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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: Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices, File No. S7–17–22

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 rule amendments under the Investment Advisers Act of 1940 and the Investment Company Act of 1940 to require registered investment advisers, certain advisers that are exempt from registration, and registered investment companies and business development companies (referred to collectively herein as "funds") to provide additional information regarding their environmental, social, and governance (''ESG'') investment practices (the "Proposal").[1] We commend the Commission's efforts to create "a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies" that will help "inform and protect investors while facilitating further innovation in this evolving area of the asset management industry."[2] As we have expressed in previous discussions with the Commission (most notably in a 2020 letter[3] responding to the SEC's request for public comment on the

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[1] *Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices*, 87 Fed. Reg. 36654 (June 17, 2022), *available at*: https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-11718.pdf.

[2] *Id.*

[3] Letter from Amy O'Brien and Yves Denizé of TIAA to SEC re Request for Comments on Fund Names (May 5, 2020), *available at*: https://www.sec.gov/comments/s7-04-20/s70420-7153866-216467.pdf (the "2020 Comment Letter").

Names Rule[4]), we support additional regulatory action by the SEC that would require ESG funds to clearly and prominently disclose their ESG investment strategies and methodologies in their prospectuses, including specific disclosures describing how various ESG factors influence their investment objectives and processes. We understand that without this disclosure, a disconnect can develop between an investor's perception of a fund's ESG investment strategies and goals, and the reality of how that fund actually incorporates ESG factors into its investment decision-making process. Indeed, if investors are to make fully informed investment decisions that take relevant ESG factors into account, they must have access to reliable, consistent, comparable ESG data from funds and investment advisers, as well as from public operating companies.

TIAA and Nuveen offer a number of funds that employ ESG-specific investment strategies and would thus be subject to the SEC's proposed new ESG disclosure requirements. However, given the breadth of the Proposal's disclosure requirements – particularly those that apply to "Integration Funds," as defined under the Proposal – it is possible that all or almost all of the funds that TIAA and Nuveen offer could fall under the Proposal's scope. In light of the Proposal's extensive implications for our products, we are eager to engage with the Commission on those aspects of the Proposal that we believe are unduly burdensome or could result in unintended consequences. We note that we have reviewed the comment letters prepared by the Investment Company Institute ("ICI") and the Securities Industry and Financial Markets Association ("SIFMA") in response to the Proposal, and we echo many of the concerns and arguments expressed therein. For the sake of expediency, we have noted below those aspects of the letters submitted by ICI and SIFMA that correspond with our strongest views and concerns.

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, we have evolved to include a range of financial services, including retail services and the asset management services offered by Nuveen and its subsidiaries. Nuveen is comprised of investment advisers that collectively manage over $1 trillion in assets,[5] including in the Nuveen and TIAA-CREF registered fund complexes as well as in private funds, separately managed accounts, and structured vehicles.

Our organization has decades of experience as a leader in responsible investing ("RI"). We have leveraged our knowledge in this space to create and implement RI principles that support well-functioning markets in order to preserve and grow financial, social, and environmental capital. We believe responsible ESG business practices help to reduce risk, improve financial performance, and promote positive social and environmental outcomes. With a perspective

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[4] *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.

[5] As of June 30, 2022.

informed by our many years of experience, we respectfully offer the thoughts and recommendations below in response to the Proposal.

II. The SEC's definition of "Integration Funds" is overly broad and should be narrowed to focus on a smaller subset of funds.

We appreciate that the SEC's proposed ESG disclosure framework takes a layered approach, with varying levels of disclosure required depending on which of three categories a fund falls into, as defined under the Proposal: Integration Funds, ESG-Focused Funds, and Impact Funds.[6] The Proposal defines an "Integration Fund" as "a fund that considers one or more ESG factors along with other, non- ESG factors in its investment decisions, but those ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio."[7] While we agree with the Commission that a layered disclosure framework makes sense given the varying degrees to which funds may factor ESG data into their investment strategies, we have serious concerns about how broadly the SEC has proposed to define "Integration Funds."

On this point, we agree with the views expressed by both ICI and SIFMA: namely, that the proposed definition of "Integration Funds" is so all-encompassing that it would capture the vast majority of funds, if not all of them. Almost all funds take into account corporate governance factors – the "G" in ESG – as some part of their investment process, even if they do not consider environmental or social factors. Under a plain reading of the Proposal, a fund's consideration of any corporate governance factor as part of its investment strategy would mean that the fund qualifies as an Integration Fund, and would be required to make ESG-specific disclosures to investors. This approach risks misleading investors by creating the false impression that there are far more funds that consider ESG factors in a meaningful way as part of their investment process than is actually the case. Additionally, by requiring this broad universe of "Integration Funds" to make specific ESG disclosures in their prospectuses, the SEC risks elevating ESG factors far above the many other significant factors these funds may consider as part of their investment strategy, which would be inaccurate, inappropriate, and confusing. We do not believe it is in the best interest of investors for the SEC to make it seem as though virtually all funds are ESG integration funds when that is simply not the case.

Ultimately, we agree with the recommendation made in both SIFMA and ICI's comment letter that the Commission should eliminate the "Integration Fund" category in its entirety, and apply its proposed ESG disclosure requirements solely to ESG-Focused Funds and Impact Funds. In developing this recommendation, we considered whether there might be some way to modify the definition of "Integration Funds" to address these concerns; however, after careful thought, we concluded that it would be extremely difficult, if not impossible, to narrow the definition with

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[6] 87 Fed. Reg. 36659.

[7] *Id.* at 36660.

sufficient accuracy such that it captures only those funds that integrate ESG factors beyond the corporate governance context in a meaningful way as part of their investment process. We believe it would be much cleaner and simpler to eliminate the Integration Fund category completely and focus instead on those funds that use ESG factors as a significant part of their investment process, and we respectfully recommend that the SEC take that approach.

III. The SEC should require funds and advisers to make qualitative, rather than quantitative, disclosures about their proxy voting and issuer engagement activity.

The SEC has included in the Proposal provisions requiring "a fund for which proxy voting or other engagement with issuers is a significant means of implementing its strategy to disclose information regarding how it voted proxies relating to portfolio securities on particular ESG-related voting matters and information regarding its ESG engagement meetings."[8] Some of these required disclosures would be more qualitative or narrative in nature, while others would be far more quantitative. Specifically, the Proposal would require funds that self-identify as using proxy voting and issuer engagement as a significant means of implementing their investment strategy to disclose in their annual reports "the percentage of ESG-related voting matters during the reporting period for which the Fund voted in furtherance of the initiative,"[9] as well as "the number or percentage of issuers with whom the fund held ESG engagement meetings during the reporting period related to one or more ESG issues and total number of ESG engagement meetings."[10]

First and foremost, we disagree with the definition of "ESG engagement meeting" that the SEC sets out in the Proposal. As proposed, an "ESG engagement meeting" means "a substantive discussion with management of an issuer advocating for one or more specific ESG goals to be accomplished over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with management regarding this goal."[11] We appreciate that this definition is designed to prevent funds from exaggerating the number of meaningful ESG engagement meetings they've taken part in by making clear that superficial discussions between a fund and an issuer that are not well designed to make meaningful progress will not qualify for purposes of the SEC's disclosure regime. However, we believe the definition proposed goes too far in the opposite direction, and would exclude many ESG-related interactions that should be disclosed to investors. In particular, the definition's reference to specific time periods and measurable goals is unduly limiting, in our view, as it assumes that every ESG *engagement* will necessarily lead to a quantifiable ESG *outcome*, which is not always the case. There are many legitimate, worthy ESG goals, especially in the climate space,

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[8] *Id.* at 36659.

[9] *Id.* at 36673.

[10] *Id.* at 36674.

[11] *Id.*

for which it may be difficult to set a specific timeline or measure quantitative progress in the near term. Additionally, we believe that effective ESG engagement meetings can occur outside of an "ongoing dialogue" – for example, where a fund engages an issuer by proactively sending a thoughtful letter emphasizing the ESG goals that are most important to the fund. While direct dialogue with an issuer is one way for a fund to engage on ESG issues, this example highlights that written communication can also prove useful in encouraging issuers to make progress on ESG issues. Given these views, we recommend the Commission take a more balanced approach by defining an "ESG engagement meeting" as:

"A substantive ~~discussion~~ communication with management of an issuer advocating for one or more specific ESG goals to be accomplished." ~~over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with management regarding this goal~~

We also disagree with the inclusion of quantitative proxy voting and ESG engagement disclosure requirements in the Proposal. In our view, it is inappropriate for the SEC to create the impression that a fund's decision to vote against an "ESG-related" initiative means that the fund's vote was contrary to its ESG investment strategy, as a fund may reasonably vote against a particular ESG-related proxy matter in an effort to further a different ESG goal or value. Similarly, the requirement that funds disclose the percentage of issuers with whom they engaged on ESG issues, as well as the total number of ESG engagement meetings held during the reporting period, implies that it is the quantity of issuer engagement meetings rather than the quality that matters most, which may very well not be the case. As an alternative to the proposed quantitative disclosure requirements on proxy voting and issuer engagement, we support SIFMA's recommendation that the SEC take a "show your work" approach, under which funds that use proxy voting and issuer engagement as a significant part of their investment strategy would be required to disclose and explain their engagement efforts and proxy votes as part of a narrative that allows them to provide relevant context and detail. We believe this is a more effective way to inform investors about the ways funds use proxy voting and issuer engagement to further their ESG objectives.

IV. **The SEC should narrow the set of funds that are subject to the greenhouse gas emissions disclosure requirement, and should make the requirement itself less burdensome.**

For ESG-Focused Funds that specifically consider environmental factors, the Proposal would require disclosure of certain greenhouse gas ("GHG") emissions metrics – namely, the carbon footprint and the weighted average carbon intensity of the fund's portfolio.[12] In addition, an ESG-Focused Fund that considers environmental factors would also be required to disclose the Scope 3 GHG emissions of its portfolio companies, to the extent that Scope 3 emissions data is

[12] *Id.* at 36676.

reported by the fund's portfolio companies.[13] Only those ESG-Focused Funds that affirmatively state that they do not consider issuers' GHG emissions as part of their investment strategy would not be required to make such disclosures.[14] The Proposal specifies the sources funds should use to access this GHG emissions data according to a "data hierarchy." Funds are instructed to first source data from regulatory reports filed with the SEC. Where that data is not available through regulatory filings, funds are then instructed to access information published by the portfolio company itself, and finally, if a "reasonable search" fails to uncover information from those first two sources, to "use a good faith estimate of the portfolio company's Scope 1 and Scope 2 emissions."[15] The SEC does not direct funds to use any particular estimation method, in recognition of the fact that "there are different approaches to estimating a portfolio company's GHG emissions that funds could use."[16]

We strongly agree with the SEC's position that "the current lack of consistent, comparable and decision-useful [GHG emissions] data makes it difficult for investors to make better informed investment decisions that are in line with their ESG investment goals and to assess any GHG-related claims a fund has made,"[17] and we commend the Commission for attempting to address this issue in the Proposal. However, we do not believe the proposed GHG emissions disclosure requirement for ESG-Focused Funds is optimally designed to achieve the SEC's objectives. Fund investors are not the only parties that lack access to reliable, consistent ESG data; funds themselves rely on portfolio companies to provide data about their GHG emissions. Without a dependable way to source this data from all issuers, funds would be put in the unenviable position of having to disclose data under the Proposal based on their own estimates, which will no doubt be inconsistent and inaccurate to varying degrees from one fund to the next. Requiring funds to disclose data to investors under a formal regulatory framework when the funds themselves cannot guarantee access to the data they need to make those disclosures is unfair and unworkable. This is particularly true with respect to Scope 3 GHG emissions data, which can be extremely difficult to source and calculate with any degree of confidence or consistency. The ultimate result of the SEC's proposed requirements on GHG emissions disclosure is that funds will be forced to either report data that they know is likely inaccurate, unreliable, and based on incomplete information, or fail to meet their disclosure obligations under the new framework. Neither outcome would be in the best interest of investors.

Ultimately, we support ICI's recommended modifications to the GHG emissions disclosure requirements in the Proposal. Specifically, only those ESG-Focused Funds that consider the GHG emissions of portfolio companies as part of their investment strategy should be required to report GHG emissions data. Second, these funds should only be required to report GHG

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[13] *Id.* at 36682.

[14] *Id.* at 36676.

[15] *Id.* at 36681.

[16] *Id.*

[17] *Id.* at 36676.

emissions data sourced from regulatory filings, and should be permitted to offer an explanation when they are unable to disclose the required data due to a lack of reliable sources. Third, under no circumstance should a fund be required to disclose Scope 3 GHG emissions data under the Proposal. And finally, funds should be granted a safe harbor from liability where they are reporting GHG emissions information that is dependent on third-party data sources. With these changes, we believe the SEC can achieve its goal of expanding investor access to quality, consistent GHG emissions data while acknowledging the fact that funds can accurately report only that data that is accessible from reliable sources.

V. **The SEC should extend the compliance period from one year to at least two years.**

Our final concern is related to the proposed period of time for funds to come into compliance with the Proposal's disclosure requirements. The SEC has offered funds and advisers only one year from publication of the final rule to make the necessary adjustments to their disclosures. This compliance period is far too short. The Proposal would require fund sponsors to analyze their funds, categorize them according to the SEC's three proposed definitions, determine the applicable disclosure requirements for each fund, source all necessary data (and in some cases go through complex calculations to estimate GHG emissions data), and make all necessary changes to the prospectuses and annual reports for each product. That represents a great deal of painstaking and time-intensive work, if it is to be done thoroughly and correctly. We urge the SEC to extend the Proposal's compliance period to at least two years to give funds and advisers the time they need to update their disclosures in a thoughtful way. We also echo ICI's point that if funds are required to report GHG emissions data as part of their annual reports, they will need to have access to at least one full year of GHG emissions reporting from their portfolio companies. Given that the SEC's climate disclosure proposal for public companies is not yet in effect, we believe the SEC should not require funds to include GHG emissions data in their annual reports until after public companies have completed at least one full year of GHG emissions reporting.

VI. **Conclusion.**

We commend the SEC's thoughtful approach to this critical topic. TIAA and Nuveen have long advocated for greater investor access to quality, comparable ESG data, and this proposal is a step in the right direction toward ensuring that investors have the information they need to incorporate material ESG considerations into their investment decision-making. However, while we are largely supportive of the Proposal, there are several aspects that we find concerning, as discussed above. We hope the points and suggestions we have raised in this letter are helpful as the SEC works to finalize an ESG disclosure regime for funds and advisers, and we would welcome further engagement on this issue.

Sincerely,

Amy M. O'Brien

Yves P. Denizé