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Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Amending the “Accredited Investor” Definition, File No. S7-25-19

Dear Ms. Countryman:

Teachers Insurance and Annuity Association of America (“TIAA”) appreciates the opportunity to comment in connection with the Securities and Exchange Commission’s (the “SEC” or “Commission”) proposed amendments to the definitions of “accredited investor” (“AI”) and “qualified institutional buyer” (“QIB”) under the SEC’s rules (the “Proposal”).¹ We strongly support the SEC’s efforts to update these definitions and expand investment opportunities for sufficiently experienced and sophisticated investors. We are particularly supportive of the SEC’s proposal to amend the AI definition to include governmental bodies owning investments in excess of \$5 million, and to make conforming changes to the QIB definition to include these same entities. Expanding these definitions as proposed will provide greater investment opportunities for governmental entities and increase overall liquidity without eroding crucial investor protections under the SEC’s rules. We discuss our perspective on the Proposal in further detail below.

I. About TIAA and Nuveen.

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA’s mission has always been to aid and strengthen the institutions, retirement-plan participants, and individual and institutional customers we serve and to provide financial products that meet their needs. Our investment model and long-term approach aim to benefit the five million individual customers we serve across more than 15,000 institutions. With our strong nonprofit heritage, we remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good.

To carry out this mission, we have evolved to include a range of financial services, including asset management and retail services. TIAA’s wholly-owned asset management subsidiary Nuveen, LLC (“Nuveen”) is comprised of investment advisers that collectively manage over \$1 trillion in assets,

¹ *Amending the “Accredited Investor” Definition*, 85 Fed. Reg. 2574 (Jan. 15, 2020), available at: <https://www.govinfo.gov/content/pkg/FR-2020-01-15/pdf/2019-28304.pdf>.

including in the Nuveen and TIAA-CREF registered fund complexes and in private funds and structured vehicles. Nuveen regularly transacts in securities eligible for resale under Rule 144A of the Securities Act of 1933 (“144A Securities”) and as such, we have an interest in any SEC amendment that could impact the liquidity of the 144A Securities market. Nuveen also invests for its clients in Regulation D offerings, and we would greatly value expanded access to that market.

II. The SEC should clarify that the revised AI definition includes a broad range of governmental entities.

TIAA appreciates that the Proposal would expand the AI definition to include certain sufficiently large and sophisticated entities – namely, “any entity owning investments in excess of \$5 million that is not formed for the specific purpose of acquiring the securities being offered . . . including Indian tribes and governmental bodies.”² The SEC notes that it decided to propose this change on the recommendation of several commenters who responded to an earlier SEC concept release on this topic (the “Concept Release”)³ arguing for an expanded AI definition that includes governmental bodies beyond those established to provide retirement plans to their employees.

As drafted, this proposed language would bring a wide spectrum of governmental entities under the AI definition. However, given the diverse array of governmental entities we believe this definition is intended to cover, it is important that the SEC clarify in its final rule that the phrase “governmental bodies” should be construed broadly to include a comprehensive range of state, territorial, and local governmental entities, as well as U.S. government agencies and departments, sovereign governments recognized by the United States and sovereign investment funds, and funds, pools, and endowments established by U.S. federal, state, and local governments for a specified purpose and subject to control by a government officer, board, or similar body.⁴ It is crucial that the SEC clarify this point to avoid uncertainty around the parameters of the revised AI definition and the types of governmental entities meant to be included, which will in turn prevent the need for future guidance and no-action letters on this issue.

As noted in the Montana Letter, it can be difficult to measure the investment levels of a governmental unit that is part of a larger governmental entity for purposes of determining whether the proposed \$5 million minimum investment threshold for qualification as an AI has been met. Without further guidance from the SEC as to the range of governmental entities that are covered by the revised AI definition (and by the revised QIB definition, as discussed below), smaller governmental units that cannot easily demonstrate that they meet the \$5 million minimum threshold may not be able to access certain investment opportunities (e.g., private placements), which will restrict their ability to diversify their portfolios. The ambiguity in the proposed AI definition could ultimately serve to decrease liquidity in key markets and deprive sophisticated government investors of the ability to

² *Id.* at 2588.

³ *Concept Release on Harmonization of Securities Offering Exemptions*, 84 Fed. Reg. 30460 (June 26, 2019), available at: <https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf>.

⁴ Specifically, we recommend that the revised AI definition include all governmental bodies listed on pages 2-3 of the comment letter submitted by Arnold & Porter on behalf of the Montana Board of Investments in response to the Proposal (the “Montana Letter”). See Letter of David F. Freeman, Jr. of Arnold & Porter to Vanessa Countryman re: Amending the “Accredited Investor” Definition, File No. S7-25-19 (Feb. 14, 2020), available at: <https://www.sec.gov/comments/s7-25-19/s72519-6828558-208529.pdf>.

access a wide range of investment options. This is yet another reason why the SEC should make clear the types of governmental bodies that are covered by the revised AI definition.

III. The SEC should similarly expand the QIB definition to include the same governmental entities included in the revised AI definition.

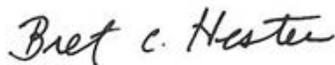
The SEC also acknowledges that a number of commenters on the Concept Release, including the South Dakota Investment Council (the “SDIC”),⁵ urged the Commission to amend the QIB definition to include a wider range of state and local governmental entities and organizations.⁶ In response, the SEC has proposed to make conforming changes to the QIB definition to include those entities covered by the revised AI definition. Namely, the Proposal would broaden the list of entities that are eligible for QIB status to include entities that have total assets in excess of \$5 million and were not formed for the specific purpose of acquiring the securities being offered (including Indian tribes and governmental bodies), so long as they own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the QIB.⁷

We commend the SEC for proposing updates to the QIB definition that would cover a wider range of governmental bodies. As a general matter, we believe that any governmental entity that meets the definition’s \$100 million investment threshold has the requisite sophistication and experience to be considered a QIB, and should be permitted greater access to a diverse array of investment choices, particularly 144A Securities. We also appreciate that the SEC has proposed changes that would keep the QIB definition consistent with the revised AI definition. However, as we note in Section II above, it is important that the SEC clarify that the same list of specific types of governmental entities that are covered by the revised AI definition will also be covered by the revised QIB definition. This clarification will ensure that a broad range of sophisticated governmental bodies have the flexibility they need to diversify their portfolios and make investment choices that help them balance potential risks and returns, and will help maintain liquidity in the 144A Securities Market.

IV. Conclusion

We applaud the SEC for working to expand both the AI and the QIB definitions, and we appreciate the opportunity to share our view on the Proposal. We hope the above comments will be helpful to the Commission’s efforts to improve the regulatory regime for AIs and QIBs, and would be pleased to discuss our views further at the Commission’s convenience.

Sincerely,



Bret C. Hester

⁵ See Letter from Matthew L. Clark, State Investment Officer of the SDIC, to SEC Chairman Jay Clayton regarding the Concept Release (Sep. 24, 2019), *available at* <https://www.sec.gov/comments/s7-08-19/s70819-6189776-192418.pdf> (the “SDIC Comment”).

⁶ 85 Fed. Reg. at 2597.

⁷ *Id.*