Amy M. O'Brien
Senior Managing Director |
Head of Responsible Investing

730 3rd Avenue
New York, NY 10017
T: (212) 916-5178
E: amy.obrien@nuveen.com

Yves P. Denizé
Senior Managing Director |
Division General Counsel

730 3rd Avenue
New York, NY 10017
T: (212) 916-6261
E: yves.denize@nuveen.com

October 5, 2020

Assistant Secretary Jeanne Wilson
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, RIN 1210– AB91

Dear Ms. Wilson:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to submit this comment in response to the proposed rule issued by the U.S. Department of Labor (the "DOL" or "Department") to amend the "Investment duties" regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")[1] (the "Proposed Rule").[2] We support the DOL's efforts to ensure that plan fiduciaries make proxy voting decisions that are cost-efficient and in the economic interest of ERISA plans and plan participants. As the provider of retirement services to over 15,000 institutions and five million individuals, we understand the importance of protecting the financial interests of plans and participants against unnecessary and excessive costs. We also believe that thoughtful, informed proxy voting plays a crucial role in a plan fiduciary's responsible management of plan assets in the best interest of plan participants, and is a vital part of effective corporate governance.

TIAA supports regulatory efforts to ensure that there is a balance between the financial costs and benefits of proxy voting by plan fiduciaries. However, we believe the Proposed Rule fails to strike that balance. The Proposed Rule would make the process of voting plan proxies unduly expensive and burdensome for plan fiduciaries, without creating any new benefits for plan participants that would justify the increased costs. If finalized as currently drafted, we are concerned that the Proposed Rule would cause plan fiduciaries to refrain from voting proxies in many situations, to the detriment of plan participants and the market as a whole. Moreover, we understand that part of the DOL's goal in issuing the Proposed Rule is to align the Department's regulations with the

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1 29 C.F.R. § 2550.404a-1.

2 *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, 85 Fed. Reg. 55219 (Sep. 4, 2020), *available at*: https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19472.pdf.

guidance and rule amendments regarding proxy voting issued by the Securities and Exchange Commission (the "SEC" or "Commission") over the past year.[3] But the DOL's proposal is inconsistent with the SEC's recent actions, giving plan fiduciaries far less flexibility to vote proxies according to their own cost-benefit analysis than they enjoy under SEC rules.

If the DOL wishes to ensure that the costs of proxy voting by plan fiduciaries do not outweigh the economic benefits, and that its regulations on proxy voting are aligned with recent SEC rulemakings, we respectfully submit that the Proposed Rule fails to achieve the Department's goal. The Proposed Rule would increase the costs and complications of the proxy voting process to such a degree that it would likely deter plan fiduciaries from voting plan proxies in many instances. This result would ultimately disadvantage plans and plan participants by depriving them of the pecuniary benefit that can accrue from proxy voting, and would suppress valuable plan involvement in key issues facing the companies in a plan's investment portfolio. The Proposed Rule would also serve to complicate the regulatory landscape around proxy voting, not only by creating new burdens for plan fiduciaries, but also by applying a number of provisions that are inconsistent with the SEC's guidance and rule amendments on this topic. Given these considerations, we strongly urge the DOL to withdraw the Proposed Rule. We discuss our position in more detail below.

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. 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.[4] Nuveen is responsible for implementing TIAA's proxy voting strategies at thousands of shareholder meetings across the U.S. and around the world every year. Nuveen also manages ERISA plan separate accounts and provides fiduciary advice to collective investment trusts and other ERISA plan asset collective vehicles. We vote proxies for many of these clients and products.

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[3] *See Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, 84 Fed. Reg. 47420 (Sep. 10, 2019), *available at*: https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-18342.pdf (the "SEC Proxy Guidance"); and *Exemptions from the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55082 (Sep. 3, 2020), *available at*: https://www.govinfo.gov/content/pkg/FR-2020-09-03/pdf/2020-16337.pdf (the "SEC Proxy Rule").

[4] Data are as of June 30, 2020.

Given the direct impact the Proposed Rule would have on Nuveen as an ERISA plan asset manager, our leadership in the areas of responsible investing and environmental, social, and governance ("ESG") investing, and our deep concern for the well-being of retirement plan participants, the TIAA organization has a vested interest in the Proposed Rule and its implications for plan fiduciaries and participants. From our perspective as an asset manager, we are concerned that the Proposed Rule would make it more expensive and difficult for plan fiduciaries to vote plan proxies in accordance with their fiduciary obligations and, in the case of plan fiduciaries that are SEC-registered investment advisers ("RIAs"), to determine how to comply with the Proposed Rule while also meeting their proxy voting responsibilities under applicable SEC rules and guidance. From a broader policy perspective, we believe that discouraging plan fiduciaries from making reasonable, well-informed proxy voting decisions would harm investors, the financial-services industry, and the market as a whole. It is with these perspectives in mind that we offer the following comments on the Proposed Rule.

II. Informed proxy voting is an essential part of corporate governance and should be encouraged by any new DOL proxy voting regulation.

We believe a well-functioning and dynamic proxy voting system is beneficial for the financial-services industry and the market as a whole. Robust participation in the proxy voting process by a broad, representative pool of investors is essential for effective corporate governance of publicly traded companies, and has benefits for both investors and operating companies. Proxy voting is the primary vehicle through which shareholders can express their preferences to company management in a meaningful way, which in turn keeps management attuned and accountable to the priorities and desires of their investors. The outcomes of proxy votes can significantly impact corporate decision-making on a range of critical issues that can impact investment performance, including mergers and acquisitions, executive compensation, and board composition, as discussed in more detail in Section V below.

Given the importance of proxy voting to the effective governance of public companies, it is crucial that the regulatory framework around proxy voting serves to balance the interests of shareholders and operating companies, while also encouraging and empowering a broadly representative pool of investors to make thoughtful voting decisions that reflect their own priorities and interests. We believe that the primary motivation in regulating the U.S. proxy voting process should be, as the SEC describes in the adopting release of the SEC Proxy Rule, to ensure "fair, honest, and informed markets, underpinned by a properly functioning proxy system."[5] In our view, a properly functioning proxy system is one where as many shareholders as possible are given the flexibility and resources necessary to make informed proxy voting decisions according to their own reasonable judgment, without being subject to onerous and unnecessary regulatory burdens.

III. The Proposed Rule would create new costs and burdens associated with proxy voting that are not outweighed by any benefit.

Throughout the Proposed Rule, the DOL repeatedly expresses its concern that the costs a plan fiduciary incurs as part of the proxy voting process are often not justified by any resulting economic

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5 85 Fed. Reg. at 55083.

benefit to plans and plan participants. The DOL laments that some plan fiduciaries ultimately "expend their assets unnecessarily" to vote proxies "on matters not economically relevant to the plan,"[6] and stresses a number of times in the Proposed Rule that plan fiduciaries are not required to vote all plan proxies to meet their fiduciary obligations. In an attempt to address these concerns, the DOL expressly states in the Proposed Rule that "fiduciaries must not vote in circumstances where plan assets would be expended on shareholder engagement activities that do not have an economic impact on the plan, whether by themselves or after the costs of engagement are taken into account."[7] The Proposed Rule goes on to set forth six specific standards that fiduciaries must meet when deciding whether and how to vote plan proxies, including investigating material facts that form the basis for any particular proxy vote; maintaining records on proxy voting activities (including records that demonstrate the basis for the plan fiduciary's decision); and carefully selecting and monitoring sources of research or proxy voting recommendations, such as third-party proxy advisory firms.[8] The DOL explicitly warns plan fiduciaries that "certain proposals may require a more detailed or particularized voting analysis" than others, and "fiduciaries must be prepared to articulate the anticipated economic benefit of proxy-vote decisions in the event they decide to vote."[9]

We appreciate the DOL's desire to ensure that fiduciaries carefully consider the costs of proxy voting against the resulting financial benefits to plans and plan participants. However, we believe that the Proposed Rule fails to achieve that goal. Rather, it would serve to make the proxy voting process even more costly and burdensome for plan fiduciaries – so much so that we anticipate many plan fiduciaries would be deterred from voting their plan proxies altogether, which could be a violation of their fiduciary obligations. In particular, we believe it is extremely unrealistic to expect plan fiduciaries to meet the six standards described in the Proposed Rule with respect to every proxy they are eligible to vote. And we question whether it is even possible for a plan fiduciary to ascertain the economic impact of every proxy vote in a detailed way that can be documented and articulated to the DOL, if necessary. Where there is any uncertainty as to the economic benefit that will result from a particular proxy vote, a plan fiduciary is likely to opt not to vote at all, rather than risk a challenge from the DOL that requires thorough documentation of the fiduciary's decision-making process. We anticipate that the number of ERISA plan fiduciaries participating in proxy votes would decrease significantly as a result of the Proposed Rule, creating an imbalanced pool of voters and depriving plan fiduciaries of the opportunity to take meaningful part in corporate decisions that could impact the value of plan investments. And even where a plan fiduciary does endeavor to fulfill each of the Proposed Rule's six standards in the process of making a proxy voting decision, the analysis, research, and recordkeeping they would be required to do would likely incur far more expense than proxy voting under the current regulatory framework does. Far from diminishing the fees plan fiduciaries pay to proxy advisory firms, the Proposed Rule would likely make proxy advisory services even more expensive, given the level of

[6] Proposed Rule, 85 Fed. Reg. at 55221.

[7] *Id*. at 55230.

[8] *Id.* at 55224.

[9] *Id*.

information, guidance, and support firms would need to provide plan fiduciaries to help them meet the DOL's new requirements.

To address this issue, the Department has proposed certain "permitted practices," which are intended to help plan fiduciaries comply with the requirements of the Proposed Rule in a more cost-effective manner. Under the Proposed Rule, "a fiduciary may adopt proxy voting policies that encompass one or more of the permitted practices, and the fiduciary may then apply those proxy voting policies to proxy votes," though such policies "would not preclude a fiduciary from voting in any particular case in which [the fiduciary] . . . determines that the proxy matter being voted upon would have an economic impact on the plan, or from refraining from voting based on a subsequent determination that the matter being voted upon would not have an economic impact."[10] One of those permitted practices would allow a fiduciary to adopt "a policy of voting proxies in accordance with the voting recommendations of a corporation's management on proposals or types of proposals that the fiduciary has prudently determined are unlikely to have a significant impact on the value of the plan's investment. . ."[11]

We appreciate that these permitted practices are intended to make it easier for plan fiduciaries to meet the Proposed Rule's requirements. However, we question the logic behind these provisions – particularly the permitted practice allowing fiduciaries to vote according to the recommendations of company management. It is unclear to us why plan fiduciaries should be prohibited from voting on economically insignificant matters based on their own judgment, but permitted to do so if they are blindly following management recommendations. Given the informational and power imbalance that exists between company management and investors, we do not believe there is a compelling policy argument for encouraging investors to automatically "rubber stamp" management voting recommendations – even on issues that may seem economically insignificant. In our view, this runs counter to one of the core purposes of proxy voting, which is to ensure that management acts in good faith and is responsible to shareholders. Moreover, because fiduciaries retain the ability to override management recommendations if they subsequently determine according to their own judgment and analysis that the costs of the vote will outweigh the benefits, this permitted practice would not appreciably diminish plan fiduciaries' research costs. We contend that the permitted practices are not so helpful as to significantly mitigate the extra costs and burdens that the Proposed Rule will impose on plan fiduciaries.

We also question whether the DOL has conducted a sufficiently thorough analysis to fully understand the costs associated with proxy voting under the current regulatory regime, and the ways in which the Proposed Rule might impact those costs. The DOL notes in the Proposed Rule that "large ERISA plans . . . file annual reports with the Department that include some information on certain fees paid directly to specific service providers," but that that information "sheds little light on the costs attendant to voting proxies or exercising other shareholder rights."[12] Were the DOL to access additional sources of information on this issue, it would become clear that the costs associated with a plan fiduciary's proxy voting decisions are, for the most part, not

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10 *Id*. at 55225.

11 *Id.*

12 *Id*. at 55228-29.

incremental based on number of individual proxies voted, and accrue almost entirely during the research and analysis process, before a voting decision has been made.

Most plan fiduciaries rely on the research and voting recommendations of third-party proxy advisory firms as an essential part of their voting decision-making process. Plan fiduciaries generally pay a single fee to a proxy advisory firm for research and recommendations provided for all of the plan's portfolio companies, pursuant to an annual agreement.[13] The fee is the same regardless of how many shareholder proposals a covered portfolio company includes in its proxy materials, or how many proxies a plan fiduciary votes. Thus, it is not true, as the DOL asserts, that if a shareholder proposal "has no or negligible implications for the value of [a] plan's investment, it would be better for the plan to simply refrain from voting than to incur even small costs making this determination."[14] Voting a proxy is essentially a cost-neutral exercise for a plan fiduciary. The process of deciding whether and how to vote the proxy – and all the research a plan fiduciary must do to make that informed decision – is where the majority of costs are incurred. The fact that the Proposed Rule would make the research and decision-making process more complicated and burdensome for plan fiduciaries will increase plan costs, even if fiduciaries vote fewer proxies as a result. We believe that many plan fiduciaries would choose to refrain from voting plan proxies altogether under the Proposed Rule, rather than repeatedly engage in an expensive, complicated, and often fruitless exercise to determine whether a vote is economically justified.

For the reasons descried above, we would encourage the Department to seek greater sources of information about the costs associated with proxy voting and the way the Proposed Rule could impact those costs before deciding whether to issue a new proposed rule. By making the proxy voting decision-making process more onerous, the Proposed Rule could ultimately deprive the proxy voting pool of a significant number of voters, thus skewing voting outcomes and potentially making it difficult for management to assemble a quorum of voters. We do not believe this is the DOL's desired result. We recommend that the Department withdraw the Proposed Rule and consider an alternative framework that would be less burdensome and costly for plan fiduciaries.

IV. The Proposed Rule is not well aligned with recent SEC guidance and rule amendments regarding the proxy voting process.

As the DOL notes in the Proposed Rule, the SEC has taken recent actions to modify certain aspects of its regulatory framework for proxy voting. In August 2019, the SEC finalized new guidance regarding proxy voting by RIAs, describing the steps an adviser should take to demonstrate that the proxy voting decisions it makes are in its clients' best interests. The SEC Proxy Guidance also requires RIAs that retain the services of proxy advisory firms to consider taking additional steps to evaluate whether the research and voting recommendations provided by those firms are consistent with the adviser's proxy voting policies and align with its clients' best interests. Additionally, in July of this year, the SEC adopted rule amendments that require proxy advisory firms wishing to rely on two exemptions from federal proxy rules to provide certain

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13 In Nuveen's case, we pay a single fee for proxy advisory firm research and recommendations, and then divide that fee among the various ERISA plans we manage.

14 Proposed Rule, 85 Fed. Reg. at 55228.

disclosures, adopt written policies and procedures, and provide clients with a mechanism for understanding an issuer's views on the proxy advisory firm's voting advice. The SEC Proxy Rule also codifies the Commission's longstanding view that proxy voting advice generally constitutes a solicitation under proxy rules, meaning that failure to disclose material information about proxy voting advice may constitute a potential violation of antifraud provisions under federal proxy rules. At the same time, the SEC issued supplemental guidance to help RIAs factor in the additional information they may receive as a result of the new SEC Proxy Rule. Finally, in September the SEC adopted new rule amendments that raise the thresholds shareholder proposals need to meet to be submitted and resubmitted as a potential part of an operating company's proxy materials.[15]

The DOL acknowledges that the SEC Proxy Guidance and SEC Proxy Rule "address some of the Department's concerns about ERISA fiduciaries properly discharging their duties with respect to proxy voting activities and appropriately selecting and overseeing proxy advisory firms."[16] However, only a subset of ERISA fiduciaries are under the Commission's jurisdiction. One of the goals of the Proposed Rule, according to the DOL, is to create a consistent regulatory framework around proxy voting for ERISA plan fiduciaries that are not subject to the SEC's jurisdiction. We agree with the DOL that any new regulation concerning the proxy voting of ERISA plan fiduciaries subject to the Department's jurisdiction should be consistent with similar SEC action on the topic. Unfortunately, we believe the Proposed Rule fails to achieve that consistency.

The DOL's Proposed Rule is far less flexible than the SEC Proxy Rule in terms of what it allows and requires plan fiduciaries to do. Notably, plan fiduciaries subject to the SEC Proxy Rule may *choose* to vote or not vote plan proxies according to their own cost-benefit analysis. The Proposed Rule, on the other hand, gives plan fiduciaries a mandate: they *must* vote proxies where the economic benefits outweigh the costs, and they are *prohibited* from voting proxies where the opposite is true. The SEC still requires a plan fiduciary under its jurisdiction to have a reasonable basis for believing any voting decision is in the plan's best interest, and to conduct reasonable investigations into any research and recommendations provided by proxy advisory firms. But the SEC ultimately recognizes that determining the costs and benefits of any particular proxy vote is a subjective process that does not always result in one clear "right" answer, and for this reason gives fiduciaries leeway to make voting decisions based on their own reasonable judgment. We believe the DOL should provide plan fiduciaries with similar flexibility, both to ensure consistency with the SEC's guidance and rulemakings, and because it is the more appropriate approach given that the economic benefits of proxy voting decisions can be difficult to quantify and document.

We would also stress that the SEC's new rules and guidance on proxy voting have only recently been finalized. It is likely that as these rules are fully digested and implemented by portfolio companies and investors, the costs and benefits associated with proxy voting will change. For example, the Council of Institutional Investors ("CII") has estimated that the SEC's new shareholder proposal submission thresholds would have more than doubled the number of

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

[16] Proposed Rule, 85 Fed. Reg. at 55223.

shareholder proposals excluded from company proxy materials from 2011 through the third quarter of 2019.[17] It remains to be seen whether CII's estimate is accurate for future proxy seasons – but we believe it is very possible that the SEC's new shareholder proposal submission thresholds will significantly reduce the number of proposals that are subject to a proxy vote, thereby reducing the costs to investors of making proxy voting decisions. We would encourage the DOL to withdraw the Proposed Rule and issue a new proposal after the industry has a better understanding of the impact of the SEC's new proxy voting guidance and rules.

V. **The DOL should not discourage proxy voting on ESG issues, which can have a direct economic impact on plans and plan participants.**

In addition to expressing concerns about the costs associated with proxy voting in general, the DOL also warns in the Proposed Rule that "some fiduciaries and proxy advisory firms . . . may be acting in ways that unwittingly allow plan assets to be used to support or pursue proxy proposals for environmental, social or public policy agendas that have no connection to increasing the value of investments used for the payment of benefits or plan administrative expenses, and in fact may have unnecessarily increased plan expenses."[18] The DOL notes that its concerns have been amplified "by the recent increase in the number of environmental and social shareholder proposals introduced," which the DOL believes are likely to have "little bearing on share value or other relation to plan interests."[19] These statements highlight the DOL's belief that a public company's decisions about ESG issues are unlikely to have any economic impact on the company's investors. We respectfully disagree with this position.

As noted in the comment letter[20] we submitted in response to the DOL's proposed rule regarding financial factors in selecting plan investments,[21] while not every ESG issue subject to a proxy vote has economic implications, we believe ESG factors are often in direct alignment with a company's pecuniary considerations – and thus it is often the case that voting proxies on ESG-related issues is in the economic interest of investors. The brand equity of many publicly traded companies is strongly connected to how they handle various ESG matters, and companies can face significant reputational risk as a result of their decision-making on these matters. Furthermore, ESG issues can directly impact a company's financial well-being in a number of ways, including by facilitating

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[17] Barkett, Ernie, *Estimating the Impact: The SEC's Proposed Rule to Curb Shareholder Proposals*, CII (Apr. 2020), *available at*: https://www.cii.org/files/publications/misc/CII_14a-8_Issue_Brief%20_April_2020_FINAL.pdf.

[18] *Id.* at 55222.

[19] *Id*. at 55229.

[20] *See* Letter from Amy M. O'Brien, Head of Responsible Investing at Nuveen, and Yves P. Denize, Division General Counsel at Nuveen, commenting on the DOL's Financial Factors Proposal (July 30, 2020), *available at*: https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00580.pdf (the "TIAA Financial Factors Comment").

[21] *Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 39113 (June 30, 2020), *available at*: https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13705.pdf (the "Financial Factors Proposal").

a company's growth, reducing its costs, minimizing its regulatory and legal interactions, increasing the productivity of its employees, and optimizing its investment and capital expenditures.[22] In our experience, the vast majority of ESG-related proposals Nuveen has voted on in recent years have been related not to environmental or social matters, but rather to executive compensation – an issue that has a direct impact on a company's financial performance. We believe it is crucial that plan fiduciaries expend the necessary resources to carefully research and consider whether and how to vote plan proxies with respect to these types of matters.

Another ESG-related issue that can have a direct economic impact on a company's financial performance is board composition. In recent years, investors have increasingly used the proxy voting process to pressure companies to increase the gender, racial, and ethnic diversity of their board members – and as a result, diversity on boards has been climbing steadily.[23] This is a beneficial outcome not only from a social perspective, but an economic one as well, given the reputational and financial damage a company may face if its board is not appropriately diverse. As an example, the California legislature recently passed a new board gender diversity law (SB 826) requiring that publicly traded companies with principal executive offices located in California include minimum numbers of women on their boards of directors. SB 826 authorizes the imposition of $100,000 fines for first-time violations of the law and $300,000 fines for subsequent violations. The California state legislature recently introduced a similar bill (AB 979) that would require all boards of companies with principal executive offices located in California to include at least one person of color, and bills like California's have been introduced in Hawaii, Massachusetts, Michigan, New Jersey, and Washington as well. This raft of new legislation has real economic implications for investors as they make voting decisions related to the composition of their portfolio companies' boards.

We would also refer the DOL to recent research, referenced in the TIAA Financial Factors Comment, showing that investment portfolios comprised of companies that perform well on ESG factors generate lower risk and enjoy greater returns on average than portfolios comprised of companies with poor ESG performance.[24] This has proven particularly true during the recent economic turmoil caused by the COVID-19 pandemic, during which ESG funds out-performed non-ESG funds, while offering comparable expense ratios.[25] Overall, the competitive performance of companies that perform well on ESG factors, net of fees, has served to drive growth in ESG investments, including funds that are ESG-branded and those that factor in ESG-related

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22 *See* TIAA Financial Factors Comment, p. 3.

23 *See* Klemash, Steve W. and Jamie C. Smith, "Five Takeaways from the 2019 Proxy Season," *Harvard Law School Forum on Corporate Governance* (Aug. 8, 2019), *available at*: https://corpgov.law.harvard.edu/2019/08/08/five-takeaways-from-the-2019-proxy-season/.

24 *Id.* at p.4, citing *Sustainable Reality – Analyzing Risk and Returns of Sustainable Funds*, Morgan Stanley Institute for Sustainable Investing (2019), *available at*: https://www.morganstanley.com/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable_Reality_Analyzing_Risk_and_Returns_of_Sustainable_Funds.pdf; and Hale, John, "Sustainable Funds Weather the First Quarter Better Than Conventional Funds," *Morningstar.com* (Apr. 3, 2020), *available* at: https://www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-quarter-better-than-conventional-funds.

25 *Id.*

considerations. Given the direct link that can exist between a company's financial performance and its handling of ESG factors, we believe plan fiduciaries are well justified in expending resources to make careful, informed proxy voting decisions on ESG-related items on behalf of plans and plan participants. The Proposed Rule would make it even more expensive and difficult for plan fiduciaries to make these voting decisions.

VI. Conclusion.

In closing, we thank the Department for allowing us this opportunity to comment on the Proposed Rule. While we support many of the goals the DOL is working to advance, we believe the Proposed Rule would in many instances result in outcomes that are contrary to the Department's intentions. As such, we respectfully recommend that the DOL withdraw the Proposed Rule and issue a new proposal once the full impact of the SEC's recent proxy voting guidance and rulemakings is better understood by the industry. We welcome further discussion on any of the foregoing.

Sincerely,

Amy M. O'Brien

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

Yves P. Denizé
Senior Managing Director, Division General Counsel
Nuveen, LLC