an intent to influence or control the issuer, which is not accurate. As IAA argues, the Proposal's test for determining whether an investor in a

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12 87 Fed. Reg. at 13862.

13 *Id*.

14 *Id*. at 13861.

15 *Id*.

cash-settled derivative security should be deemed a beneficial owner is not well designed, as it hinges on whether an investor holds the cash-settled derivative with the intent of controlling or influencing the issuer of the underlying reference securities. In our view, a situation where the owner of a derivative has some kind of ownership right or voting authority over the underlying reference securities, and uses such authority to influence or control the issuer, is highly unlikely, if not virtually impossible, making this test largely unhelpful. Using the SEC's proposed formula for calculating the number of reference securities a derivatives holder is deemed to beneficially own is complicated and may produce inaccurate results, and keeping track of that calculation every day, would be difficult, time-consuming, and expensive for holders of these securities – with no real benefit for investors or the market that we can identify. In light of the above, we second IAA's recommendation that cash-settled derivatives securities be excluded from any required determination and reporting of beneficial ownership.

IV. **We support the shortened reporting timeframe for Schedule 13D**.

In addition to shortening the reporting timeline for Schedule 13G filers, the Proposal would amend Rule 13d-1(a) under the Exchange Act to decrease the filing deadline for Schedule 13D from 10 days after the date on which a person acquires beneficial ownership of more than five percent of a covered class of equity securities, or loses eligibility to file on Schedule 13G, to five days after the date of such acquisition.[16] The Proposal would also amend Rule 13d-2(a) to require that amendments to Schedule 13D be filed within one business day of a material change.[17] We believe these changes are appropriate for Schedule 13D filers, as they will enable investors and the market more generally to better track when beneficial owners take significant positions in covered securities for purposes of controlling or exerting influence over issuers, resulting in more informed decision-making by investors and more accurate valuation of securities by the market.

In our comments above, we have explained our concerns about the Proposal's shortened timeline for QIIs filing on Schedule 13G. Our objections to those particular provisions center on the fact that QIIs reporting beneficial ownership information on Schedule 13G have no control intent and are unlikely to engage in abusive trading practices, and thus should not be required to take on onerous reporting requirements for ordinary course investment activity. The situation is different, however, in the context of Schedule 13D, where filers have taken a beneficial ownership position in a covered class of equity securities with the goal of influencing or controlling the issuer. In that scenario, we agree with the Commission's concern that in light of the "rapid pace with which trading activities and large accumulations of beneficial ownership can occur in the financial markets today as compared to when the [Schedule 13D filing] deadline was enacted in 1968. . .the current delay in reporting market-moving information on Schedule

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[16] *Id*. at 13851.

[17] *Id*. at 13857.

13D raises investor protection concerns."[18] This is because "large shareholders may acquire more shares without contemporaneously disclosing their beneficial ownership during the 10-day period that follows the date that a Schedule 13D filing obligation arises," and "the informational imbalance between a buyer and seller during that period may result in transactions being consummated based on mispriced securities."[19] We agree with the Commission's proposed solution to these concerns: a shortened reporting deadline that will provide investors and the market with more timely information and greater transparency, while still giving Schedule 13D filers sufficient time to report their activities to the SEC. For the sake of investor protection, accurate pricing, and market efficiency, we support the proposed changes to the filing timelines for beneficial owners reporting on Schedule 13D.

V. **Conclusion**.

We appreciate the SEC's efforts to modernize the reporting regime for beneficial owners of covered securities. We recognize that with its release of this Proposal, the Commission has worked to strike a balance between providing investors with timely, accurate information and not overburdening filers on Schedules 13D and 13G with unduly stringent reporting requirements. In the case of Schedule 13D filers, we think the Commission has struck this balance well. However, we believe the proposed new reporting requirements for QIIs filing on Schedule 13G are far less appropriate for the reasons discussed above, and should be eliminated from the Proposal. We would also urge the Commission to consider our recommendation to remove cash-settled derivative securities from its beneficial ownership reporting framework. We hope the perspective we have provided is helpful to the SEC as it works toward a final rulemaking on this topic, and we welcome further engagement on any aspect of this letter.

Sincerely,

Theresa Brunsman

Theresa Brunsman

18 *Id*. at 13852.

19 *Id.*