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

Re: Share Repurchase Disclosure Modernization, File No. S7-21-21

Dear Sir or Madam:

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 disclosure regime for issuer repurchases of equity securities that are registered under the Securities Exchange Act of 1934 (the "Exchange Act") (the "Proposal").[1] We appreciate that the Commission's proposed changes are intended to modernize and improve the current disclosure regime for share repurchases by requiring more timely reporting on new Form SR and enhancing existing periodic disclosure requirements. In addition, we recognize that the Proposal is based on the Commission's comprehensive evaluation of current disclosure requirements, and is designed to address many of the concerns raised by commenters in response to the 2016 Concept Release on business and financial disclosure requirements under Regulation S–K, including disclosure pursuant to Item 703.[2] While we commend the Commission for its years of work on this important topic, we believe the scope of the current Proposal when applied to registered closed-end funds ("CEFs") is overbroad and not well tailored to maximize the benefits of an enhanced share repurchase disclosure regime.

Specifically, the SEC notes that the Proposal is intended in large part to address concerns about the potential "opportunistic and harmful use of issuer share repurchases by issuer insiders" who may view share repurchases "as a tool to raise the price of an issuer's stock in a way that allows insiders and senior executives to extract value from the issuer instead of using the funds to invest in the issuer and its employees" or as "a mechanism to inflate the

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1 *Share Repurchase Disclosure Modernization*, 87 Fed. Reg. 8443 (Feb. 15, 2022), *available at*: https://www.govinfo.gov/content/pkg/FR-2022-02-15/pdf/2022-01068.pdf.

2 *Business and Financial Disclosure Required by Regulation S–K*, 81 Fed. Reg. 23916 (Apr. 22, 2016), *available at*: https://www.govinfo.gov/content/pkg/FR-2016-04-22/pdf/2016-09056.pdf (the "2016 Concept Release).

compensation of their executives in a manner that is not transparent to investors or the market."[3] In the context of publicly-traded operating companies, these are valid concerns, and ones that we share. In the context of CEFs, however, we respectfully believe the proposed enhanced disclosure requirements are not appropriate. Given the way CEFs are structured and managed, there is little incentive or ability for CEF insiders to implement a share repurchase program in an effort to somehow inflate their own compensation. In light of this absence of the primary concern underlying the Proposal in the CEF context, the burdens and expenses CEFs would have to bear to meet the Proposal's new disclosure requirements would, in our view, far outweigh any potential benefit. For that reason, we believe the Proposal should carve out CEFs, and apply only to publicly-traded operating (*i.e.*, non-1940 Act-registered) companies. We discuss our views 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 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, including open-end funds and CEFs, through several investment advisory subsidiaries. In total, Nuveen has more than $1 trillion in assets under management, 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, CEFs and interval funds registered as CEFs. We believe our extensive experience as a leading CEF provider gives us a unique perspective on the application of the Proposal in the CEF context.

II. **The Proposal should carve out registered CEFs from its share repurchase disclosure requirements.**

Question 9: Should we exempt or provide different requirements for registered closed-end funds from the Form SR requirements? Those funds already provide share repurchase disclosure less frequently than most other issuers subject to the disclosure requirement in that they disclose the information semiannually rather than quarterly. Would less frequent disclosure continue to be appropriate for these issuers or, conversely, would investors benefit from the more frequent disclosure on Form SR? Alternatively, because the proposal would only apply to issuers with securities registered pursuant to Section 12 of the Exchange Act, it would only apply to those

[3] 87 Fed. Reg. at 8445.

registered closed-end funds with securities that trade on an exchange. Should we expand the scope of covered registered closed-end funds to more closely match the scope of corporate issuers subject to repurchase disclosure requirements by applying the requirements to registered closed-end funds that would be subject to Section 12(g) of the Exchange Act but for Section 12(g)(2)(B) (15 U.S.C. 78l(g)(2)(B)), which exempts them from the requirement to register their securities under that section unless they are listed on an exchange?

Today, Item 703 of Regulation S-K imposes share repurchase disclosure requirements on issuers (via reporting on Forms 10-Q and Form 10-K). Item 703 specifically requires issuers to disclose the total number of shares purchased by the issuer or any affiliated purchaser during the relevant period, reported on a monthly basis and by class, as well as the average price paid per share, the total number of shares purchased as part of a publicly announced repurchase plan or program; and the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs. Additionally, Item 703 requires footnote disclosure in the aggregate of the principal terms of all publicly announced repurchase plans or programs. Item 9 of Form N–CSR implements the same requirements for CEFs as those set forth in Item 703 for issuers, varying from Item 703 only to account for the different reporting period covered by Form N–CSR.

In light of the growth in issuer share repurchase plans in recent years, as well as the concerns raised by commenters in response to the 2016 Concept Release, the Commission is now seeking to impose additional disclosure requirements on issuers including CEFs that engage in share repurchase activity.[4] Specifically, the Proposal would require daily repurchase disclosure on new Form SR within one business day after execution of an issuer's share repurchase order. The Proposal would also amend Item 703 to require additional detail regarding the structure of an issuer's repurchase program and its share repurchases, and would require all information disclosed pursuant to Item 703 and Form SR to be reported using a structured data language.[5]

In support of these proposed requirements, the Commission argues that where "issuers are repurchasing their own securities, asymmetries may exist between issuers and affiliated purchasers and investors," which in turn "could exacerbate some of the potential harms associated with issuer repurchases," including "the potential for share repurchases to be used by issuers as a mechanism to inflate the compensation of their executives in a manner that is not transparent to investors or the market."[6] We understand that a key driver behind the SEC's proposed new disclosure requirements is a desire to shed light on share repurchase activity that may be undertaken by issuer insiders for purposes of maximizing their compensation, to the detriment of shareholders. Indeed, in touting the potential benefits of the Proposal, the SEC highlights that an enhanced share repurchase disclosure regime would "improve the ability of

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4 *Id.* at 8444.

5 *Id.* at 8446.

6 *Id.* at 8445.

investors to identify repurchases that are more likely to be driven by managerial self-interest (*e.g.*, increasing the share price prior to an insider's sale, meeting a threshold in an executive compensation arrangement, or meeting consensus earnings forecast) and thereby promote investor protection."[7]

We share the SEC's concerns about the potential for operating company executives to use share repurchase programs as a means of inflating their own compensation. But respectfully, we believe these concerns are inapplicable in the context of CEFs. Investors have significant transparency into a CEF's share repurchase activity, which must be publicly disclosed, as well as the impact of such activity on the fund's net asset value ("NAV"), which is calculated according to strict parameters and published on a daily or weekly basis. Any accretion to the CEF's assets as a result of the CEF's ability to purchase and retire shares for less than NAV is reflected in the fund's NAV shortly after the repurchase occurs, which provides investors with ample insight into how a CEF's share repurchase activity impacts the fund's share price. Moreover, CEF insiders are not subject to the same financial incentives as senior executives of operating companies. The compensation structures under which CEF insiders generally operate are not impacted by changes in fund share prices, nor do CEF insiders generally receive fund shares or options thereon as part of their compensation package; thus they have little motivation to initiate share repurchases in an effort to drive the fund share price up for their own personal benefit. For these reasons, we believe there is no compelling reason for the Commission to subject CEFs to an onerous next-day reporting regime for ordinary course activity that poses no real risk of "opportunistic and harmful" behavior by insiders.

Ultimately, we believe the burdens and expenses that would be imposed on CEFs in complying with the Proposal would far outweigh any potential benefit of their disclosure to investors and the market as a whole, given that CEF insiders have little or nothing to gain personally from directing the repurchase of fund shares. In fact, we fail to see how next-day share repurchase reporting by CEFs would benefit investors in any meaningful way. CEFs are already required to provide information about their share repurchase activity in their semiannual reports, which we believe is an appropriate reporting cadence given the way CEFs are structured. Moreover, in addition to disclosing planned share repurchase programs to shareholders in advance, CEFs report their NAVs frequently, typically on a daily basis, which should reflect any recent repurchase activity. It is not clear to us that investors want or need more detailed information about a CEF's latest share repurchases on a near-immediate basis.

We also fear that if CEFs are required to publicly disclose detailed information about their share repurchases, including pricing information, on a next-day basis, it may give investors a false sense that a CEF that has engaged in share repurchase activity has established a floor for its share price, when in fact prices could continue to drop despite the fund's willingness to repurchase shares. These next-day disclosures could exacerbate selling activity by shareholders by giving the inaccurate impression that there is low demand for the fund's shares, thus incentivizing shareholders to sell quickly while the CEF is willing to buy. In these cases, the

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7 *Id.*

disclosure of detailed share repurchase information by a CEF on a next-day basis could significantly impact investor behavior in negative ways. We believe it would be highly inappropriate to subject CEFs to the significant burdens of complying with this stringent disclosure regime when there are few clear benefits – and some potential risks – for investors. As such, we urge the SEC to carve registered CEFs out of the Proposal's scope.

III. **We would support more detailed disclosure of share repurchase information by CEFs in their semiannual reports.**

While we believe it would be inappropriate to apply the Proposal's next-day reporting requirements to registered CEFs, we would support amendments to the current disclosure framework that require CEFs to provide more detailed information about their share repurchases in their semiannual reports. Currently, CEFs are required to disclose in their semiannual reports the aggregate number of shares they repurchased over the past six months, without any additional detail. The reporting requirements in Item 9 of Form N–CSR are more granular; in addition to reporting the total number of shares repurchased, CEFs are required to disclose the average price paid per share, the total number of shares purchased as part of a publicly announced repurchase plan or program, and the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs. However, we understand that investors may benefit from a CEF's disclosure of more detailed information about its past share repurchase activity.

To provide investors with greater transparency, the Commission might consider requiring CEFs to include information in their semiannual reports about their aggregate share repurchases on a monthly, or even weekly, basis; the average discount to NAV at which these shares were repurchased; and the average accretion per share. While we do not believe that CEF investors need, or even want, this information on a next-day basis, we expect it may be helpful for investors – and not unduly burdensome for CEFs – if the Commission amended the requirements for CEFs' semiannual reporting to require a greater level of detail regarding share repurchases made over the past reporting period.

IV. **Conclusion.**

We appreciate the SEC's efforts to ensure that investors have access to the information they need and desire regarding issuers' share repurchases, and to shed light on potentially inappropriate share repurchase activity by issuer executives seeking to inflate their own personal compensation. While we share many of the concerns underlying the Proposal, we do not believe those concerns are generally applicable in the context of CEFs, for the reasons discussed above, and we recommend that the Commission carve out CEFs from the disclosure requirements set forth in the Proposal. As an alternative, and in an effort to be as transparent as possible with investors, we would support amendments that require CEFs to provide more detailed information about their share repurchase activity in their semiannual reports. We hope the perspective we have provided in this letter is helpful to the Commission, and we welcome further engagement.

Sincerely,

Megan Duffy

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