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June 17, 2022

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

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America ("TIAA") and its wholly-owned subsidiary Nuveen, LLC ("Nuveen") are pleased to respond to the Securities and Exchange Commission's (the "SEC" or the "Commission") proposed rules governing climate-related disclosures by public operating companies and other SEC registrants (the "Proposal").[1] We welcome the issuance of this Proposal, which is long-anticipated by members of the financial-services industry. As discussed in our June 11, 2021 comment letter (the "2021 Comment Letter")[2] in response to the SEC's Request for Public Input on Climate Change Disclosure,[3] we share many of the Commission's concerns about the risks climate change poses to the savings of American investors, and we applaud the SEC's efforts to create a disclosure framework that will allow investors to achieve superior long-term returns by properly incorporating climate change-related considerations. We also wish to recognize the time and effort the Commission has put into drafting these proposed requirements, as well as the complexities involved in creating a disclosure framework that applies to a wide range of companies from every industry. As a general matter, we are broadly supportive of the Proposal's objectives and many of its specific requirements, which we believe will give investors greater access to quality, comparable climate-related data from public operating companies. However, we recommend the SEC

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1 *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334 (Apr. 11, 2022), *available at*: https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.

2 Letter from Amy M. O'Brien, Head of Responsible Investment, and Yves P. Denizé, Division General Counsel, of TIAA to the SEC re Request for Public Input on Climate Change Disclosure (Jun. 11, 2021), *available at*: https://www.sec.gov/comments/climate-disclosure/cll12-8907502-244231.pdf.

3 *Public Input Welcomed on Climate Change Disclosures*, Acting Chair Allison Herren Lee (Mar. 15, 2021), *available at*: https://www.sec.gov/news/public-statement/lee-climate-changedisclosures.

consider modifying several provisions in the Proposal to make the final rule more effective and improve the disclosures provided by issuers, as we describe further below.

Our biggest concern is not related to the Proposal's substantive requirements, but rather to certain entities that would be required to comply with the Proposal's climate disclosure framework. Namely, while we understand that the Commission has designed the Proposal with public operating companies in mind, the Proposal is drafted in such a way that it would apply to certain types of registered and unregistered collective investment vehicles as well (*e.g.*, real estate investment trusts ("REITs"), insurance separate accounts, and business development companies ("BDCs")). These entities would fall under the Proposal's scope because they file certain registration statements and/or periodic reports with the Commission that the Proposal seeks to amend. In our view, it would be wholly inappropriate to apply the proposed disclosure requirements to these collective investment vehicles given how vastly different they are from public operating companies in their structure, purpose, and investor base, as well as their limited ability to compel disclosure of the required data from certain private entities in their value chain. We would urge the Commission to make clear in the final rule that the climate disclosure requirements it is establishing in this rulemaking apply only to public operating companies, and not to any collective investment vehicle based solely on its registration or filing status with the SEC. We discuss our thoughts and recommendations in more detail in the following sections.

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 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. Our investment model and long-term approach aim to benefit the approximately five million individual customers we serve across more than 15,000 institutions. 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, including in the Nuveen and TIAA-CREF registered fund complexes as well as in private funds and structured vehicles.

For over 40 years, Nuveen has been a leader in the responsible investing ("RI") space. Drawing from its years of experience, Nuveen has implemented RI principles throughout the enterprise that support well-functioning markets in order to preserve and grow financial, social, and environmental capital. We believe responsible environmental, social, and governance ("ESG") business practices reduce risk, improve financial performance, and promote positive social and environmental outcomes. Nuveen is also a top-10 manager among ESG mutual funds, exchange-traded funds, and variable insurance products.

As of May 12, 2021, TIAA's General Account – the $280 billion insurance investment account that provides guaranteed income for the millions of educators, healthcare workers, and other retirement savers who own the TIAA Traditional annuity product – has set a target of achieving

net zero carbon emissions by 2050. While this pledge aligns with our desire to serve as a good environmental steward, it is first and foremost an affirmation of our fiduciary obligation, as one of the world's largest institutional investors, to achieve the best possible investment outcomes on behalf of our clients. We believe that climate risk is an investment risk that we must manage over time to maximize our risk-adjusted portfolio returns. Helping the companies we invest in understand and manage the climate risks they face is essential to our mutual continued success. Central to achieving our net zero target is the ability to access consistent, reliable, and quantifiable climate-related information from the companies in which we invest. That is why we are largely supportive of the Proposal, which we believe will help us reach our target by establishing climate-risk disclosure requirements for U.S. issuers across all industries.

II. **TIAA generally supports the Proposal's disclosure requirements for public operating companies.**

As a general matter, we believe the Proposal represents a significant and long-overdue step toward ensuring that investors have access to the type of reliable, comparable climate-related data they need to make fully informed investment decisions that incorporate relevant climate factors, where appropriate. In recent years, investor demand for climate-related information has increased significantly, highlighting the fact that climate risks can be – and often are – material to investment performance. However, because U.S. regulators have not yet established a formal regulatory framework requiring public issuers to make specific climate-related disclosures, today's investors are left with a patchwork of inconsistent and unreliable information from some (but not all) issuers about how they are confronting and attempting to address climate-related risk. Many investors are left largely in the dark, forced to make investment decisions based on incomplete and potentially inaccurate data regarding how the impacts of climate change may be impacting their investments. We believe the SEC's Proposal, as it applies to public operating companies, would go a long way toward addressing this issue, giving investors much-needed transparency into the many ways issuers are affected by, and choose to respond to, the risks and opportunities posed by climate change. The fact that the Proposal's disclosure requirements apply equally to issuers across all industries is particularly important, as it will give investors a greater ability to compare consistent climate data across a range of investments, rather than relying on uneven levels of disclosure by companies that may be impacted by climate change to a greater or lesser degree.

We are particularly pleased that the SEC has chosen to leverage so many of the recommendations issued by the Task Force on Climate-Related Financial Disclosures ("TCFD") in designing its own disclosure requirements. As we argued in our 2021 Comment Letter, the TCFD framework is well established and accepted by companies and investors around the world, making it an ideal starting point for the SEC's own disclosure proposal. However, the TCFD recommendations are still voluntary. By formalizing similar requirements in its own Proposal, the SEC is making crucial progress toward ensuring that public operating companies across industries comply with this well-designed and globally familiar framework. These disclosure requirements will undoubtedly help investors better understand the climate-related

risks and opportunities faced by the issuers in which they invest (or may decide to invest) and evaluate their ability to adapt to a future low-carbon economy.

We also welcome the Commission's proposal to require Scope 1 and Scope 2 greenhouse gas ("GHG") emissions disclosure from all registrants subject to the Proposal, as well as disclosure of "Scope 3 GHG emissions and intensity, if material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions."[4] This approach should allow investors to access Scope 3 GHG emissions data in the most significant circumstances, either because such data is material to a registrant's operations, or because it is part of an emissions target or goal that a registrant has chosen to adopt. However, while we are supportive of this proposed approach, we believe the better approach, as described in our 2021 Comment Letter, would be to require *all* registrants in industries that are highly exposed to climate change to disclose data about their Scope 3 GHG emissions and intensity.[5] This disclosure framework would ensure that investors receive Scope 3 GHG emissions data from the most at-risk companies in every instance, without leaving it to the companies themselves to determine whether such data is material, or provide data only in instances where companies have adopted voluntary emissions targets or goals. Moreover, our recommended approach is in line with the TCFD framework, which establishes baseline disclosure recommendations for companies across all industries, and then provides sector-specific disclosure recommendations for industries with heightened exposure to climate risk.[6] Ultimately, we believe the SEC's proposed disclosure requirements for Scope 3 GHG emissions are a significant step in the right direction – but we hope the Commission will consider our recommended alternative approach as an even more effective way of ensuring that investors have access to the Scope 3 emissions data they need to make informed investment decisions.

III. **The SEC should amend the Proposal to exclude collective investment vehicles.**

As discussed above, TIAA is generally supportive of the SEC's proposed approach to mandating climate risk disclosures from public operating companies. However, we do have some significant concerns about the Proposal. Most notably, it is our understanding, based on

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[4] 87 Fed. Reg. at 21345.

[5] In our view, these highly exposed industries should align with those industries specifically called out in the TCFD framework, namely: (1) Financials (including banks, insurance companies, asset owners, and asset managers); (2) Energy (including oil and gas, coal, and utilities); (3) Transportation (including air freight, passenger air, maritime transportation, rail transportation, trucking services, and automobiles); (4) Materials and Buildings (including metals and mining, chemicals, construction materials, capital goods, and real estate management and development); and (5) Agriculture, Food, and Forest Products (including beverages, agriculture, packaged foods and meats, and paper and forest products).

[6] *Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures, TCFD*, Sections D and E (June 2017) (the "TCFD Annex"), *available at*: https://assets.bbhub.io/company/sites/60/2020/10/FINAL-TCFD-Annex-Amended-121517.pdf.

the Proposal's repeated references to "public companies,"[7] as well as the nature of the climate-related disclosures the SEC has proposed, that the SEC has designed the Proposal to apply to publicly-traded operating companies. However, because entities other than publicly-traded operating companies may file the various registration statements and periodic reporting forms that the Proposal seeks to amend,[8] the proposed disclosure requirements would also apply to various registered and unregistered collective investment vehicles, such as BDCs, REITs, and certain other entities that file a Form S-1 registration statement with the SEC (including the TIAA Real Estate Account, a variable annuity product). The Proposal does not contain any discussion as to how and why it might be appropriate, or even possible, for such entities to comply with disclosure requirements that are designed for public operating companies. In the absence of such discussion, we wish to stress that the various types of investment vehicles that would be covered by the Proposal as currently drafted are by their very nature and design significantly different from publicly-traded operating companies, and should be explicitly carved out of the Proposal.

For example, while public operating companies can generally be expected to have insight into the GHG emissions generated by their supply chain, many of the collective investment vehicles that would be covered by the Proposal lack transparency into and/or control over the hundreds, or even thousands, of investments and entities that are part of their downstream and upstream value chain. The legal relationships these investment vehicles have with the extensive number of privately-owned entities in their value chain are such that they will not have the right to obtain the very information they need to disclose under this Proposal. Yet the Proposal would require these entities to gather detailed data from a large number of sources throughout that value chain to ensure compliance with the new disclosure requirements, despite the fact that this data may be difficult or impossible to obtain. If the Commission's ultimate objective is to provide investors with better access to quality, comparable climate data, we are concerned that these types of collective investment vehicles may not be able to meet that goal, despite their best efforts. Given the challenges inherent in their business model, they may only be able to produce incomplete or inconsistent data that is not entirely reliable.

For these reasons, we strongly urge the Commission to exclude from the Proposal's scope all registered and unregistered collective investment vehicles that file the forms that the Proposal seeks to amend. If, however, the SEC decides not to exclude investment vehicles from the final rule, we would ask the Commission at the very least to establish a delayed compliance timeline for these entities. It will be impossible for collective investment vehicles to comply with the Proposal's disclosure requirements until after they gain access to the climate-risk data that public operating companies are mandated to provide under this new framework, and have time to determine how best to incorporate that data into their own reporting process. We would ask the SEC to adopt a compliance date for all investment vehicles that is at least five years delayed

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7 *See*, *e.g.*, 87 Fed. Reg. at 21335. The SEC states in the Introduction to the Proposal: "We are proposing to require disclosures about climate-related risks and metrics reflecting those risks because this information can have an impact on public companies' financial performance or position and may be material to investors in making investment or voting decisions."

8 Specifically, Forms S–1, F–1, S–4, F–4, S–11, 10, 10–K, 10–Q, 20–F, and 6–K.

from the compliance dates provided in the Proposal, which we believe is an appropriate amount of time for investment vehicles to ensure that they can access and properly leverage public company disclosures to meet their own reporting requirements under the final rule.

IV. **The SEC should adopt a "comply or explain" approach to disclosures regarding climate-related targets, tools, and transition plans.**

Another aspect of the SEC's Proposal that we find potentially concerning are those provisions that would impose additional disclosure requirements on registrants that voluntarily adopt climate-risk targets, goals, or transition plans, and/or use various tools to help assess and monitor climate risk within their organization. For example, the Proposal would require a registrant that has voluntarily adopted a transition plan to reduce climate-related risks "to describe its plan, including the relevant metrics and targets used to identify and manage physical and transition risks."[9] In addition, the Proposal provides that if a registrant has set any climate-related targets or goals (*e.g.*, those that relate to "the reduction of GHG emissions, or address energy usage, water usage, conservation or ecosystem restoration"), then the registrant is required to provide specific descriptions of those targets and goals, as well as information about how the registrant intends to meet them.[10] Finally, the Proposal would require disclosure of detailed information from registrants that choose to use carbon offsets or an internal price of carbon, as well as additional descriptions from those that use analytical tools like scenario analysis.[11]

We are concerned that these disclosure requirements, while well-intentioned, may ultimately serve to deter registrants from setting important climate-related goals or using helpful analytical tools in an effort to avoid additional disclosure obligations. For example, while we certainly welcome additional disclosures related to companies' adoption of climate-related targets, goals, and transition plans, the proposed disclosure requirements we cite above may cause many issuers to avoid committing to these plans and objectives altogether. Additionally, the requirement to provide detailed disclosures regarding the use of scenario analysis, carbon pricing and similar methods of evaluating climate risk may deter companies from utilizing these tools. Instead of the proposed approach of requiring detailed disclosures from those companies that do adopt climate-related targets, transition plans, and tools, we urge the Commission to consider using a "comply or explain" model, which is an approach already in use by the SEC and certain other international regulators.[12] Under this approach, any company that opts not to set a climate-risk target or goal, adopt a transition plan, or use the climate-related tools referenced in the Proposal would be required to explain why they have decided not to do so. Even if the SEC were to require only a brief explanation, we believe the need to provide some additional disclosure around the decision not to employ these tools or set climate-risk goals

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[9] 87 Fed. Reg. at 21361.

[10] *Id*. at 21405-6.

[11] *Id*. at 21431.

[12] *See*, *e.g.*, Item 407(d)(5) of Regulation S-K; U.K. Corporate Governance Code, Introduction (2018), *available at*: https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF.

could encourage registrants to take up these practices when they otherwise might opt not to. At the very least, the fact that registrants would be subject to a disclosure requirement whether or not they choose to adopt goals, transition plans, and analytical tools would hopefully level the playing field and mitigate the potentially disincentivizing impacts of the SEC's current Proposal. While the details of such a "comply or explain" model would need to be carefully thought through, we believe our recommended approach would address many of the concerns that we have raised here, and that other commenters have previously raised with the Commission.

V. **The SEC should not subject data disclosed under the Proposal to any required audit or attestation.**

Finally, the Proposal would require registrants to include in a note to their audited financial statements certain climate-related financial statement metrics, which would be subject to an audit by an independent registered public accounting firm.[13] In addition, the Proposal would require accelerated filers and large accelerated filers to include in their relevant filings an attestation report covering their Scopes 1 and 2 GHG emissions disclosures, and provide certain related disclosures about their attestation service provider.[14] We understand that the Commission's goal in proposing these requirements is to ensure that the climate-risk data provided is as reliable, consistent, and accurate as possible. We agree that this data should, in due time, be subject to the type of auditing and attestation requirements the SEC has proposed here. As we noted in our 2021 Comment Letter, subjecting an issuer's climate-related financial metrics to an audit will give investors the necessary assurance that a company's climate data is correct and reliable.

However, we reiterate the recommendation in our 2021 Comment Letter that the SEC should make a determination on appropriate audit and attestation requirements after the new climate disclosure regime set forth in the Proposal has been fully established and issuers have had an opportunity to become familiar with it. Once the specific details of the new climate disclosure framework have been finalized and registrants have begun complying and disclosing the required data, it will be easier for the SEC to determine what type of audit requirements would be most appropriate for these disclosures. Waiting to impose audit and attestation requirements will give registrants and other industry participants more time to become informed about the specifics of the new climate disclosure landscape and weigh in knowledgeably on the implications of auditing climate data. In addition, this delay will put accounting firms and attestation service providers in a better position to provide the required services, as they will have had the benefit of reviewing the climate data initially disclosed under this new framework and prepare to review it for accuracy and completeness. We therefore urge the SEC to wait until registrants have begun disclosing climate data in compliance with the proposed new requirements to finalize audit and attestation requirements that are carefully designed to reflect

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[13] *Id*. at 21345.

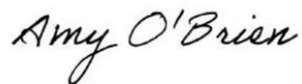
[14] *Id*. at 21346.

the realities of the new disclosure regime and the abilities of auditors and attestation service providers.

VI. **Conclusion.**

TIAA applauds the SEC's efforts to design a thoughtful framework for climate-risk disclosure that includes ambitious yet realistic requirements. We appreciate the opportunity to once again express our support for such a framework and provide our recommendations on how it might be further improved. By proposing formal climate disclosure requirements for public operating companies, the SEC is taking a significant step toward ensuring that all investors can make better, more informed investment decisions that appropriately factor in the significant risks and opportunities posed by climate change. We hope the Commission will consider the views and suggestions contained herein as it works to draft a final rule, and we welcome further engagement on any aspect of this letter.

Sincerely,



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