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[redacted]

March 21, 2022

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

Re: Amendments to Form PF To Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, File No. S7–01–22

Dear Sir or Madam:

Teachers Insurance and Annuity Association of America ("TIAA") and its wholly-owned subsidiary Nuveen, LLC ("Nuveen") appreciate the opportunity to submit this comment in response to the Securities and Exchange Commission's ("SEC" or the "Commission") proposed amendments to Form PF to require current reporting by large hedge fund advisers and private equity fund advisers upon the occurrence of certain key events; decrease the threshold for reporting as a large private equity fund adviser and require additional information from these advisers; and require large liquidity fund advisers to report substantially the same information that money market funds would report on Form N–MFP (the "Proposal").[1] We recognize that the Proposal is designed to serve two primary purposes, according to the Commission: first, to enhance the Financial Stability Oversight Council's ("FSOC") "monitoring and assessment of systemic risk and to provide additional information for FSOC's use in determining whether and how to deploy its regulatory tools," and second "to collect additional data for the Commission's use in its regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers."[2]

While we fully understand and support the SEC's desire to gather information that will assist FSOC in monitoring and addressing systemic financial risk, we respectfully contend that many of the key events and circumstances that would trigger reporting requirements under the Proposal, as well as the proposed current reporting timeline and decrease in reporting thresholds for private equity fund advisers, are not well designed to achieve that goal. In many

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1 *Amendments to Form PF To Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers*, 87 Fed. Reg. 9106 (Feb. 17, 2022), *available at*: https://www.govinfo.gov/content/pkg/FR-2022-02-17/pdf/2022-01976.pdf.

2 *Id*. at 9107.

instances, we find the Commission's proposed requirements to be overbroad, lacking in specificity, and poorly designed to balance the costs of reporting with the potential benefits to investors, regulators, and the market as a whole. With certain changes, however, we believe the Proposal can be improved to help FSOC better identify true threats to the financial system, while mitigating the unnecessary reporting burdens that would be imposed – particularly on smaller funds and advisers that do not pose a systemic risk to the financial system, but would be adversely impacted by certain requirements of the Proposal. We discuss our specific concerns with the Proposal, as well as our recommendations for changes that we believe would better advance the SEC's stated goals, 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 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.

Nuveen, the investment management arm of TIAA, offers a comprehensive range of outcome-focused investment solutions designed to secure the long-term financial goals of institutional and individual investors. The Nuveen organization includes investment advisers that collectively manage over $1 trillion in assets, the large majority of which comes from the TIAA General Account, the TIAA Variable Annuity Separate Account, and mutual fund assets. Nuveen affiliates also manage private equity funds, hedge funds, and structured vehicles, and our experience managing these funds within a larger financial-services organization leads us to believe that certain aspects of the Proposal are ill-suited to target and mitigate systemic risk. Drawing on Nuveen's experience as a leader in private markets, we have reviewed the Proposal to identify specific areas of concern and develop recommendations for changes that we believe would make the Proposal more efficient, focused, and balanced, while still helping the Commission achieve its stated goals of protecting against systemic financial risk. We hope these comments are helpful as the SEC considers further action on this important topic.

II. **The reporting threshold for private equity fund advisers should not be decreased.**

One of the Proposal's most significant provisions would reduce the Form PF reporting threshold for private equity fund advisers from $2 billion to $1.5 billion in private equity fund assets under management ("AUM"). The SEC explains in the Proposal that given the recent increase in the number of advisers with aggregate private equity AUM below $2 billion, "lowering this threshold would enable the Commission and FSOC to receive reporting from a similar proportion of the U.S. private equity industry based on committed capital as [they] did when Form PF was initially adopted."[3] Additionally, the Commission argues that "reducing the threshold in this manner would provide a robust data set to help identify potential investor protection issues and monitor for systemic risk, while also minimizing burdens for smaller advisers."[4]

Respectfully, we do not agree that the threshold should be repeatedly adjusted as the number of smaller advisers fluctuates to ensure that the same percentage of private equity fund advisers is subject to the Form PF regime at any given time. The SEC notes that "when Form PF was originally adopted in 2011, the $2 billion reporting threshold captured 75 percent of the U.S. private equity industry based on committed capital. Today, this threshold only captures about 67 percent of the U.S. private equity industry." We believe a threshold that captures 67 percent of private equity fund advisers, and excludes only the smallest third of advisers, is appropriate and need not be lowered. If anything, given the rate of inflation since 2011 when the final Form PF rule was issued, we would support *increasing* the threshold so that only the most significant advisers – meaning those most likely to experience events that could pose systemic financial risk – are covered. While we would strongly support a proposal to increase the threshold for private equity fund advisers set over a decade ago, at the very least we would urge the Commission not to lower the threshold, thus imposing costly new burdens on advisers who are unlikely to experience events that pose a threat to the financial system.

We also fail to see how lowering the threshold for private equity fund advisers as proposed will enhance the ability of the SEC and FSOC to identify systemic risks to the market. Bringing smaller advisers and funds under the Form PF reporting regime will only serve to increase the number of reports filed for incidents that are unlikely to indicate the existence of any system-wide threat. The costs and burdens imposed on advisers – especially smaller advisers – to file these reports, and the valuable SEC resources that must be devoted to processing these reports, do not seem justified by the incrementally higher likelihood that the Commission and FSOC will identify some systemic risk that they would not have noticed had the current threshold remained in place.

III. **The Commission should amend the proposed current reporting requirements, which are unrealistic and overly burdensome.**

Another one of the most significant aspects of the Proposal is the addition to Form PF of new current reporting section 5 for large hedge fund advisers and new current reporting section 6 for private equity fund advisers. These sections would require advisers to file current reports within one business day of the occurrence of a reporting event. To support this proposed change, the SEC notes that "large hedge fund advisers file Form PF quarterly while private equity fund advisers file annually," meaning that "during fast moving events that could have systemic risk implications or negatively impact investors, Form PF data is often stale," which may make it difficult for the Commission and FSOC to assess systemic threats and consider potential responses in a timely manner.[5] We recognize that the SEC and FSOC would like access to information about time-sensitive systemic threats on a more frequent basis than the current

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[3] *Id.* at 9108.

[4] *Id.*

[5] *Id.*

Form PF reporting regime requires. However, we are concerned that the proposed current reporting requirements for large hedge fund advisers and private equity fund advisers go too far in seeking to achieve that goal. These requirements would subject advisers to unrealistically short reporting timelines that, at best, would be unnecessarily burdensome where the key event in question is innocuous or immaterial, and at worst may force advisers to subvert critical resources as they scramble to meet onerous reporting timelines instead of working to manage time-sensitive challenges. In our view, the significant burdens imposed by the proposed current reporting requirements would far outweigh any potential benefit to investors, the market, or even the regulators themselves.

Given that the Commission has also proposed to lower the minimum threshold of AUM that will trigger Form PF reporting requirements for private equity fund advisers (as discussed above), a larger number of advisers – and a greater number of small advisers – would be brought under the current reporting regime if the Proposal is finalized as drafted. The increase in advisers who are subject to Form PF requirements, coupled with the new current reporting requirements for a number of key events, means the SEC will likely be flooded with reports in times of significant market volatility. In most instances, these reports will be unrelated to any real systemic risk, and will instead indicate normal market fluctuations and investment activity. Nevertheless, the Commission will be forced to devote significant resources to processing these reports, sifting through a sea of filings to identify those that truly do indicate the presence of a system-wide threat. The cost to advisers of adding new systems for measuring and monitoring potential reporting events in real time, as well as hiring new compliance personnel or contracting with outside vendors to prepare and submit these filings, will be heavy, and we question whether the new regime will truly enhance the ability of the SEC and FSOC to detect and respond to systemic financial risks in any significant way.

We believe there are changes the SEC can make to the Proposal to address these concerns, while still providing the Commission and FSOC with greater access to information about those occurrences that are most likely to pose a systemic financial risk in a timely manner. Namely, we urge the Commission to add several thresholds to this aspect of the Proposal such that the current reporting requirements would apply only to advisers of sufficiently large funds experiencing significantly concerning events. We recommend that hedge fund advisers and private equity fund advisers who are subject to Form PF reporting requirements should be required to file current reports only with respect to funds with assets greater than $2 billion. In addition, the list of key events triggering current reporting requirements should be tailored to capture only those events that truly pose concerns on a system-wide basis, as we discuss in more detail below. For funds that fall short of our recommended size threshold, or for those events that are not sufficiently disruptive as to trigger current reporting requirements, advisers should provide information as part of their next periodic Form PF filing (*i.e.*, on a quarterly basis for large hedge fund advisers and on an annual basis for large private equity fund advisers). These guardrails will help ensure that the Commission receives current reports of those incidents that are most likely to be connected with systemic risk without needing to parse through a flood of insignificant filings.

We wish to stress that we understand and share many of the concerns underlying the Commission's proposed current reporting requirements. From the failure and multi-billion dollar bailout of the Long-Term Capital Management ("LTCM") hedge fund in 1998 to the meltdown of

Bear Stearns's High-Grade Structured Credit Strategies and High-Grade Structured Credit Strategies Enhanced Leverage hedge funds in 2007 to the collapse of Archegos Capital Management just last year, events in recent decades have focused the Commission's attention on the significant risks that large funds and fund advisers can pose to the entire financial system. In the wake of these events, we understand why the SEC and FSOC would want enhanced transparency into certain key events that could threaten financial stability. But we would also highlight that the funds involved in those events all controlled billions of dollars in assets before they collapsed. There is no question that funds of that size can threaten the overall stability of the financial system, and our recommended changes to the Proposal would still require advisers to submit current reports for funds of this size (and much smaller funds) that experience events indicating potential distress or systemic risk. Our recommended changes would only exclude smaller funds and advisers that are highly unlikely to cause wider ripples in the financial system, even in times of significant stress. By narrowing the universe of reports that must be filed on a current basis, our recommended threshold will better position the SEC and FSOC to identify system-wide issues quickly and focus their efforts on responding to the most concerning and dangerous events.

IV. **The Commission should modify or eliminate a number of the key events that trigger current reporting requirements for hedge fund advisers and private equity fund advisers.**

As discussed above, we believe *all* key events that would trigger current reporting requirements under the Proposal should incorporate a minimum asset threshold for funds of $2 billion, such that hedge fund advisers and private equity fund advisers are not required to submit current reports for any event experienced by a fund that does not meet or exceed the specified threshold. We also recommend that the Commission make the following changes to certain key events listed in the Proposal:

a. *Material changes in relationship with prime broker.*

Proposed section 5, Item F would require a large hedge fund adviser to report a material change in the relationship between the reporting fund and a prime broker, including material changes to the fund's ability to trade or an outright termination of the prime brokerage relationship for default or breach of the prime brokerage agreement. The Commission argues that "material changes in a reporting fund's prime brokerage relationships may signal that the fund or the brokers with whom the fund transacts are experiencing stress and may be subject to an increased risk of default or in the case of the reporting fund, potential liquidation."[6] We believe this reporting requirement should apply only where the fund exceeds the minimum threshold size *and where the prime broker has terminated the relationship with the fund for*

[6] *Id.* at 9113.

default or breach of the prime brokerage agreement, as that is the scenario most likely to indicate that the fund may be experiencing significant stress.

b. Changes in unencumbered cash.

Proposed section 5, Item G would require large hedge fund advisers to report a significant decline in holdings of unencumbered cash by reporting funds. A current report for changes in unencumbered cash would be triggered if the value of the reporting fund's unencumbered cash declines by more than 20 percent of the reporting fund's most recent net asset value over a rolling 10 business day period. We understand why the Commission might be concerned when a fund experiences a significant decline in unencumbered cash, and why it would wish to be notified of such an event quickly. Market events in recent years have given the SEC reason to view significant changes in unencumbered cash as a potential sign of a fund's distress or imminent failure. But this reporting requirement as drafted could also be triggered when a fund that previously decided to reposition to cash ahead of an anticipated market downturn chooses to re-deploy that cash later in response to changes in the market. In such a case, a decline in unencumbered cash would not signal any distress within the fund, but would rather occur as part of ordinary course investment activity by the fund. A fund might also experience a significant decrease in unencumbered cash during its ramping-up phase. During this time, it would not be uncommon for the fund to call capital, have a relatively large amount of unencumbered cash for a day or so, and then deploy it all at once. A fund going through this ramping-up period could run up against the NAV threshold that would trigger current reporting under the Proposal, despite the fact that the fund is not experiencing any distress.

In our view, there is no reason why a large hedge fund adviser should have to report a fund's ordinary investment activity to the SEC on a next-day basis simply because it results in a significant decline in unencumbered cash. At most, the hedge fund adviser should be required to report that decline as part of its next quarterly SEC filing. We recommend that the Commission add a carve-out to this proposed current reporting requirement excluding funds that experience a decline in unencumbered cash as a result of their ordinary course investment activity, unrelated to any pressure or distress within the fund.

c. *Operations events.*

Proposed section 5, Item H would require a large hedge fund adviser to report when the adviser or a reporting fund experiences a "significant disruption or degradation" of the fund's "key operations," whether as a result of an event at the reporting fund, the adviser, or other service provider to the reporting fund.[7] Key operations is defined in the Proposal as operations necessary for (1) the investment, trading, valuation, reporting, and risk management of the reporting fund; as well as (2) the operation of the reporting fund in accordance with the Federal securities laws and regulations.[8] Respectfully, we believe this reporting requirement is overbroad, lacking in detail, and would impose needless burdens on funds and their advisers to file reports on a next-day basis for a vast array of issues unrelated to systemic risk, when they

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7 *Id.* at 9114.

8 *Id.*

should instead be focusing on addressing and mitigating those operational issues. In particular, the second prong of the definition of "key operations" is vague and unhelpful, leaving open the possibility that advisers may be expected to report potential violations of applicable law and regulations, as well as temporary and *de minimis* violations. We believe this is an illogical and undesirable outcome, and we urge the Commission to amend the wording of proposed section 5, Item H to either provide more clarity and detail around the types of infractions that will be deemed reportable, or add a materiality qualifier to the second prong.

d. *Private fund adviser current reporting on private equity funds*.

Similar to the current reporting requirements in proposed new section 5 for large hedge fund advisers, the SEC is also proposing to require private equity fund advisers to file a current report of certain events under proposed new section 6, including the execution of an adviser-led secondary transaction; the implementation of a general partner or limited partner clawback; and the removal of a fund's general partner, termination of a fund's investment period, or termination of a fund.[9] We strongly urge the Commission to remove the execution of an adviser-led secondary transaction from the list of current reporting events for private equity fund advisers. These types of events are a standard part of customary fund management, and are unlikely to pose any kind of systemic risk. For example, portfolio sales from one fund to another (*i.e.*, rollovers) would be required to be reported within one business day under the Proposal. This is normal course business activity for funds, and requiring advisers to report that activity within one day every time it occurs is unworkable, in our view.

We would additionally recommend that the Commission add an "ordinary course" exception to the current reporting requirement for termination of an investment period or termination of a fund. These incidents can occur as part of an adviser's normal fund management, and do not necessarily reflect the presence of any distress or risk. As such, we believe that private equity fund advisers should not be required to report the termination of an investment period or fund within one business day unless such events happen outside the ordinary course of that adviser's business activity.

e. Restructuring or recapitalization of a portfolio company.

The Proposal would add Question 70 to section 4 of Form PF to obtain additional information regarding restructurings or recapitalizations of the reporting fund's portfolio companies. Specifically, the Commission is seeking to require a private equity fund adviser to indicate whether a portfolio company was restructured or recapitalized following the reporting fund's investment period, and if so, to provide the name of the portfolio company and the effective date of the restructuring. We urge the SEC to narrow the scope of this proposed current reporting requirement. Specifically, we recommend that the restructuring or recapitalization of debt positions should be carved out from the reporting requirement, as funds often restructure loans and bonds as part of their ordinary course business activity, and should not be required to submit reports on a next-day basis just to describe these commonplace events. Additionally, we believe the scope of this reporting requirement should apply to a private equity fund's controlled companies.

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9 *Id.* at 9117.

f. Investments in different levels of a single portfolio company's capital structure by related funds.

The SEC is proposing to add Question 71 to section 4 of Form PF to require current reporting on investments in different levels of a single portfolio company's capital structure by funds advised by a private equity fund adviser or its related person. Specifically, "the adviser would indicate whether the reporting fund held an investment in one class, series or type of securities (*e.g.*, debt, equity, etc.) of a portfolio company while another fund advised by the adviser or its related persons concurrently held an investment in a different class, series or type of securities (*e.g.*, debt, equity, etc.) of the same portfolio company, and if so, to provide the name of the portfolio company and a description of the class, series or type of securities held."[10]

We understand that the SEC has proposed this current reporting requirement so that it can better monitor potential conflicts of interest that may occur when multiple funds advised by the same adviser have exposure to the same portfolio company. However, we would respectfully note that entering into these types of arrangements is a common investment management practice. In our experience, it is not unusual for private equity investors going through the diligence process to ask advisers whether they have broader exposure to a particular portfolio company. These sophisticated investors understand the value of an adviser's ability to expand its stake in a portfolio company through investments made across multiple funds, and often seek out advisers that engage in these types of arrangements, regardless of any conflict of interest that could theoretically arise. We believe it is inappropriate to subject advisers who engage in these common investment arrangements to current reporting requirements under section 4 of Form PF, and we recommend that the Commission delete this reporting requirement from the final rule.

V. **We support the proposed current reporting requirement regarding fund-level borrowings as drafted.**

The Proposal would add Question 72 to section 4 of Form PF, requiring advisers to report whether a reporting private equity fund borrows or has the ability to borrow at the fund level as an alternative or complement to the financing of portfolio companies. If a fund engages in fund-level borrowing, the proposal would require the adviser to provide (1) information on each borrowing or other cash financing available to the fund, (2) the total dollar amount available, and (3) the average amount borrowed over the reporting period.

We believe this reporting requirement will help the SEC and FSOC identify and monitor the use of leverage within private funds, and identify any misalignment of interests between the adviser to such funds and investors relating to the use of leverage. As SEC officials have observed in the past, the use of subscription lines of credit to delay investor capital contributions and preferred return calculations, while leaving investors at risk on the related investments, could artificially inflate internal rate of return ("IRR") calculations made by advisers on behalf of private funds. We believe the SEC would benefit from increased visibility into the practices of advisers, to ensure that adequate and consistent disclosure is being made by advisers regarding their use of such facilities.

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10 *Id.* at 9121.

VI. **Conclusion.**

We appreciate the SEC's desire to gather new and more detailed information from private funds and their advisers with the goal of enhancing FSOC's ability to monitor and respond to systemic risks. However, the Proposal as currently drafted is not ideally designed to achieve the Commission's goal as efficiently and effectively as possible, in our view. We believe the changes to the Proposal that we have recommended above would help FSOC better identify significant threats to the financial system, while sparing advisers of the unnecessary costs and burdens of reporting on events that are unlikely to pose any systemic risk. We appreciate the SEC's consideration of our comments, and we welcome further engagement.

Sincerely,

John McCally

John McCally