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February 3, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Email: rule-comments@sec.gov

Re: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, File No. S7–22–19; Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a–8, File No. S7–23–19

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to submit this comment in response to two proposed rule amendments issued by the U.S. Securities and Exchange Commission (the "SEC" or "Commission"): (i) the proposed amendments to the Commission's rules governing exemptions from applicable proxy rules for voting advice published by proxy advisory firms (the "Proxy Advice Proposal");[1] and (ii) the proposed amendments to the procedural requirements and related provisions under Rule 14a-8 of the Securities Exchange Act of 1934 (the "Exchange Act") regarding the minimum thresholds for submission and resubmission of shareholder proposals (the "Submission Thresholds Proposal" and, together with the Proxy Advice Proposal, the "Proposals").[2] We commend the Commission for working to improve the regulatory framework governing the U.S. proxy voting system, and we echo our support for the Commission's thoughtful examination of this subject, as previously expressed in our comments

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[1] *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, 84 Fed. Reg. 66518 (Dec. 4, 2019), *available at*: https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24475.pdf.

[2] *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a–8*, 84 Fed. Reg. 66458 (Dec. 4, 2019), *available at*: https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24476.pdf.

on the Commission's Concept Release on the U.S. Proxy System (File No. S7-14-10)[3] and Staff Roundtable on the Proxy Process (File No. 4-725).[4]

Like many institutional investors, TIAA takes its responsibilities as a shareholder seriously, and we work hard to make informed proxy voting decisions and participate thoughtfully in annual shareholder meetings. We believe it is important to maintain a careful balance between the rights of shareholders and those of operating companies, and we appreciate the Commission's continued efforts to do so. However, we are concerned that certain aspects of the Proposals may ultimately make the proxy voting process more costly and difficult without providing meaningful benefits to investors or the market. We respectfully offer our thoughts and perspectives on the Proposals below in hopes that we may assist the SEC in its worthy goal of effectively and efficiently improving the U.S. proxy voting process.

I. About TIAA.

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.[5] With its strong nonprofit heritage, TIAA remains committed to our mission of serving the financial needs of those who serve the greater good.

Nuveen, LLC ("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, including in the Nuveen and TIAA-CREF registered fund complexes, as well as in private funds and structured vehicles.[6] Nuveen and its affiliates offer deep expertise across a comprehensive range of traditional and alternative investments through a wide array of vehicles and customized strategies. Nuveen is also responsible for implementing TIAA's proxy voting strategies at thousands of shareholder meetings across the U.S. and around the world every year. In light of this experience, we have a vested

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[3] Letter of Jonathan Feigelson, Senior Vice President, General Counsel and Head of Corporate Governance of TIAA-CREF, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission Re: Concept Release on the U.S. Proxy System, File No. S7-14-10 (Nov. 8, 2010), *available at*: https://www.sec.gov/comments/s7-14-10/s71410-263.pdf.

[4] Letter of Amy O'Brien, Senior Managing Director and Head of Responsible Investing of TIAA and Yves Denize, Senior Managing Director and Division General Counsel of TIAA to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission Re: SEC Staff Roundtable on the Proxy Process, File No. 4-725 (Jun. 10, 2019), *available at*: https://www.sec.gov/comments/4-725/4725-5649823-185710.pdf.

[5] Participant data are as of September 30, 2019.

[6] Data are as of September 30, 2019.

interest in any proposed changes that would impact investors' abilities to make informed voting decisions and engage with their portfolio companies through the shareholder proposal process.

II. Proxy advisors should not be required to give registrants an opportunity to review and provide feedback on voting advice before it is disseminated to clients.

The Proxy Advice Proposal includes proposed amendments to Rule 14a–2(b) of the Exchange Act that would require proxy advisory firms to give registrants one standardized opportunity for timely review of and feedback on proxy voting advice before disseminating the advice to clients, regardless of whether the advice is adverse to the registrant's own recommendation.[7] The amount of time a given registrant would have to conduct its review and provide feedback would depend on how far in advance of the shareholder meeting the registrant files its definitive proxy statement. Registrants that file their proxy statement between 25 and 44 days before their next shareholder meeting would be given at least three business days for review and feedback, while registrants that file their definitive proxy statement 45 days or more before their next shareholder meeting would be given at least five business days.[8] Registrants would also have the option under the proposed amendments to request that a proxy advisor's final voting advice include a hyperlink provided by the registrant directing the recipient of the advice to a written statement that sets forth the registrant's views on the advice.[9]

These proposed amendments raise strong concerns for TIAA, as we believe they could seriously impede the ability of investors to obtain the information they need to make informed proxy voting decisions on a cost-effective and time-sensitive basis. Specifically, we believe that requiring proxy advisors to give issuers an opportunity to review and comment on voting advice in advance could (i) compromise the objectivity and reliability of the advice, (ii) make proxy advisor services more expensive for investors, (iii) limit the amount of information proxy advisors can provide to investors in a condensed timeframe, and (iv) decrease competition in the proxy advisor industry by driving smaller proxy advisors out of business. We examine each of these concerns in turn below.

A. Integrity and Reliability of Voting Advice

Critics of the proxy advisor industry argue that an advisor's voting advice may contain false or misleading statements, and that registrants should be able to address such statements before the advice is sent to investors. However, in our experience, the information contained in proxy advisor voting advice is overwhelmingly reliable, in large part because proxy advisors maintain robust procedures for ensuring that the data and analysis they provide are accurate and transparently sourced. In the rare instances where a recommendation does contain a misstatement or mischaracterization, we do not believe that giving registrants an advance opportunity for review and feedback, as the Commission has proposed, is the appropriate response. Allowing registrants to take such an active role in previewing and commenting on the content of voting advice – particularly where their feedback may result in significant changes

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7 84 Fed. Reg. at 66530.

8 *Id.* at 66531.

9 *Id.* at 66533.

being made – could compromise the fundamental integrity and independence of the advice, and throw its value to investors into serious question.

Giving registrants the opportunity to review and request changes to voting advice in advance risks creating new pressures for advisory firms that wish to maintain positive relationships with the operating companies they review. While the SEC acknowledges in the Proxy Advice Proposal that "the content of proxy voting advice [would be left] entirely within the proxy voting advice business's discretion, the only exception being the inclusion of the registrant's or other soliciting person's hyperlink,"[10] it is nevertheless the case that the review and feedback process could put proxy advisors in an awkward positon. In an attempt to avoid alienating registrants, proxy advisors may agree to modify their voting advice in certain ways they would not have otherwise, even if they do not entirely agree with a registrant's critique.

What's more, investors would have no transparency into whether or how a proxy advisor has changed a piece of advice in response to a registrant's feedback. Without insight into that process, investors would be left to decide for themselves whether they can trust a recommendation that may have been modified at the request of the registrant or otherwise altered as part of a compromise with the registrant to expedite publication. Proxy advisory firms will either need to identify and explain which elements of their advice have been modified in response to registrant concerns – which would force investors to read, digest, and analyze even more information in an already compressed time period – or change or delete elements of their advice without notifying investors. Ultimately, the process of producing proxy advisor voting advice would become far more opaque, resulting in more expensive recommendations that are less trustworthy and useful to investors.

B. Cost of Obtaining Proxy Advisor Voting Advice

Proxy advisory firms are already required to devote enormous resources to producing thorough, reliable, well-researched voting advice for investors in a compressed time period, and they charge investors accordingly for their services. If proxy advisory firms are required to additionally review their voting recommendations with registrants in advance, consider registrant feedback, and potentially make changes to their recommendations before disseminating them to clients, the costs of providing these recommendations will likely increase substantially. Proxy advisory firms would undoubtedly need to hire additional staff members, both to prepare advice on a shorter timeline to accommodate the multi-day review and feedback process, and to work with and respond to registrants as they conduct their review and provide comments. In addition, as further discussed below, the increased costs and regulatory burdens of compliance with newly revised Rule 14a-2(b) could force some smaller proxy advisory firms out of business, thus decreasing competition and likely increasing costs for the clients of those firms that remain in business. In this way, the SEC's proposal may have the unintended effect of making it more costly and difficult for investors to access an important source of data that helps them make informed voting decisions.

C. Timing of Voting Advice Publication

Every year, TIAA, through its investment management arm Nuveen, completes a proxy voting review of more than 3,000 U.S. and 11,000 global companies and processes more than 100,000 unique agenda items. The vast majority of our voting decisions and actions are concentrated in the two-month period known as "proxy season." Like many institutional investors, we rely on proxy

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10 *Id.* at 66532.

advisory firms to gather and synthesize the information we need to make informed voting decisions in a timely and efficient manner. We are concerned that the SEC's proposed review and feedback process for registrants would limit the amount of information proxy advisors can provide to investors in the condensed timeframe during which voting decisions need to be made.

Neither proxy advisors nor investors have input into the timing of when an operating company publishes its proxy statement, and proxy advisers are already under tremendous pressure to produce voting advice as quickly as possible after a company's proxy statement is released. Requiring proxy advisors to review their advice with registrants and consider any disputed elements before providing the advice to investors is likely to delay this timeline, possibly significantly. Even in the case of large institutional investors that dedicate significant resources to their internal corporate governance programs, delaying the release date of voting advice by even a few days to accommodate the registrant review and feedback process will make it much more difficult for investors to collect necessary data about their portfolio companies, complete thorough due diligence, engage with companies if necessary, and submit their proxy votes. Therefore, the SEC's proposal could ultimately reduce the time and consideration investors give to the company-specific factors that underlie their voting decisions, potentially forcing them to make voting decisions based on incomplete information. At the very least, we would ask that the SEC modify its proposed amendments to provide that proxy advisors are required to provide an opportunity for review and feedback only for those registrants that file their proxy statement at least 60 days before their next shareholder meeting.

D. Reduced Competition in Proxy Advisor Industry

As discussed above, implementing the required registrant review and feedback process under newly revised Rule 14a-2(b) would almost certainly increase operation costs for proxy advisors, who would need to hire additional staff and implement new procedures to ensure their compliance. The largest proxy advisory firms would most likely be able to pass these costs down to clients; but for some smaller firms, the heightened costs of doing business could force them to shut down entirely. With fewer proxy advisory firms left, investors would have access to fewer sources of data – and the voting recommendations and research published by the remaining proxy advisory firms would have even greater influence over investors than they do now. In addition, the lack of competition would likely drive the cost of obtaining voting advice even higher, and many investors may not be willing or able to pay a higher price for research reports.

For the reasons stated above, we respectfully request that the SEC eliminate the proposed amendments in the Proxy Advice Proposal requiring proxy advisory firms to give registrants an opportunity to review and provide feedback on voting advice before it is disseminated to clients. We believe the information in proxy advisor voting advice is by and large accurate and reliable; and to the extent the Commission wishes to address those rare instances where voting advice may contain inaccurate or misleading information, we believe it would be more effective to encourage greater direct communication between operating companies and their investors. From the institutional investor's perspective, the primary concern when making a voting decision is whether an operating company is making sufficiently clear disclosures and meeting high standards of accountability and transparency – and we do not believe that requiring proxy advisors to facilitate a burdensome and ineffectual review process with registrants is the best way to address that concern.

III. The proposed changes to the shareholder proposal submission and resubmission thresholds are unnecessary and would upset the current balance between the rights of shareholders and those of operating companies.

The current version of Rule 14a-8 under the Exchange Act requires a public company shareholder to hold at least $2,000 or one percent of a company's securities for at least one year to be eligible to submit a proposal for inclusion in the company's proxy statement.[11] Rule 14a-8 also allows operating companies to block resubmission of a shareholder proposal that has previously been voted on at least once in the last three years if the proposal did not receive (i) three percent of the vote, if previously voted on once; (ii) six percent of the vote, if previously voted on twice, or (iii) 10 percent of the vote, if previously voted on three or more times.[12] According to the Commission, these requirements are "generally designed to ensure that the ability . . . for a shareholder to have a proposal included alongside management's in the company's proxy materials – and thus to draw upon company resources and to command the time and attention of other shareholders – is not excessively or inappropriately used."[13]

The SEC's proposed amendments to Rule 14a-8 would create a more stringent three-tiered system of criteria for proposal submission eligibility, and would raise the minimum thresholds for shareholder proposal submission and resubmission. Under the Submission Thresholds Proposal, a shareholder that meets any of the following three requirements would be eligible to submit a proposal: (i) continuous ownership of at least $2,000 of a company's securities for at least three years; (ii) continues ownership of at least $15,000 of a company's securities for at least two years; or (iii) continuous ownership of at least $25,000 of a company's securities for at least one year.[14] To achieve eligibility, a shareholder would need to satisfy one of these three requirements independently, and would not be permitted to aggregate its holdings with other shareholders to meet the minimum threshold. The Submission Thresholds Proposal would also exclude from resubmission any shareholder proposal that has been voted on three or more times in the last five years if the most recent vote occurred within the preceding three calendar years and received (i) less than five percent of the votes cast, if previously voted on once; (ii) less than 15 percent of the votes cast, if previously voted on twice; or (iii) less than 25 percent of the votes cast, if previously voted on three times or more."[15]

We believe the current version of Rule 14a-8 strikes the appropriate balance between the rights of significantly invested shareholders to submit and resubmit proposals, and the rights of operating companies to control the costs of responding to those proposals.[16] If finalized, the

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11 17 CFR § 240.14a-8(b).

12 *Id.* at §240.14a-8(i)(12).

13 84 Fed. Reg. at 66459.

14 *Id.* at 66459-60.

15 *Id.* at 66471.

16 We note, however, that while we believe the current thresholds do strike an appropriate balance and, in particular, support the broad and demonstrated benefits of shareholder engagement with operating companies, there are specific scenarios where higher thresholds would be warranted. We urge the Commission to consider addressing those scenarios with an alternative set of shareholder proposal submission and resubmission requirements. In the case of closed-end funds (CEFs), we have seen a

proposed amendments would upset this balance, making it more difficult for shareholders to submit new proposals and resubmit previously unsuccessful proposals for inclusion in a company's proxy statement. We do not believe that the potential benefits of the proposed amendments (which would accrue only to operating companies) justify the restrictions that would be placed on shareholder access.

With respect to proposal resubmissions in particular, company- and industry-specific developments, as well as macroeconomic events, regulatory changes, and stakeholder concerns, can change dramatically over a three- or five-year period. An issue that was only of interest to a small subset of investors in the past may transform into a material, mainstream issue over time. Operating companies do bear costs in reviewing and responding to resubmitted proposals, and we recognize that minimum thresholds must exist to ensure that companies are not forced to spend significant resources repeatedly addressing proposals that are unlikely to succeed. But shareholders are already subject to robust minimum thresholds for proposal resubmission under Rule 14a-8(i)(12), and it is unclear to us what changes have occurred that would justify making those restrictions even more stringent. In addition, the SEC provides operating companies with a sufficient set of additional rationales for excluding a shareholder proposal, beyond Rule 14a-8(i)(12), to ensure that any issue being resubmitted in subsequent years merits consideration.[17] The costs incurred by operating companies to process resubmitted shareholder proposals are not trivial, but are in our view a justified expense to protect shareholder access.

Explaining the reasoning behind its proposed changes to the submission thresholds, the SEC notes that "much has changed since the Commission last considered amendments to Rule 14a–8, including the level and ease of engagement between companies and their shareholders. For instance, shareholders now have alternative ways, such as through social media, to communicate their preferences to companies and effect change."[18] Thus, the SEC argues, it may be the case that the current submission thresholds set forth in Rule 14a-8, last updated in 1998, no longer strike the appropriate balance between shareholder rights and operating company resources. We respectfully disagree with the Commission's reasoning and assessment on this point. While there are more opportunities for shareholders, along with the general public, to contact operating companies than ever before, these communication methods

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dramatic increase in opportunistic activism designed to benefit short-term investors to the detriment of long-term shareholders. CEFs often trade at a discount to the value of their underlying investments for a variety of reasons that are not related to fund management. Certain opportunistic short-term investors have sought to take advantage of arbitrage opportunities by acquiring CEF shares at a discount and pursuing disruptive shareholder proposals to extract liquidity events. Contrary to the shareholder proposal practice we have seen across operating companies in the market, these activities are examples of arbitrage profit schemes that ultimately operate to the detriment of long-term investors. We respectfully request the Commission to consider addressing this trend by proposing increased submission and resubmission thresholds for CEFs or other appropriate measures.

[17] Bases for exclusion under 17 C.F.R. § 240.14a-8 include several "procedural" bases under Rule 14a-8(b)–(g) (*e.g.*, untimely submission and failure to properly document beneficial ownership) and "substantive" bases under Rule 14a-8(i)(3)–(13), such as violation of federal proxy rules, focus on personal grievances, lack of relevance, absence of authority, and treatment of matters related to a company's ordinary business.

[18] 84 Fed. Reg. at 66462.

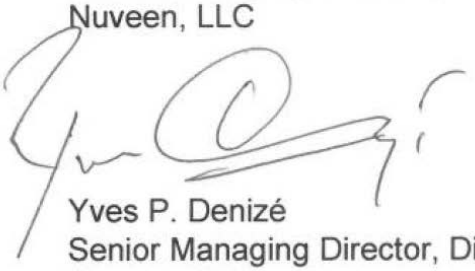
are largely informal, unregulated, and devoid of any safeguards that ensure shareholder views are seriously considered. The proposal submission and resubmission process set forth in Rule 14a-8 exists precisely because shareholders with a sufficient minimum stake in an operating company need and deserve a formal mechanism that ensures they can engage meaningfully with company management. We believe the current version of the Rule accomplishes that goal well. Social media is not a replacement for, or even a supplement to, the current proposal submission and resubmission process, and should not be used as a justification for making that process more difficult for shareholders. As such, we would urge the Commission to leave the shareholder proposal submission and resubmission thresholds in the current version of Rule 14a-8 intact.

IV. Conclusion.

In closing, we thank the SEC for providing this opportunity to comment on the Proposals. We applaud the Commission for working to improve the current, highly complex proxy voting system, and we hope the Commission considers our suggestions for making this system operate even more efficiently and effectively. We believe our recommendations will serve the shared interests of operating companies and their shareholders in promoting the informed exercise of voting rights by investors at a "reasonable" cost. We welcome further engagement on any aspect of this letter.

Sincerely,

Amy M. O'Brien
Senior Managing Director, Head of Responsible Investing
Nuveen, LLC



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