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The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Dear Chairman Clayton:

Thank you for making your staff available to meet with our CEO, Vijay Advani, and myself on November 16 to discuss the SEC's regulatory priorities. We appreciated the opportunity to provide Nuveen's perspective on how the current regulatory regime impacts our ability to provide asset management services to our clients. As the SEC continues its important work of modernizing the existing securities regulatory framework, we write to share our views on certain final rules, proposed rules, and new rulemakings applicable to asset managers like Nuveen. We hope this information provides helpful additional context to those issues we discussed during our meeting with your staff.

Liquidity Risk Management Programs (final rule)[1]

Nuveen commends the SEC for working to raise standards for investment companies' liquidity risk management programs, and we believe that new SEC Rule 22e-4 will ultimately strengthen funds' management of liquidity risk. However, a delay in the compliance date of Rule 22e-4 of at least one year is necessary to give funds and their third-party vendors the time they need to achieve compliance with Rule 22e-4's requirements. Many funds will rely on vendors to provide classification products and services to facilitate compliance with Rule 22e-4 – yet vendors are not expected to offer fully functional classification products and services until well into 2018. Given the time funds will need to vet and onboard vendors, test new classification methodologies to gain confidence in their accuracy, reliability, and readability, and obtain

[1] Final Rule: Investment Company Liquidity Risk Management Programs, 81 Fed. Reg. 82142 (November 18, 2016), available at: https://www.gpo.gov/fdsys/pkg/FR-2016-11-18/pdf/2016-25348.pdf.

approval from their boards for their new liquidity risk management programs, we think it likely that many funds will be unprepared to meet the December 1, 2018 compliance date.

Correspondingly, a delay in the compliance date would enable the SEC to consider substantive changes to Rule 22e-4. For example, we respectfully urge the SEC not to publicly disclose the liquidity classification information submitted via new Form N-PORT. The classification information, which will be based on a series of inherently subjective assumptions and methodologies and presented out of context, may lead investors to draw inappropriate conclusions about a fund's liquidity and make uninformed investment decisions.

Investment Company Reporting Modernization (final rule)[2]

We also recommend that the compliance date for the SEC's investment company modernization rules be delayed by at least six months. To report the data required by the rules via new forms N-PORT and N-CEN, funds must compile vast amounts of information, which may be stored in several internal and/or third-party systems, into one central location and build new processes to automate certain data points. Further complicating the matter, third-party vendors who will be submitting filings on behalf of funds are still building and testing their systems, meaning that vendor clients cannot conduct test filings until March 2018 – just three months before the June 1, 2018 compliance date. This does not leave funds with enough time to ensure compliance with the new reporting requirements, thereby necessitating a delay of at least six months.

We would also urge the SEC to require portfolio holdings information to be reported on a quarterly basis, rather than monthly, until certain information security concerns are addressed. Recent reports by the SEC Inspector General and the Government Accountability Office have called into question the SEC's ability to keep monthly portfolio holdings information secure. Until the SEC can improve its information security program to better protect this information, we believe a monthly reporting requirement is inappropriate.

Use of Derivatives by Registered Investment Companies (proposed rule)[3]

While Nuveen supports the SEC's efforts to clarify its regulatory treatment of derivatives, we respectfully recommend certain changes to proposed Rule 18f-4. Rule 18f-4 would limit qualifying coverage assets to cash and cash equivalents, which would cause funds that use derivatives significantly to either experience "cash drag" on performance or reduce their derivatives use. Instead, we recommend that the SEC leverage the approach taken by prudential regulators and the CFTC with respect to margin rules, which permit posting high-quality government bonds, high-quality corporate and municipal bonds, and listed equities, subject to risk-based haircuts. We also believe the final rule should not have portfolio limits, as

[2] Final Rule: Investment Company Reporting Modernization, 81 Fed. Reg. 81870 (November 18, 2016), available at: https://www.gpo.gov/fdsys/pkg/FR-2016-11-18/pdf/2016-25349.pdf.

[3] Proposed Rule: Use of Derivatives by Registered Investment Companies and Business Development Companies, 80 Fed. Reg. 80883 (December 28, 2015), available at: https://www.gpo.gov/fdsys/pkg/FR-2015-12-28/pdf/2015-31704.pdf.

the rule's asset segregation and derivatives risk management program requirements should mitigate risk sufficiently to make such limits unnecessary.

Business Continuity and Transition Planning (proposed rule)[4]

We believe business continuity and transition planning are an important part of ensuring that registered investment advisers can continue operations in the event of a significant disruption. Proposed Rule 206(4)-4 under the Investment Advisers Act of 1940 (the "Advisers Act") would require registered investment advisers to implement written business continuity and transition plans. We believe the proposed rule is unnecessary given existing Advisers Act Rule 206(4)-7, which already requires funds and investment advisers to implement written compliance policies and procedures, including business continuity and transition plans to the extent they are relevant. Accordingly, we urge the SEC to withdraw the proposed rule. If, after a thorough review of existing practices, the SEC determines that certain policies and procedures adopted under Rule 206(4)-7 are insufficient, the SEC can address this insufficiency through targeted guidance that largely mirrors the proposed rule's principles-based approach.

If the SEC does finalize proposed Rule 206(4)-4 or issues guidance on the topic, we strongly urge the SEC to clarify that business continuity and transition planning failures by investment advisers do not constitute *per se* fraud or deceit. In the proposing release for Rule 206(4)-4, the SEC stated that "it would be fraudulent and deceptive for an adviser to hold itself out as providing advisory services unless it has taken steps to protect clients' interests from being placed at risk as a result of the adviser's inability (whether temporary or permanent) to provide those services."[5] Nuveen understands that to satisfy its fiduciary obligations to clients, it must take reasonable measures to maintain continuity of services if a disruption occurs. However, this statement could be read to suggest that *any* failure of such reasonable measures would constitute fraud or deceit – an unreasonably high standard to impose on advisers. We respectfully request that the SEC clarify the standard for classifying business continuity and transition planning failures as *per se* fraud or deceit in any future guidance or final rule.

Electronic Delivery of Disclosure Documents (proposed rule and new rulemaking)

Nuveen supports the SEC's proposed Rule 30e-3 under the 1940 Act,[6] which would permit mutual funds to deliver shareholder reports electronically by default subject to certain conditions, saving shareholders millions of dollars in printing and mailing costs. We appreciate that some are critical of this proposal, and believe the SEC could accommodate concerns by making certain changes to the rule before it is finalized. For example, we support the creation of a new "summary" shareholder report containing certain key information which would be sent by

[4] Proposed Rule: Adviser Business Continuity and Transition Plans, 81 Fed. Reg. 43530 (July 5, 2016), available at: https://www.gpo.gov/fdsys/pkg/FR-2016-07-05/pdf/2016-15675.pdf.
[5] *Id.* at 43532.
[6] Rule 30e-3 was included in the proposing release for rules addressing investment company reporting modernization, but was not included in the final rulemaking. *See* Proposed Rule: Investment Company Reporting Modernization, 80 Fed. Reg. 33589 (June 12, 2015), available at: https://www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12779.pdf.

mail to all shareholders, other than those who opt for full electronic delivery. Under this approach, full shareholder reports would be made available on a website, and shareholders would have the option to request paper copies. Disclosure about the summary shareholder report could be incorporated into summary prospectuses, thus eliminating the requirement that funds send separate "initial statements" about electronic delivery. We believe this is a practical and reasonable compromise between Rule 30e-3 as proposed and existing delivery requirements.

We also encourage the SEC to investigate electronic delivery options for other shareholder documents. For example, Section 19(a) of the 1940 Act and Rule 19a-1 thereunder require a fund to provide shareholders with a "written statement...on a separate paper" if the fund makes a distribution from any source other than the fund's net income. SEC staff guidance has permitted electronic delivery of Rule 19a-1 notices only where a shareholder has affirmatively consented to electronic delivery. We would urge the SEC to consider revising this guidance to permit electronic delivery of Rule 19a-1 notices with implied consent, rather than requiring affirmative consent.

ETFs (new rulemaking)

Nuveen encourages the SEC to re-propose its 2008 rule allowing ETF sponsors to access the market without needing to obtain exemptive relief.[7] Not only is it time-consuming and expensive for ETF sponsors to secure exemptive relief, the conditions for exemptive relief have changed over time, meaning that early entrants to the market often have a competitive advantage. For example, some ETF sponsors like Nuveen may accept only those securities that are in their creation/redemption baskets published prior to trading each morning, while certain early entrants can utilize so-called "custom baskets" to more effectively track their indices.

In addition to re-proposing the 2008 rule on ETFs, Nuveen respectfully requests that the SEC act on Nuveen's request for "custom basket" relief. Nuveen and three other newer entrants to the ETF market recently filed applications to amend their exemptive relief orders to permit the use of custom baskets.[8] We understand that SEC staff have indicated they are not inclined to act on those applications, and prefer instead to address this issue in a generally applicable rule. However, a new rulemaking will take many months or perhaps even years to finalize, and there is no guarantee that such a rule will ever be completed. Working through exemptive relief applications in the meantime can inform any generally applicable SEC rulemaking in the future, while more quickly addressing the distinct competitive disadvantage faced by newer entrants to the ETF marketplace.

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[7] Proposed Rule: Exchange-Traded Funds, 73 Fed. Reg. 14618 (March 18, 2008), available at: https://www.sec.gov/rules/proposed/2008/33-8901fr.pdf.

[8] NuShares ETF Trust, et al. (File No. 812-14824); Goldman Sachs ETF Trust, et al. (File No. 812-14826); Oppenheimer Revenue Weighted ETF Trust, et al. (File No. 812-14825); and PIMCO ETF Trust, et al (File No. 812-14827).

Standards of Conduct for Registered Investment Advisers and Broker-Dealers (new rulemaking)

Today's disparity between standards of conduct for investment advisers and broker-dealers causes confusion for investors and allows broker-dealers to act in a way that may not put their customers' best interests first. Nuveen believes that registered investment advisers and broker-dealers should be subject to a consistent best-interest standard of conduct when providing investment advice to retail customers. Specifically, we recommend that the SEC establish a new best-interest standard for broker-dealers under the Securities Exchange Act of 1934, rather than subjecting broker-dealers to the Advisers Act. We also recommend that the SEC preserve the fiduciary standard for registered investment advisers under the Advisers Act, rather than creating a single, harmonized standard for investment advisers and broker-dealers outside of the Advisers Act.

As the Department of Labor reviews its own fiduciary rule, we urge the SEC to work with the Department to ensure that a consistent standard of conduct applies to investment advice for both retirement and non-retirement assets. Additionally, we are concerned that state securities regulators will layer additional standards of conduct on top of the multiple federal standards that exist today, creating even greater potential confusion for investors and their financial advisers – as has already happened in Nevada. We encourage the SEC to collaborate with state securities regulators to achieve consistency in the standards of conduct that apply to investment advisers and broker-dealers nationwide.

Volcker Rule (new rulemaking)

Nuveen recommends certain changes to the Volcker Rule that we believe would better accomplish the purposes of the statute. First, we believe that registered investment companies and foreign public funds should be excluded from the Volcker Rule, even if they are "seeded" by a bank-affiliated asset manager. While the Rule includes an exemption for seeding activity, subjecting regulated funds to the Volcker Rule's significant compliance burdens is unjustified given the low risk profile of these funds.

Additionally, we support a clarification that underwriting activities fall outside the definition of "proprietary trading." Underwriting activities like those undertaken by Nuveen's affiliated broker-dealer in initial public offerings of closed-end funds should not require complex exemptions from the Rule that require detailed compliance programs, but should be excluded from the Rule's application by definition.

Finally, we believe the Volcker Rule's prohibition on a covered fund sharing its name, or a variation of its name, with a sponsoring banking entity or any of its affiliates should be modified. The name-sharing prohibition was intended to prevent the implication that an insured depository institution guarantees or stands behind the obligations or investments offered by a covered fund. However, the prohibition was drafted so broadly that it goes beyond its original purpose, with unintended and illogical consequences, including that bank-affiliated managers like Nuveen cannot brand funds they sponsor with their own names, even if that name is not shared by the nuveen

insured depositary institution itself. To address this issue, we recommend that the definition of "banking entity," solely for purposes of the name-sharing prohibition, be revised to exclude all entities other than insured depository institutions and top-tier bank holding companies. Such a revision would ease the restriction on covered funds, allowing them to share a name with their sponsor so long as the name is not the same as, or a variation of, the name of the top-tier bank holding company or any insured depository institution within the banking organization. We believe that the original intent behind the Volcker Rule's name-sharing prohibition would be better served were such a revision to be made.

I would welcome the opportunity to engage further on any of the above points. Thank you for your time and consideration.

Sincerely,

John L. MacCarthy
Executive Vice President
Chief Legal Officer

cc: Dalia Osman Blass, Director, Division of Investment Management
Vijay Advani, Chief Executive Officer, Nuveen LLC