UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99549 / February 16, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6559 / February 16, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21856

In the Matter of **TIAA-CREF INDIVIDUAL & INSTITUTIONAL SERVICES, LLC** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 21C AND 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 21C and 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against TIAA-CREF Individual & Institutional Services, LLC ("TC Services" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 21C and 15(b) of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of TC Services' failure to comply with Regulation Best Interest ("Reg BI") between June 30, 2020, the compliance date for Reg BI, and approximately November 1, 2021 (the "Relevant Period") in connection with recommendations to retail brokerage customers to open a TIAA individual retirement account ("TIAA IRA"), which under Reg BI is an investment strategy involving securities.

2. After opening a TIAA IRA, retail customers could invest in a pre-selected "core menu" of affiliated investments, including affiliated mutual funds and retirement annuities. In addition, through the TIAA IRA's optional "brokerage window," customers could invest in a broader array of securities, including a variety of mutual funds (both affiliated and third-party), ETFs, stocks, and bonds. During the Relevant Period, TIAA IRA customers investing in certain core menu funds paid higher mutual fund expenses than if they had invested in lower-cost share classes of those same funds that were available in the brokerage window. As a result, TC Services earned higher fees from those core menu investments.

3. In recommending the TIAA IRA, TC Services violated Reg BI's General Obligation by failing to comply with three of Reg BI's component obligations. Specifically, between June 30, 2020 and February 9, 2021 (the "Disclosure Violation Period"), TC Services violated the Disclosure Obligation because the firm inaccurately disclosed that it only offered more expensive share classes of funds in the TIAA IRA, and failed to disclose that substantially equivalent, lower cost share classes of affiliated funds were available in the brokerage window. TC Services also failed to disclose the conflict of interest associated therewith. In addition, TC Services violated the Care Obligation of Reg BI during the Relevant Period because the firm failed to exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with its recommendations to open a TIAA IRA, including that investment minimums had been waived on affiliated funds available within the TIAA IRA. Finally, during the Relevant Period, TC Services failed to comply with Reg BI's Compliance Obligation because the firm failed to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI's Care Obligation.

4. As a result of TC Services' violations, approximately 5,894 retail customers purchased higher cost share classes of certain affiliated mutual funds in the core menu. In total, TC Services' customers paid approximately $936,714 more in mutual fund expenses by purchasing those core menu funds.

Respondent

5. TC Services is a dually registered broker-dealer and investment adviser headquartered in New York, New York. TC Services is a wholly owned subsidiary of the

Teachers Insurance and Annuities Association of America ("TIAA") and an affiliate of Nuveen, LLC ("Nuveen").[1]

Facts

A. The TIAA IRA

6. During the Relevant Period, TC Services offered a variety of investment alternatives to retail brokerage customers, including the TIAA IRA, an investment strategy involving securities. The TIAA IRA enabled customers to invest in a pre-selected core menu of affiliated investments, including TIAA mutual funds, Nuveen mutual funds, and TIAA retirement annuities. In the core menu, customers could opt to receive certain benefits like third-party allocation advice on core menu investments and the ability to establish automatic contributions. Affiliated funds in the core menu typically had higher expenses than the lowest-cost share classes offered by those funds and required no minimum initial investment.

7. In addition to the core menu, the TIAA IRA also enabled customers to invest in a broader array of affiliated and non-affiliated investments through the TIAA IRA brokerage window. Specifically, through the TIAA IRA brokerage window, customers could invest in TIAA mutual funds and Nuveen mutual funds, as well as a variety of third-party mutual funds, ETFs, stocks, and bonds. The brokerage window included the lowest-cost share classes of core menu funds where available. These share classes were generally subject to investment minimums. Specifically, certain TIAA funds in the brokerage window required a $2 million minimum investment; certain Nuveen funds required a $1 million minimum investment.

8. In December 2020, TC Services discovered that the minimum investment requirements for these TIAA and Nuveen funds in the brokerage window had been waived by agreements between TC Services' clearing broker and the affiliated fund families. While the waivers predated the compliance date of Reg BI, they were initiated by TIAA and, as such, TC Services should have been aware of the waivers and considered their impact in the context of Reg BI.

9. As a result of the waivers, during the Relevant Period, TC Services' retail customers could have purchased substantially equivalent, less costly share classes of these funds through the TIAA IRA brokerage window without the minimum investment requirement. Specifically, 80 of the 96 affiliated funds offered in the core menu had substantially equivalent, lower cost share classes available in the brokerage window for all or some portion of the Relevant Period.

10. Notwithstanding the availability of substantially equivalent, lower cost options in the brokerage window, the vast majority (*i.e.*, more than 94%) of TIAA IRA customers invested only through the core menu. TC Services and its affiliates earned higher fees when these customers purchased the more expensive core menu funds.

[1] Nuveen, LLC is a wholly owned subsidiary of TIAA.

B. TC Services' Violation of Reg BI's Disclosure Obligation

11. To help satisfy its Reg BI disclosure obligation, TC Services provided its customers with a Reg BI Disclosure Document ("Disclosure Document") and a Form Customer Relationship Summary document ("Form CRS").

12. During the Disclosure Violation Period, TC Services did not comply with Reg BI's Disclosure Obligation because it did not disclose to its retail customers prior to or at the time of the recommendation to open a TIAA IRA account that substantially equivalent, lower cost share classes of select affiliated funds were available in the brokerage window. TC Services also did not disclose the conflicts associated therewith – that is, that TC Services earned higher fees when customers invested in more expensive share classes of core menu funds. Specifically, TC Services' June 26, 2020 Disclosure Document stated: "we only offer the retirement share class of TIAA-CREF mutual funds and the class I of the Nuveen funds in the IRA." This statement was inaccurate because substantially equivalent lower cost share classes of these funds were available in the brokerage window of the TIAA IRA. TC Services' June 28, 2020 Form CRS also did not disclose the conflict of interest associated with the availability of lower cost share classes available within the TIAA IRA brokerage window. These disclosures were both in force as of June 30, 2020, the compliance date for Reg BI.

13. After discovering that lower cost share classes of affiliated funds in the brokerage window were not subject to investment minimums, TC Services revised its Disclosure Document and Form CRS. On February 1, 2021, the firm revised its Form CRS to disclose the conflict of interest resulting from the availability of different share classes within the TIAA IRA. On February 9, 2021, TC Services revised its Disclosure Document to disclose that multiple share classes, including lower cost share classes of affiliated funds, were available in the TIAA IRA brokerage window and that this created a conflict of interest.

C. TC Services' Failure to Exercise Reasonable Diligence, Care, and Skill to Understand the TIAA IRA Product and the Costs Associated with Recommending the TIAA IRA

14. During the Relevant Period, TC Services failed to comply with Reg BI's Care Obligation because TC Services and its associated persons ("APs") did not exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with its recommendations to open a TIAA IRA. In particular, the firm failed to understand the costs associated with their recommendations of that product.

15. Prior to December 2020, TC Services and its APs were unaware that investment minimums had been waived on affiliated funds available within the TIAA IRA brokerage window. In addition, some APs did not understand that affiliated funds were available in the brokerage window of the TIAA IRA at all. As a result, APs had an incomplete understanding of the TIAA IRA recommendation and therefore lacked a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers.

16. When making recommendations, TC Services required APs to follow the Regulatory Standards for Recommendations Standard Operating Procedure ("Regulatory Standards SOP"). The Regulatory Standards SOP stated that costs, along with potential risks and rewards, must always be considered when making a recommendation.

17. To consider costs associated with the TIAA IRA, the Regulatory Standards SOP directed APs to generate a "fee comparison report" which compared the costs associated with a customer's current investments with the costs associated with the TIAA IRA. To calculate costs associated with the TIAA IRA, APs used a third-party tool that generated a hypothetical allocation based on the customer's stated risk profile. The tool was coded to consider only the affiliated mutual funds available in the core menu and did not consider any brokerage window options notwithstanding that those options were also available within the TIAA IRA. Thus, when recommending the TIAA IRA, TC Services and its APs did not consider the costs associated with other share classes of core menu funds available within the TIAA IRA brokerage window.

18. On October 27, 2021, TC Services implemented "Procedural Enhancements" which enforced investment minimums regardless of the existence of any waivers that had previously been in place between the clearing firm and TIAA's affiliated fund families. Shortly thereafter, on November 1, 2021, TC Services put in place the Investment Companies – Mutual Fund Minimums WSP ("MFM WSP"). The MFM WSP instituted supervisory procedures to ensure that TC Services would enforce investment minimums consistent with the Procedural Enhancements. As a result of these changes, substantially equivalent, lower cost share classes of the relevant affiliated funds were no longer available to customers in the TIAA IRA brokerage window whose investments did not meet the investment minimums. On December 9, 2022, TC Services stopped offering affiliated funds in the brokerage window.

D. TC Services' Failure to Establish, Maintain, and Enforce Written Policies and Procedures Reasonably Designed to Achieve Compliance with Reg BI

19. During the Relevant Period, TC Services failed to comply with the Compliance Obligation of Reg BI because it failed to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI's Care Obligation. TC Services had no policies and procedures in place to detect investment minimum waivers. In addition, TC Services did not enforce its written policies and procedures (*i.e.,* the Regulatory Standards SOP which required APs to consider costs associated with the TIAA IRA recommendation) because the third-party tool TC Services provided to APs to consider costs did not consider costs associated with other share classes of core menu funds available within the TIAA IRA brokerage window.

E. Investor Impact

20. As a result of TC Services' violations of Reg BI, between June 30, 2020 and October 27, 2021, approximately 5,894 retail customer accounts purchased higher cost share classes of affiliated mutual funds without being informed by TIAA or its APs that substantially equivalent, lower cost offerings were also available within the TIAA IRA. In total, these

customers paid about $936,714 more in expenses for substantially equivalent funds than they otherwise could have paid if these funds were purchased through the brokerage window.

Violations

21. As a result of the conduct described above, Respondent willfully[2] violated Reg BI's General Obligation which requires brokers and their associated persons to act in the best interest of retail customers when making a recommendation. *See* Exchange Act Rule 240.15*l*-1(a)(1).

22. As a result of the conduct described above, Respondent willfully violated Reg BI's Disclosure Obligation which requires a broker to, *inter alia*, provide the retail customer, in writing, prior to or at the time of the recommendation, full and fair disclosure of all material facts relating to the type and scope of services provided to the customer, including any material limitations of the recommendation and all material facts relating to conflicts of interest that are associated with the recommendation. *See* Exchange Act Rules 240.15*l*-1(a)(2)(i)(A)(3), 240.15*l*-1(a)(2)(i)(B).

23. As a result of the conduct described above, Respondent willfully violated the Care Obligation of Reg BI which, among other things, requires a broker making a recommendation to a retail customer to exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with the recommendation. *See* Exchange Act Rule 240.15*l*-1(a)(2)(ii)(A).

24. As a result of the conduct described above, Respondent willfully violated Reg BI's Compliance Obligation. Reg BI's Compliance Obligation requires brokers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. *See* Exchange Act Rule 240.15*l*-1(a)(2)(iv).

Disgorgement

25. The disgorgement and prejudgment interest ordered in Section IV.C is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

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[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

TC Services' Remedial Efforts

26. In determining to accept the Offer, the Commission considered TC Services' prompt remedial efforts, that TC Services disclosed the issue to Commission staff who were in the process of examining TC Services, and the cooperation afforded Commission staff during the investigation.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer. Accordingly, pursuant to Sections 21C and 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Exchange Act Rules 15*l*-1(a)(1) and (2).

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement, prejudgment interest, and a civil monetary penalty as follows:

1. Respondent shall pay disgorgement of $936,714 and prejudgment interest of $103,424.91 consistent with the provisions of this Subsection C.

2. Respondent shall pay a civil monetary penalty in the amount of $1,250,000, consistent with the provisions of this Subsection C.

3. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected customer accounts. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action

brought against Respondent by or on behalf of one or more investor based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

4. Within ten (10) days of the issuance of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 -17 C.F.R. § 201.600 and/or 31 U.S.C. § 3717.

5. Respondent shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

6. Respondent shall distribute from the Fair Fund to each current or former affected customer an amount representing (a) the excess fees she or he paid for the more expensive share classes within the TIAA IRA during the time period June 30, 2020 and October 27, 2021, and (b) from any remaining funds, reasonable interest on such amounts, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. Reasonable interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of calendar year of the excess fees through the approximate date of the disbursement of the funds. No portion of the Fair Fund shall be paid to any affected customer account in which Respondent, or any of its officers or directors, has a financial interest.

7. Respondent shall, within ninety (90) days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Distribution Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its

implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The Calculation shall be subject to a *de minimis* threshold. The revised Calculation shall be subject to all of the provisions of this Subsection C.

8. Respondent shall, within thirty (30) days of written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected customer. The Payment File should identify, at a minimum, (i) the name of each affected customer; and (ii) the net amount of the payment to be made, less any tax withholding; (iii) the amount of any *de minimis* threshold to be applied; and (iv) the amount of reasonable interest paid, if applicable. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

9. Respondent shall disburse all amounts payable to affected customer accounts within ninety (90) days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph 13 of this Subsection C. Respondent shall notify the Commission staff of the date(s) and the amount paid in the initial distribution.

10. If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected customer or a beneficial owner of an affected customer or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of funds is complete and before the final accounting provided for in Paragraph 12 of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

    a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

b. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

c. Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying TIAA-CREF Individual & Institutional Services, LLC as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Alison Conn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616, or such other address as the Commission staff may provide.

11. A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1468B.1-1468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

12. Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected customers, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (ii) the date of each

payment; (iii) the check number or other identifier of the money transferred; (iv) the amount of any returned payment and the date received; (v) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (vi) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that Respondent has made payments from the Fair Fund to affected customers in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Alison Conn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

13. The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

By the Commission.

Vanessa A. Countryman
Secretary