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December 14, 2021

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (File No. S7-11-21)

Dear Ms. Countryman:

Teachers Insurance and Annuities Association of America ("TIAA") and its asset management arm Nuveen, LLC ("Nuveen") welcome the opportunity to comment on the Securities and Exchange Commission's (the "SEC" or "Commission") proposed amendments to Form N-PX under the Investment Company Act of 1940 (the "Proposal").[1] We support the SEC's goal of enhancing the information mutual funds, exchange-traded funds, and certain other funds currently report about their proxy votes and making that information easier for investors to access and analyze. While we are generally supportive of the Commission's overall objective in issuing the Proposal, certain aspects raise concerns for our organization.

First and foremost, we disagree with the Commission's proposed requirement that reporting persons disclose the number of shares they have loaned but not recalled for proxy voting purposes. We believe this requirement, while straightforward on its face, would ultimately cast a misleading and unfairly negative light on funds' securities lending activity without providing context as to the many benefits securities lending can create for funds' investors. We urge the Commission to eliminate this proposed requirement, and instead require funds to disclose their policies and procedures around securities lending. We would also ask the SEC to consider taking additional action to help resolve the current tension faced by funds and managers who wish to secure the benefits of securities lending for their investors without giving up the right to vote proxies for shares on loan.

Additionally, we are concerned that the Commission's proposal to require funds and investment managers to categorize their proxy votes according to a prescribed list of

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1 *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, 86 Fed. Reg. 57478 (Oct. 15, 2021), *available at*: https://www.govinfo.gov/content/pkg/FR-2021-10-15/pdf/2021-21549.pdf.

categories and subcategories would fail to simplify the reporting process or clarify information for investors. We expect there would be some overlap in categorization as funds and managers take different approaches to identifying a proxy voting issue, which could confuse investors further. We are also concerned that the SEC would need to go through the time-consuming process of amending the final rule any time updates to the proposed categories and subcategories are necessary, including when new categories of issues arise. To address these concerns, we recommend that the Commission consider broadening its proposed categories, and pay especially close attention to proxy advisors' views on whether this aspect of the proposal is operationally workable.

We hope our perspective is helpful as the SEC works to enhance its disclosure requirements around proxy voting, and we appreciate the Commission's consideration of our views. We discuss our thoughts and recommendations in more detail below.

I. <u>About TIAA and Nuveen</u>.

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 retail customers we serve and to provide financial products that meet their needs. Our investment model and long-term approach aim to benefit the over five million individual customers we serve across more than 15,000 institutions. 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. 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 interest in any proposed changes that would impact the proxy voting disclosure requirements applicable to funds and institutional investment managers.

TIAA firmly believes that a well-functioning and dynamic proxy voting system is beneficial for investors, financial-services institutions, and the market as a whole. Given the importance of proxy voting to the effective governance of public companies and the broader financial system, we support a robust regulatory framework that requires funds and investment managers to disclose information about their proxy voting activity in a clear, consistent way that gives investors transparency and allows them to make informed investment decisions. But we also believe that a proxy voting disclosure regime should be carefully designed to produce accurate, helpful information for investors without unfairly burdening reporting parties or presenting their proxy voting decisions in a way that is misleading or lacking in context. We recognize that in issuing the proposal, the Commission intends to strike this delicate balance. However, we feel this balance can be better achieved if the Commission modifies several aspects of the proposal, as described further below.

II. **<u>The Commission should eliminate the requirement that reporting persons disclose the number of shares they have loaned and not recalled</u>.**

Question 35: Should we require disclosure of the number of shares a reporting person loaned and did not recall, as proposed? Is this information valuable to investors? Does the value of the information differ between institutional and retail investors? Are there any changes we could make to enhance the utility of the information for investors?[2]

Question 37: We understand that proxy statements typically are not delivered until after the record date. Does this create challenges for reporting persons to determine whether they want to recall loaned securities before the record date? If so, how might these challenges affect disclosure of the number of shares loaned and not recalled, or other aspects of this proposal? Are there any changes we should make to the proposed rule to recognize these challenges?

The SEC has proposed changes to Form N-PX that would require reporting persons to provide "disclosure of information about the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast)," as well as disclosure of "the number of shares the reporting person loaned and did not recall."[3] We support the first aspect of this proposal, but have serious concerns about the second. We recognize that by including this provision in the Proposal, the SEC aims to "provide transparency into how a reporting person's securities lending affects its proxy voting."[4] But respectfully, we do not believe the proposed disclosure requirement would give investors a complete and accurate picture of the positive returns securities lending can generate, or the cost-benefit analysis funds must undergo when deciding whether securities lending or proxy voting is more valuable for the funds' investors. While straightforward on its face, we believe the proposed disclosure requirement would create the inaccurate impression that lending securities without recalling them for proxy voting purposes is an inherently negative activity.

The SEC's disclosure proposal reflects the inherent tension that can exist between an investment manager's desire to lend a fund's shares and vote the proxies associated with those shares. In instances where it is not possible or practical to recall loaned shares in advance of a proxy vote, investment managers must determine whether the returns generated by the loan will be more valuable for investors than voting the proxies for those shares. The proposed disclosure requirement fails to capture this cost-benefit analysis, which investment managers must go through to meet their fiduciary obligations and ensure that they are acting in the best interest of fund investors. On this point, we echo the arguments made by the Investment Company Institute ("ICI") in their comment letter in response to the Proposal, as well as those made by Commissioner Roisman in his statement released after the Proposal was approved.[5] We especially agree with Commissioner Roisman's argument that the proposed disclosure requirement "seems ill-designed to communicate to investors the balancing that funds go through when considering

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[2] *Id*. at 57490.
[3] *Id.* at 57487.
[4] *Id.* at 57489.
[5] *Statement on Proposed Changes to Asset Managers' Proxy Voting Disclosures*, Commissioner Elad L. Roisman (Sep. 29, 2021), *available at*: https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29 (the "Roisman Statement").

how to maximize value for fund investors. . .None of these considerations are reflected in the proposed new disclosure, and investors will be left to view only *part of the outcome* of this balancing act: the unvoted shares. . .[R]eporting only this metric gives a distorted view of how managers make decisions and potentially implies that voting shares *should be* a fund's priority rather than lending out those shares for a return."[6]

If the proposed disclosure requirement is finalized as drafted, funds may be incentivized to recall their securities on loan on a more regular basis in order to avoid giving the impression that they are somehow neglectful in not voting proxies for those shares. In our view, this would not be a positive or practical result. It is often not possible for funds to recall securities on loan in time to vote proxies on singular issues of particular interest, because companies typically deliver their proxy statements to shareholders *after* the record date (as the Commission itself acknowledges in Question 37 of the Proposal). This means funds usually do not find out what issues they will be voting on until after the deadline for recalling securities on loan has passed. So long as the record date generally occurs before issuers deliver their proxy statements, it is unclear to us how funds could be expected to timely recall select securities in order to vote proxies on particularly important issues.

To avoid the record date issue, funds might choose instead to undertake a general recall of all securities on loan every proxy season to ensure they regain possession of the securities in time to vote proxies on *any* issue. But recalling all shares on loan every proxy season would be costly and burdensome for funds – and may be so operationally inefficient that it would discourage funds from lending securities altogether. The need to recall shares on such a large scale would almost surely make securities lending less financially beneficial for funds and their investors. What's more, there is no guarantee that funds would be able to find a willing borrower on equally favorable terms once proxies for the recalled shares had been voted. Additionally, incentivizing funds to recall a large portion of their shares on loan at the same time during each proxy season could cause market volatility and decrease market efficiency. We would strongly urge the Commission to consider these potential consequences when deciding whether to include the proposed disclosure requirement as part of a final rule.

For all the reasons discussed above, we echo ICI's recommendation that the Commission eliminate this provision from the Proposal and instead require funds and investment managers to publicly disclose their securities lending policies and procedures. We believe this disclosure would give investors valuable transparency into the ways funds and investment managers make decisions around securities lending, including the ways they balance the potential return to investors that securities lending can generate with the inherent value of proxy voting. These policies would provide investors with a much more balanced, nuanced, and accurate picture of the costs and benefits involved in making these decisions, rather than presenting them with data that lacks context and can easily be misconstrued.

Beyond the final rule, we would urge the Commission to consider additional steps it might take to help resolve the current tension between funds' securities lending and proxy voting activity. The only reason investment managers and funds must choose between generating

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[6] *Id.*

revenue for investors through lending securities and retaining the valuable right to vote proxies for those shares (where recall is not practical or possible) is because SEC rules do not permit funds to vote proxies for shares on loan. Rather than imposing a disclosure requirement that casts a negative light on this necessary cost-benefit analysis, perhaps the Commission might be able to take some action that would allow funds and their investors to secure the benefits of securities lending *and* proxy voting at the same time. For example, the SEC might consider issuing a rulemaking that would allow funds to retain the right to vote proxies for shares on loan. Another option might be to permit investment managers to direct borrowers to vote proxies for those shares on loan, while at the same time exempting the borrowers who execute those votes of the fiduciary obligations that usually accompany proxy voting activity. The Commission might also consider whether it would be possible to move back the record date so that funds receive proxy statements from issuers before they need to decide whether to recall their securities on loan for proxy voting purposes. We are hopeful that the SEC can find new ways to resolve the long-standing balancing act that funds and their managers must undergo as they weigh the benefits of securities lending against those of proxy voting, and we welcome further engagement on this topic.

III. The Commission should consider modifying the proposed categories for identifying proxy voting issues, and should pay close attention to feedback from proxy advisors.

Question 23: Should we require reporting persons to categorize their votes, as proposed? What are the advantages and disadvantages of this approach?

Question 26: Are there particular types of votes where the categorization would be unclear or where reporting persons may reasonably categorize the same vote differently? To what extent would the ability to select more than one category for a given vote address these types of issues? Would the use of subcategories help address or contribute to potentially differing approaches to categorizing a particular vote among reporting persons?

The Proposal would require funds and investment managers filing Form N-PX to "select from standardized categories" listed in the Proposal "to identify the subject matter of each of the reported proxy voting items."[7] The Commission states in the Proposal that its objective in creating this requirement is to allow investors to better compare how different managers or funds voted on specific types of matters by standardizing the way those matters are identified.[8] According to the Commission, "the proposed categories and subcategories are designed to cover matters on which funds frequently vote, based on [SEC staff] experience and review of the matters on which funds voted in 2020, including say-on-pay votes."[9]

We believe the SEC's stated goal in proposing this requirement is a worthy one. But we believe this aspect of the Proposal as drafted would ultimately cause investors confusion, rather than provide them with greater clarity. Once again, we echo the concerns expressed by ICI in their comment letter that the categories the Commission has selected may overlap, and that funds and investment managers could reasonably disagree on the proper categorization for the same proxy voting issues. We also reiterate the views shared by

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7 *Id.* at 57486.
8 *Id.*
9 *Id.*

Commissioner Roisman in his statement that this aspect of the Proposal "is hardly a recipe for longevity. . ." and by "freezing in place categories that reflect issues *last year's* shareholders care about, [the SEC] risk[s] relegating future shareholders' interests to an 'Other' category that likely will be as useful to investors as the line items appearing as 'Miscellaneous' on today's forms.[10]

To address these issues, we support the recommendations made by ICI that the SEC should replace its proposed categories and subcategories with a smaller number of more broad-based categories. We also share ICI's perspective that if a categorization requirement is adopted as part of a final rule, most funds and managers will likely use the services of proxy advisory firms to perform the categorization on their behalf. As such, we urge the Commission to pay special attention to the feedback of proxy advisors when considering whether and how to include the categorization provision in a final rule.

IV. <u>**Conclusion**</u>.

We thank the Commission for allowing us this opportunity to comment on the Proposal. While we support the goals the SEC is working to advance, we have concerns about certain aspects of the Proposal – particularly the provision requiring disclosure of funds' shares on loan that have not been recalled for proxy voting purposes. We urge the Commission to consider modifying those provisions discussed above to ensure that the Proposal is as effective and beneficial to investors as possible. We welcome further discussion on any of the foregoing.

Sincerely,

Amy O'Brien

Amy M. O'Brien

Yves P. Denizé

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[10] Roisman Statement.