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October 31, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via Email to: rule-comments@sec.gov

Re: Request for Comment on Fund Retail Investor Experience and Disclosure, File No. S7-12-18

Dear Mr. Fields:

As the leading provider of retirement and other financial services for those in academic, research, medical, and cultural fields, Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to submit this letter in response to the Securities and Exchange Commission's ("SEC," or the "Commission") request for public comment from individual investors and other interested parties on enhancing disclosures by mutual funds, exchange-traded funds, and other types of investment funds (collectively, "funds") to improve the investor experience and help investors make more informed investment decisions.[1] We commend the Commission for seeking comments on this important issue, and we look forward to continuing this dialogue as we strive to enhance and improve investor disclosure in a meaningful way that embraces evolving technology. In this spirit, we are writing to recommend that the SEC consider certain enhancements to the current fund disclosure regime that we believe would ease the costs that fund shareholders bear while maintaining a robust fund disclosure framework.

Specifically, we urge the Commission to (1) amend Rule 19a-1 under the Investment Company Act of 1940 (the "1940 Act") to permit funds to satisfy their disclosure

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[1] *Request for Comment on Fund Retail Investor Experience and Disclosure*, SEC Release No. 33-10503, 83 Fed. Reg. 26891 (June 11, 2018), available at: https://www.gpo.gov/fdsys/pkg/FR-2018-06-11/pdf/2018-12408.pdf.

obligations thereunder by posting written statements required under Section 19(a) of the 1940 Act ("19(a) Notices") on their websites; (2) confirm that funds and their intermediaries will satisfy their delivery obligations under Section 5 of the Securities Act of 1933 (the "Securities Act") by providing prospectuses on their websites or retirement plan microsites, so long as they obtain affirmative indications that prospective investors have accessed the prospectuses; (3) propose a rule similar to the SEC's recently finalized Rule 30e-3 that would allow funds to satisfy their delivery obligations by providing prospectus updates and supplements through an optional electronic "notice and access" method; and (4) revise Forms N-1A, N-2 and N-3 to exclude interest expenses from the fee and expense tables included in a fund's prospectus. We also commend the Commission for its October 30, 2018 proposal to improve disclosure and permit the use of summary prospectuses for investors in variable annuities and variable life insurance contracts. We discuss our recommended changes in greater detail below.

About TIAA.

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions, retirement-plan participants, and retail customers we serve and to provide financial products that meet their needs. To carry out this mission, we have evolved to include a range of financial services, including asset management and retail services. With our strong nonprofit heritage, we remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good.

Today, TIAA as an enterprise has multiple registered investment adviser ("RIA") and broker-dealer affiliates. Our investment model and long-term approach aim to benefit the five million individual customers we serve across more than 15,000 institutions.[2] TIAA's investment management subsidiary Nuveen, LLC ("Nuveen") includes RIAs that collectively manage over $973 billion in assets, including registered investment companies, separately managed accounts, and various other product offerings. This includes over $139 billion in mutual funds, closed-end funds, and exchange-traded funds in the Nuveen fund complex; over $138 billion in the TIAA-CREF mutual fund complex; and over $232 billion in the College Retirement Equity Fund ("CREF"), an

[2] Participant data are as of June 30, 2018.

open-end investment company that issues variable annuity contracts.[3] Nuveen's products and services are distributed through a wide range of unaffiliated intermediaries, as well as through TIAA.

TIAA's unique corporate structure allows us to focus our efforts on our clients' long-term financial needs. TIAA has no outside shareholders, other than the TIAA Board of Overseers, which is a not-for-profit entity. Importantly, under TIAA's corporate charter, TIAA functions without profit to the corporation or its shareholders. As a result, our corporate interests are aligned with those of our customers – both at the retirement plan and individual investor level. This structure makes TIAA particularly interested in the potential cost savings that may be achieved by expanding website delivery of shareholder documents, which would ultimately benefit our retirement-plan participants and other retail customers. Given the amount of retail assets we manage and our commitment to meaningful and transparent disclosure, we feel we are well positioned to comment on how the current fund disclosure regime could be enhanced to better serve fund shareholders.

The SEC should amend Rule 19a-1 to specify that funds will satisfy their delivery obligations by posting 19(a) Notices to their websites.

Section 19(a) and Rule 19a-1 thereunder require a fund to provide shareholders with contemporaneous written statements identifying the source of distributions to shareholders if any portion of the distributions is from a source other than the fund's net income. We recommend that the Commission consider an amendment to Rule 19a-1 that would specifically permit a fund to satisfy this disclosure obligation by posting 19(a) Notices to the fund's website by default, rather than by sending paper 19(a) Notices in the mail.[4] In order to make use of the option to post 19(a) Notices to a website by default, a fund would have to (i) provide shareholders with prior written notice that 19(a) Notices will be made available on the fund's website in the future and (ii) give shareholders the opportunity to choose to receive paper 19(a) Notices by mail, free of charge. In our experience, it can cost fund complexes millions of dollars every year to print and mail paper 19(a) Notices to all

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[3] Asset data are as of June 30, 2018. Nuveen assets under management are inclusive of Nuveen's multiple investment subsidiaries, including Nuveen Asset Management, LLC; Symphony Asset Management, LLC; NWQ Investment Management Company, LLC; Santa Barbara Asset Management, LLC; Winslow Capital Management, LLC; AGR Partners LLC; Churchill Asset Management LLC; Greenwood Resources Capital Management, LLC; Gresham Investment Management LLC; Nuveen Fund Advisors, LLC; Nuveen Investments Advisers, LLC; Teachers Advisors, LLC; TIAA-CREF Investment Management, LLC; and Nuveen Alternatives Advisors LLC.

[4] We note that the source of a distribution described in a 19(a) Notice may be subject to recharacterization at a future date, because the source of a fund's distribution may be not be determined until the end of the fund's fiscal year. In addition to the information provided in the 19(a) Notice, fund shareholders also receive IRS Form 1099-DIV and the fund's annual report, both of which identify the source of the fund's distributions.

shareholders – and it is the funds' shareholders that ultimately bear these costs.[5] Given the high rate of internet access among today's shareholders, the SEC's increased embrace of electronic delivery of fund disclosure documents in recent years, and the potential cost savings involved, we believe the benefits of allowing funds to post 19(a) Notices on their websites justify our proposed amendments to Rule 19a-1.

2013 Guidance Update on Electronic Delivery of 19(a) Notices

The Commission's Division of Investment Management (the "Division") previously identified certain circumstances under which funds may provide 19(a) Notices electronically. In a 2013 Guidance Update (the "2013 Guidance Update"), the Division shared SEC staff's view that funds can fulfill their Section 19(a) disclosure obligations by delivering 19(a) Notices to their shareholders electronically.[6] Importantly, SEC staff's view was predicated on a fund's compliance with the SEC's 2000 guidance on use of electronic delivery (the "2000 Guidance").[7] Under this guidance, a fund is allowed to electronically deliver a 19(a) Notice in the form of an e-mail message to a shareholder containing the 19(a) Notice itself or an electronic link to it, so long as the fund (or its intermediary) has obtained the prior consent of the shareholder to receive communications through electronic means, and the fund only sends e-mails to those shareholders that have expressly consented to electronic delivery (with immediate cessation of electronic delivery in the event a shareholder withdraws his or her consent).

Although the 2013 Guidance Update was a positive first step, its reliance on e-mail delivery and affirmative consent has limited its reach. In light of the adoption of Rule 30e-3, we believe it is appropriate for the SEC to amend Rule 19a-1 to clarify that funds can satisfy their Section 19(a) disclosure requirements by posting 19(a) Notices to a website by default, so long as they provide shareholders with appropriate advance notice and give them the opportunity to receive 19(a) Notices in paper form free of charge.

Rule 30e-3

Since the Division issued the 2013 Guidance Update, the Commission has made significant strides toward encouraging greater default electronic delivery of other

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[5] In 2017, the Nuveen fund complex incurred printing and mailing costs associated with 19(a) Notices of $1.14 million.

[6] *Shareholder Notices of the Sources of Fund Distributions – Electronic Delivery*, IM Guidance Update No. 2013-11 (Nov. 2013), available at: https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-11.pdf.

[7] *Use of Electronic Media,* SEC Interpretation and Solicitation of Comment, Release No. 33-7856 (Apr. 28, 2000), available at: https://www.sec.gov/rules/interp/34-42728.htm.

fund disclosure documents, so long as funds provide appropriate notice that their materials are available via website. In June 2018, the SEC adopted Rule 30e-3 under the 1940 Act, which creates an optional electronic "notice and access" method by which funds can deliver shareholder reports by default.[8] Under this new rule, a fund may deliver its shareholder reports by making them publicly accessible on a website, provided the fund sends investors a notice of each report's availability by mail and allows investors to choose to receive the reports in paper form at any time, free of charge. In the rule's adopting release, the SEC noted its belief that allowing funds to deliver shareholder reports to investors electronically, including by posting such reports online, "will improve investors' ability to access and use this information…while reducing expenses associated with printing and mailing that are borne by funds, and ultimately, by their investors."[9]

Amending Rule 19a-1 to Allow Website Delivery of 19(a) Notices By Default

We believe that allowing funds to provide shareholders with 19(a) Notices by posting them on a website by default is a logical extension of the reasoning behind Rule 30e-3. Since Rule 19a-1 was first enacted, technological advances have dramatically altered the way funds provide shareholders the information they need to make informed investment decisions – and yet Rule 19a-1 has not been updated to reflect those advances. Although the Division's 2013 Guidance Update was a step in the right direction, we believe Rule 19a-1 should be amended to expressly permit funds to satisfy their disclosure obligations thereunder by posting 19(a) Notices on their websites by default, so long as they provide shareholders with appropriate advance notice and give them the opportunity to receive 19(a) Notices in paper form free of charge.

We recognize that Section 19(a) and Rule 19a-1 play an important role in protecting investors from mistaking fund distributions that come from capital gains, for example, for distributions that have come from accumulated net income. The information disclosed in 19(a) Notices is important in helping shareholders make informed decisions about their investments. We believe that allowing funds to post 19(a) Notices on their websites will further advance the goals of Section 19(a) and Rule 19a-1 by encouraging critical communications between funds and their shareholders and giving shareholders the opportunity to more readily access and use important information about fund distributions. In addition, allowing funds to provide 19(a) Notices via their websites by default will mitigate the significant costs involved in printing and mailing these notices to all shareholders, thus decreasing shareholders' expenses.

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[8] *Optional Internet Availability of Investment Company Shareholder Reports*, SEC Release No. 33-10506, 83 Fed. Reg. 29158 (Jun. 22, 2018), available at: https://www.gpo.gov/fdsys/pkg/FR-2018-06-22/pdf/2018-12423.pdf.

[9] *Id*. at 29195.

Specifically, we recommend that the SEC amend Rule 19a-1 to add a new section stating that funds may meet their Section 19(a) disclosure requirements by posting 19(a) Notices to their websites, so long as funds (i) provide advance written notice to shareholders informing them that 19(a) Notices will be posted on the fund's website by default in the future and (ii) give shareholders the option to choose paper delivery of 19(a) Notices free of charge at any time.

As is required under Rule 30e-3 with respect to shareholder reports, we recommend that the SEC adopt an extended transition period before default web posting of 19(a) Notices is allowed. For the sake of operational simplicity, we suggest that the transition period expire on January 1, 2021 – the same effective date set forth in Rule 30e-3. Any fund that wishes to post 19(a) Notices on its website as of that date would be required to provide advance written notice to its shareholders during the transition period. A fund would meet its advance notice requirements by (i) including a transition disclosure in each 19(a) Notice the fund issues before January 1, 2021, alerting shareholders to the fact that 19(a) Notices will be made available via the fund's website by default as of January 1, 2021, and instructing shareholders on how they can opt for paper delivery, or (ii) if the fund does not issue any 19(a) Notices before January 1, 2021, but wishes to reserve the right to post 19(a) Notices on its website in the future, including the same transition disclosure in the fund's prospectus and each of the fund's shareholder reports issued before January 1, 2021. The transition period should give shareholders ample time to determine whether they would like to continue receiving 19(a) Notices by paper.

We believe our proposed changes would be consistent with the Commission's evolving views on electronic delivery of fund disclosure documents, as well as with Rule 30e-3, while preserving the important shareholder protections established in Section 19(a) and Rule 19a-1.

The SEC should provide guidance or issue a new rule clarifying that funds and their intermediaries can satisfy their delivery obligations under Section 5 of the Securities Act by making prospectuses available to prospective investors online.

Section 5 of the Securities Act prohibits the use of interstate commerce to sell securities that are not accompanied or preceded by a prospectus.[10] In our experience, many fund investors, including participants in retirement plans that include mutual funds, prefer to access a fund's most recent prospectus and other disclosure documents via the fund's website or the retirement plan's website before making their investment decisions. However, under current regulations, funds must

[10] 15 U.S.C. § 77e(b)(2).

actively deliver prospectuses to investors – often in paper form – rather than simply making them available on a website. Given the SEC's recent adoption of Rule 30e-3, which allows funds to satisfy their shareholder report delivery obligations through an optional electronic "notice and access" method, we think it would be appropriate for the Commission to allow funds and their intermediaries to satisfy their Section 5 delivery obligations by providing required prospectuses to prospective investors via a website, subject to two conditions.

First, funds or their intermediaries must have the ability to obtain, and must obtain for each prospective investor who does not receive a paper copy of a given prospectus, an affirmative indication that the prospective investor has reviewed the prospectus online at the time the investor purchases or elects to purchase the fund. This affirmative indication could be obtained through a simple electronic link that the prospective investor must click to acknowledge that he or she has reviewed the relevant prospectus before a purchase is made (with language informing the investor that he or she may opt for paper or electronic delivery of the prospectus if desired).[11] Funds or their intermediaries would be required to keep records of these affirmative indications for each prospective investor, and make such records available to Commission staff upon request. Second, prospective investors must have the option to receive prospectuses in paper form or through electronic delivery (*i.e.*, via e-mail), free of charge. With these safeguards in place, we believe it would be appropriate for the SEC to clarify that funds and their intermediaries can satisfy their prospectus delivery obligations under Section 5 of the Securities Act by providing prospectuses to prospective investors online by default.

The SEC should propose a new rule creating an optional electronic "notice and access" method of delivery for summary prospectuses, annual prospectus updates, and prospectus stickers.

Electronic delivery of summary prospectuses, fund prospectus updates, and supplements, or "stickers," is also subject to the conditions set forth in the SEC's 2000 Guidance, meaning that funds must obtain prior consent from shareholders before delivering these updates via e-mail. As discussed above, Rule 30e-3 creates an optional electronic "notice and access" method by which a fund is permitted to provide shareholder reports via a publicly accessible website, so long as the fund mails investors a paper notice of each report's availability and allows investors to opt for paper delivery at any time, free of charge.[12] We believe that funds should be able to use the same "notice and access" method to make summary prospectuses,

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[11] Similar to the requirement that funds or their intermediaries deliver the most current prospectus to investors, this would be a one-time acknowledgment at the point of purchase for the first dollar purchase of fund shares.

[12] *Optional Internet Availability of Investment Company Shareholder Reports*, 83 Fed. Reg. 29158 (Jun. 22, 2018).

prospectus updates, and prospectus stickers available. We urge the SEC to propose a rule allowing funds to provide prospectus updates and stickers electronically via the same optional "notice and access" method described in Rule 30e-3. Given our view that funds should be able to meet their delivery obligations by posting prospectuses on their websites, it follows logically that funds should be able to provide updates and supplements to those prospectuses via web posting as well.

We support the SEC's efforts to extend the disclosure framework for summary prospectuses to variable annuities and other variable insurance products.

As a variable annuity and insurance provider, TIAA is particularly interested in the disclosure requirements that apply to summary prospectuses. Specifically, we look forward to reviewing and engaging on the SEC's October 30, 2018 proposal to extend the summary prospectus framework to include variable annuities and other variable insurance products. As Division Director Dalia Blass acknowledged in her September congressional testimony, "Investors in variable annuities and other variable insurance products often have to navigate a complex set of disclosures about the variable contract and underlying investment options when deciding whether to invest."[13] Allowing providers of variable products to take advantage of a summary prospectus framework similar to the one open-end funds are able to rely on today would not only simplify the disclosure process and decrease investor confusion, it would reduce the significant printing and mailing costs that variable product providers are currently required to shoulder. For that reason, we not only support the extension of the current summary prospectus regime to variable products, but we also recommend that any future changes the SEC makes to the summary prospectus framework (*e.g.*, if the SEC were to allow summary prospectuses to be provided via an optional electronic "notice and access" method) apply to variable products as well.

The SEC should revise Forms N-1A, N-2 and N-3 to exclude interest expenses from the fee and expense tables included in a fund's prospectus.

The SEC's request for comment includes a request on how the disclosure of a fund's fees and expenses can be improved. We endorse the recommendation of the Investment Company Institute ("ICI") that the SEC revise Item 3 of Form N-1A to exclude interest expenses from the "other expenses" included in that form's fee and

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[13] United States Cong. House Committee on Financial Services, Subcommittee on Capital Markets, Securities, and Investment. *Testimony on "Oversight of the SEC's Division of Investment Management." Sep. 26, 2018.* 115th Cong. 2nd sess. (statement of Dalia Blass, Director, Division of Investment Management, SEC), available at: https://www.sec.gov/news/testimony/testimony-2018-09-26-blass.

expense table,[14] and we recommend that this be extended to Item 3 of Forms N-2 and N-3 as well. As ICI notes, interest expenses are more akin to transaction costs (such as brokerage commissions, which are excluded from the fee and expense table) incurred in implementing a fund's investment strategy, as opposed to a fund's more traditional operating costs associated with audit, legal, custody, and transfer agency services.

We provide additional context in support of this recommendation below. As we will discuss in greater detail, many municipal bond funds employ tender option bond ("TOB") transactions as a form of leverage, and certain structural changes to TOB transactions required by the adoption of the Volcker Rule have resulted in a misleading appearance of an increase in the interest expenses of many municipal bond funds. Excluding interest expenses from the fee and expense table would correct the misleading impression that the expenses of municipal bond funds engaged in TOB transactions have increased.

In a TOB transaction, one or more highly-rated municipal bonds are deposited into a special purpose trust (the "TOB Trust") that issues floating rate securities ("Floaters") to third parties and inverse floating rate securities ("Inverse Floaters") to a fund. The Floaters pay interest at a rate that is reset periodically (generally weekly) to reflect current short-term tax-exempt interest rates. Holders of the Floaters have the right to tender them back to the TOB Trust for par plus accrued interest. The Inverse Floaters pay interest at a rate equal to (a) the interest accrued on the underlying bonds, minus (b) the sum of the interest payable on the Floaters and the fees payable in connection with the TOB transaction. Thus, interest payments on the Inverse Floaters will vary inversely with the short-term rates paid on the Floaters. Because holders of the Floaters have the right to tender their securities to the TOB Trust at par plus accrued interest, the fund, as the holder of the Inverse Floaters, is exposed to all of the gains or losses on the underlying municipal bonds, despite the fact that its net cash investment is significantly less than the value of those bonds. This multiplies the positive or negative impact of the underlying bonds' price movements on the value of the Inverse Floaters, thereby creating leveraged exposure to the underlying municipal bonds.

The accounting treatment of interest expenses attributable to a fund's investments in Inverse Floaters differs depending on whether the Inverse Floater is "self-deposited" or "externally-deposited." An Inverse Floater issued in a TOB transaction is "self-deposited" when a fund (a) transfers an underlying bond that it owns to a TOB Trust created by a third party or (b) transfers an underlying bond that it owns, or that it has

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[14] Letter from the ICI, to Mr. Brent Fields, Secretary, US Securities and Exchange Commission, dated October 24, 2018, available at https://www.ici.org/pdf/18_ici_sec_shareholder_ltr.pdf.

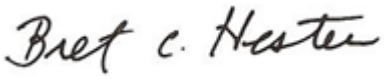
purchased in a secondary market transaction for the purpose of creating an Inverse Floater, to a TOB Trust created at its direction. An Inverse Floater is "externally-deposited" when purchased by a fund in a secondary market transaction from a third-party creator of the TOB Trust where the fund does not first own the underlying bond. An investment in a self-deposited Inverse Floater is accounted for as a "financing" transaction (*i.e*., a secured borrowing). The income from the Inverse Floater is reflected as a component of "Investment income" on the fund's Statement of Operations, and the interest payable on the Floaters and fees payable in connection with the TOB transaction are included as a component of "Interest expense" on the Statement of Operations (and therefore reflected as an expense in the fund's fee and expense table as well). By contrast, an investment in an externally-deposited Inverse Floater is simply accounted for as a purchase of the Inverse Floater, with the income from the Inverse Floater reflected under "Investment income" on the Fund's Statement of Operations net of interest payable on the Floaters and fees payable in connection with the TOB transaction (*i.e*., these interest expenses and fees are excluded from "Interest expense" on the fund's Statement of Operations and are not reflected in the fund's fee and expense table).

Due to certain regulatory dynamics following the adoption of the Volcker Rule, bank sponsorship of TOB Trusts has disappeared. As a result, Inverse Floaters issued in connection with the establishment of newly-created TOB Trusts have become self-deposited, with the interest payable on the associated Floaters reflected as an interest expense. Thus, as municipal bond funds have increasingly employed self-deposited Inverse Floaters over the past several years, it appears that their expense ratios have been increasing. It is important to note, however, that the increasing use of self-deposited Inverse Floaters has not led to an increase in the net interest paid or the net income received through the use of TOB transactions; rather, because the proportion of self-deposited Inverse Floaters utilized by funds has increased, the different accounting treatment afforded self-deposited Inverse Floaters has simply shifted a portion of interest expense associated with Inverse Floaters onto funds' Statement of Operations (and thus onto fee and expense tables) that was previously excluded for accounting purposes. This misleading impression of an increase in expenses has caused significant investor confusion, which, given the highly technical nature of the issue, has been difficult to explain.

Conclusion.

TIAA appreciates the SEC's efforts to modernize and enhance the regulatory framework for fund disclosure. We believe our recommended updates would improve the current fund disclosure regime by reflecting recent developments in technology, encouraging more frequent and informative communications between funds and their shareholders, and preserving essential investor protections. We welcome the opportunity to engage further on any aspects of the foregoing.

Sincerely yours,



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