



August 28, 2025

**By Electronic Mail**

Holly Hunter-Ceci, Esq.  
Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

**Re: No-Action Request for TIAA and TIAA Separate Account VA-4**

Dear Ms. Hunter-Ceci:

On behalf of Teachers Insurance and Annuity Association of America (“TIAA”) and its new insurance separate account, TIAA Separate Account VA-4 (the “Post-Combination Account”), we are seeking assurance that the staff of the Division of Investment Management (the “SEC Staff”) of the U.S. Securities and Exchange Commission (“SEC”) will not recommend enforcement action if TIAA and the Post-Combination Account rely on certain exemptive orders issued by the SEC and no-action assurance issued by the SEC Staff, enumerated below, that the College Retirement Equities Fund (“CREF”), the companion organization to TIAA and predecessor entity to the Post-Combination Account, has obtained and has been relying upon.

This SEC Staff no-action assurance request is being submitted in connection with the pending combination of TIAA and CREF and the merger of CREF with and into the Post-Combination Account (the “Combination”). The Post-Combination Account has been created in connection with the Combination as a “shell” insurance separate account of TIAA (*i.e.*, with no assets at the time of Combination other than seed capital contributed by TIAA) into which CREF’s assets and liabilities will be placed so that CREF will effectively merge with and into the Post-Combination Account. The Combination, as described in more detail below, should provide potentially significant financial and other benefits to TIAA and Post-Combination Account participants. Because the assets and liabilities of CREF will remain intact following the merger of CREF with and into the Post-Combination Account (as the successor to CREF) and the rights and benefits of CREF participants will not be adversely affected by the Combination, from a federal securities law perspective the Combination is essentially administrative, not substantive, in nature. This SEC Staff no-action request relates solely to existing and unmodified relief that will continue for the new corporate structure.

As discussed below, the SEC Staff has provided no-action assurance in circumstances similar to those here that have enabled investment companies to rely on exemptive orders and SEC Staff no-action letters obtained by the predecessor entity in a merger transaction. Those precedents recognized that providing such assurance is critical to the continuity of the merging

investment companies involved in the transaction. The same is true here: the exemptive orders and SEC Staff no-action letter identified below that CREF has previously obtained, and that TIAA and the Post-Combination Account seek to continue to rely upon following the Combination, are critical to the continuing operation of CREF as the Post-Combination Account and the variable annuity contracts issued by CREF (the “CREF Contracts”) at the time of the Combination as variable annuity contracts co-issued by the Post-Combination Account and TIAA.<sup>1</sup>

## **CREF, TIAA, AND THE POST-COMBINATION ACCOUNT**

**CREF**. CREF was established by TIAA pursuant to a special act of the New York State Legislature that became effective on March 18, 1952. CREF was formed for the purpose of providing retirement benefits suited to the needs of teachers and other employees of nonprofit educational and research organizations. CREF achieves this purpose by issuing the CREF Contracts.

CREF is a not-for-profit membership corporation subject to the Not-For-Profit Corporation Law of New York State (“NY-NPCL”).<sup>2</sup> Although CREF is not an insurance company under the New York Insurance Law (“NYIL”),<sup>3</sup> CREF’s organizing Charter subjects it to certain, but not all, provisions of the NYIL as well as to the general supervision of the New York State Department of Financial Services (“NYDFS”). Changes to CREF’s governing documents, *i.e.*, its Charter, Constitution, Bylaws, and Rules of the Fund, require approval by the NYDFS. As a New York not-for-profit membership corporation, CREF is also subject to the jurisdiction and oversight of the New York Attorney General’s Charities Bureau (“NYAGCB”).

CREF registered as an open-end management investment company under the Investment Company Act of 1940 (“1940 Act”) and the Securities Act of 1933 (“1933 Act”) in 1989 on Forms N-8A and N-3 pursuant to an SEC exemptive order.<sup>4</sup> As of the date hereof, CREF has eight accounts (each, an “Account”): Stock, Global Equities, Growth, Equity Index, Core Bond, Inflation-Linked Bond, Social Choice and Money Market. Each Account operates as a separate

---

<sup>1</sup> As explained below, CREF and TIAA are legally separate but companion organizations that have substantially aligned mission-based charters. The common corporate purpose under both charters is to aid and strengthen nonprofit colleges, universities, institutions engaged primarily in education and research, governments and their agencies and instrumentalities, and other nonprofit institutions. In addition, the TIAA Board of Governors (as defined below) and the CREF Board of Governors (as defined below) have overlapping members, and both TIAA and CREF have certain overlapping officers. Solely for purposes of the 1940 Act, TIAA and CREF can be considered “affiliated persons” of one another.

<sup>2</sup> New York Consolidated Laws, Not-For-Profit Corporation Law - NPC §§ 101-1617.

<sup>3</sup> CREF is regulated as a “Retirement System” under Article 46 of the NYIL.

<sup>4</sup> With respect to the CREF 1933 Act and 1940 Act registrations, respectively, *see* SEC Registration File No. 33-00480 and File No. 811-04415. With respect to CREF’s original “omnibus” exemptive order application, *see* CREF and TIAA, File No. 812-6208 (April 17, 1987) (amendment no. 3 and restatement of application) (“Amended and Restated Application”); Inv. Co. Act Rel. Nos. 15866 (July 10, 1987) (notice), 16062 (October 20, 1987) (notice), and 16235 (January 21, 1988) (notice); SEC Admin. Proc. No. 3-6954 (December 21, 1988) (settlement agreement); SEC Admin. Proc. No. 3-6954 (January 17, 1989) (proposed order); Inv. Co. Act Rel. No. 17116 (August 22, 1989) (order) (collectively, the “Omnibus Order”).

investment portfolio with its own investment objective, investment policies and investment restrictions. CREF owns the assets of each Account. Each Account's income, investment gains, and investment losses are credited to or charged against the assets of that Account without regard to CREF or the other Accounts' other income, gains, or losses. Under New York law, CREF cannot charge any Account with liabilities incurred by any other Account, nor can CREF be charged with any liabilities incurred by TIAA or any of its affiliates other than those arising from the CREF Contracts given that CREF is a separate and distinct legal organization from TIAA.

CREF has a board of governors (the "CREF Board of Governors") consisting of seven individual members of CREF. The role of the CREF Board of Governors is a limited one: to (a) ensure that CREF adheres to its mission as described in its Charter, (b) schedule meetings of CREF participants, and (c) when necessary, approve amendments to CREF's Charter, Constitution and Bylaws. The CREF Board of Governors is required by the CREF Charter, Constitution, and Bylaws to be comprised of the same seven individuals who serve as the TIAA Board of Governors. Thus, the same seven individuals provide an oversight role for both CREF and TIAA.

CREF's operations are overseen by a board of trustees (the "CREF Board of Trustees"). The CREF Board of Trustees operates as the traditional corporate board of directors overseeing the management of CREF for purposes of the 1940 Act and applicable state corporate law. The CREF Trustees are elected by CREF participants or are otherwise appointed in accordance with the 1940 Act. None of the CREF Trustees is an "interested person" of CREF within the meaning of Section 2(a)(19) of the 1940 Act.

The CREF Contracts held by CREF participants currently consist of ten types of individual and group variable annuity contracts and certificates. Each CREF Account currently issues four classes of units, *i.e.*, Class R1, Class R2, Class R3 and Class R4, although not all classes are available under each type of CREF Contract.

**TIAA**. TIAA is a legal reserve stock life insurance company organized under the NYIL, and subject to the supervision of the NYDFS. It was founded on March 4, 1918, by the Carnegie Foundation for the Advancement of Teaching. All of the outstanding common stock of TIAA is held by the TIAA board of governors, a not-for-profit corporation organized under the NY-NPCL (the "TIAA Board of Governors"). The TIAA Board of Governors was originally created for the purpose of holding the stock of TIAA. TIAA's operations are overseen by the TIAA Board of Trustees.

TIAA's primary purpose is to aid and strengthen nonprofit educational and research organizations, governmental entities and other nonprofit institutions by providing retirement and insurance benefits for their employees and their families and by counseling such organizations and their employees on benefit plans and other measures of economic security.

TIAA is the companion organization of CREF. Together, TIAA and CREF form the principal retirement system for the nation's education and research communities and form one of the largest pension systems based on assets under management in the United States.

TIAA currently has two operating separate accounts that are registered as investment companies under the 1940 Act that fund variable annuity contracts.<sup>5</sup> TIAA also has a real estate separate account that is not registered as an investment company but whose accumulation units are registered under the 1933 Act on Form S-1.<sup>6</sup>

The large majority of CREF participants hold individual or group fixed annuity contracts or certificates issued by TIAA that serve as companion contracts to the CREF Contracts.

**The Post-Combination Account.** The Post-Combination Account was established pursuant to resolutions adopted by TIAA's Board of Trustees on July 16, 2024. Legislation was adopted by the New York State Legislature on June 30, 2023 authorizing the Combination (the "Legislation")<sup>7</sup>. The Post-Combination Account has several investment sub-accounts although those sub-accounts have not yet commenced operations. These sub-accounts mirror the current CREF Accounts, including the Stock, Global Equities, Growth, Equity Index, Core Bond, Inflation-Linked Bond, Social Choice and Money Market Accounts.<sup>8</sup> Each sub-account will operate as a separate investment portfolio with its own investment objective, investment policies and investment restrictions that will be identical to the investment objectives, policies, restrictions and risks of the corresponding current CREF Accounts.

TIAA will own the assets of the Post-Combination Account and each of the sub-accounts for purposes of the NYIL. Pursuant to the terms of the Legislation and Section 4240 of the NYIL, the assets of the Post-Combination Account, and of each investment sub-account, will be insulated and legally segregated from the assets of the general account of TIAA, any other TIAA separate account and investment sub-account, and TIAA's other business operations as required by NYIL.<sup>9</sup> Once registered under the 1940 Act, the Post-Combination Account will be a "separate account" as defined in Section 2(a)(37) of the 1940 Act and Rule 0-1(e) thereunder.

---

<sup>5</sup> TIAA Separate Account VA-1:

<https://www.sec.gov/Archives/edgar/data/923524/000119312525102160/d930572d485bpos.htm>.

TIAA Separate Account VA-3:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/0001364783/000119312525102219/d772814d485bpos.htm>.

<sup>6</sup> TIAA Real Estate Account (REA):

<https://www.sec.gov/Archives/edgar/data/946155/000162828025019810/tiaarealestateaccounts-1a2.htm>.

<sup>7</sup> Laws of New York, 2023 Chapter 171.

<sup>8</sup> Between the date of this letter and the closing of the Combination, CREF could create one or more additional Accounts. In such event, the Post-Combination Account will also have investment sub-accounts that mirror those additional CREF Accounts.

<sup>9</sup> More specifically, pursuant to the terms of the Legislation and Section 4240 of the NYIL, that portion of the assets of the Post-Combination Account, and of each investment sub-account, not exceeding the reserves and other contract liabilities with respect to the Post-Combination Account and each sub-account, will not be chargeable with liabilities arising out of any other business of TIAA. The income, gains and losses, whether or not realized, from assets allocated to the Post-Combination Account, and each investment sub-account, will be credited to or charged against the Post-Combination Account and each sub-account without regard to other income, gains or losses of TIAA.

The Post-Combination Account will be registered with the SEC as an open-end management investment company on Form N-8A and will file a registration statement on Form N-3. CREF Contracts in force as of the effective date of the Combination and registered on Form N-3 under the 1933 Act will be endorsed to reflect the TIAA separate account structure and memorialize the Combination. The Post-Combination Account will issue the same classes of units for each Account under those variable annuity contracts as have been issued under the CREF Contracts as well as for contracts issued after the effective date of the Combination. As of the date hereof, such classes include Class R1, Class R2, Class R3 and Class R4.<sup>10</sup>

## THE COMBINATION TRANSACTION

**The Legislation.** Under the Legislation, CREF has been authorized and empowered to combine with TIAA. The Combination will involve the assets and liabilities of CREF being transferred to the Post-Combination Account in exchange for units of the Post-Combination Account to be issued to CREF participants in complete liquidation and termination of CREF upon the closing date for the Combination. The terms of the Legislation provide that the Combination shall be deemed a merger under the laws of the State of New York and shall be approved by not less than two-thirds of the individual members of the CREF Board of Governors and the TIAA Board of Governors. Prior to the closing of the Combination, an agreement and plan of combination will be prepared that sets forth the substantive terms of the Combination (the “Plan of Combination”). The Plan of Combination will become effective only if approved by (i) the TIAA and CREF Boards of Governors, (ii) the TIAA and CREF Boards of Trustees, (iii) the Superintendent of the NYDFS and (iv) additional state regulatory authorities as provided by the terms of the Legislation.

**Anticipated Benefits of the Combination.** Currently, TIAA and CREF are subject to certain financial, tax and marketplace disadvantages. In addition, the existence of TIAA and CREF as separate legal entities has resulted in separate governance structures that are not as efficient as they could be. The Combination should, among other things, enable the realization and allocation as between TIAA and the Post-Combination Account of certain federal income tax attributes relating to CREF’s prior operations and the operations of the Post-Combination Account that result in lower expense ratios for the Post-Combination Account, streamline governance structure and processes, and ameliorate the existing financial, tax, and marketplace disadvantages for both TIAA and CREF.

**The Merger of CREF into the Post-Combination Account.** As a preparatory step to facilitate the necessary filings and obtain the necessary state regulatory approvals of variable annuity contract forms and the Post-Combination Account’s plan of operation prior to the effective date of the Combination, TIAA established the Post-Combination Account on July 16, 2024 through resolutions adopted by the TIAA Board of Trustees on the same date. Pursuant to the Legislation, the assets and liabilities of CREF will move over intact to the Post-Combination

---

<sup>10</sup> Between the date of this letter and the closing of the Combination, CREF could create one or more additional classes of units for each Account. In such event, the Post-Combination Account also will issue those additional pre-Combination classes of units for each Account.

Account and will not be combined with TIAA's general account or with the assets or liabilities of any other TIAA separate account consistent with applicable NYIL.

The investment advisory, administrative and distribution services that are now being provided to CREF by TIAA and certain of its subsidiaries on an "at cost" basis will continue to be provided to the Post-Combination Account by those same entities and by the same personnel, at the time of Combination, on an "at cost" basis.<sup>11</sup> The terms of these service agreements will not differ materially from the terms of the existing service agreements with CREF at the time of the Combination. The Post-Combination Account's investment and other operational processes will be virtually identical to CREF's investment and other operational processes. Moreover, the same individuals serving as the CREF Board of Trustees at the time of the Combination will serve as the Management Committee of the Post-Combination Account, providing the same oversight that they have been providing as members of the CREF Board of Trustees at the time of the Combination. Upon the closing of the Combination, each of the sub-accounts of the Post-Combination Account will be the financial and performance survivor of its corresponding CREF Account. There will not be any change in the Post-Combination Account's unit values immediately subsequent to the Combination from CREF's unit values immediately prior to the Combination.

Because CREF will cease to exist as a distinct corporate entity as a result of the Combination, TIAA will endorse the existing companion TIAA contracts and certificates held by CREF participants to provide for and reflect the Post-Combination Account structure and to add provisions of the CREF Contracts. The purpose of these endorsements is to comply with applicable state insurance laws and to add provisions to the group and individual annuity contracts and certificates issued by TIAA and the Post-Combination Account after the Combination that will be substantively the same as, and virtually identical to, the provisions of the CREF Contracts in effect prior to closing the Combination. In addition, these endorsements filed with state insurance commissions will provide for mortality and expense guarantees that TIAA will be required to provide under the insurance laws and regulations of the various states.<sup>12</sup>

---

<sup>11</sup> Specifically, TIAA-CREF Investment Management, LLC ("TCIM"), an indirect wholly controlled subsidiary of TIAA, manages the assets of each CREF Account under the oversight of the CREF Board of Trustees, and will continue to manage the assets of the Post-Combination Account and its investment sub-accounts under the oversight of the Post-Combination Account's Management Committee. TIAA-CREF Individual & Institutional Services, LLC ("T-C Services"), a wholly controlled subsidiary of TIAA, is the principal underwriter and distributor of the CREF Contracts and will serve as principal underwriter and distributor of those contracts following the closing of the Combination. Administrative services are provided to CREF pursuant to an Administrative Services Agreement with TIAA. TIAA will continue to provide administrative services to the Post-Combination Account. All these advisory, principal underwriter and distributor, and administrative services have been, and will continue to be following the Combination, provided at cost.

<sup>12</sup> CREF Contracts currently include mortality experience as a factor in the computation of annuity unit values. Exemptive relief from Rule 2a-4 under the 1940 Act was included in the Omnibus Order for the inclusion of this factor. After the Combination, due to the added mortality and expense guarantees and certain regulatory requirements, variable annuity payments will no longer reflect negative/unfavorable mortality experience. Variable annuity payments will continue to reflect positive/favorable mortality experience, but mortality experience will no longer be a factor used to compute changes in annuity unit values. Instead, any positive/favorable mortality experience will be provided to annuitants by periodically crediting additional annuity units. By completely

Accordingly, the Combination will not result in any changes to the substantive provisions of the CREF Contracts or the classes of units that have been issued under the CREF Contracts at the time of the Combination, other than as necessary in order to (i) reflect the TIAA separate account structure and memorialize the Combination and (ii) reflect the above noted TIAA mortality and expense guarantees.

The substantive rights and obligations that CREF participants now have under their CREF Contracts, which rights and obligations will not be adversely impacted by the Combination, will become rights and obligations that TIAA will be responsible for as issuer of the variable annuity contracts it issues upon and after the Combination, and those rights and obligations will be supported by the assets of the Post-Combination Account. In addition, the substantive rights and obligations that CREF participants currently have under the 1940 Act, including shareholder approval rights, will remain unchanged in the Post-Combination Account.

The Post-Combination Account's Management Committee and TIAA, as the sole holder of the seed money interests in the Post-Combination Account, will approve, as applicable, the investment management, administration, and distribution services agreements with TCIM, TIAA, and T-C Services (as defined above), respectively, as well as the distribution plan pursuant to Rule 12b-1 under the 1940 Act. Because the Combination will not entail any changes requiring a 1940 Act vote of security holders, and because no vote is required under applicable state law, no votes of CREF participants will be solicited by the CREF Board of Trustees to effect the Combination.<sup>13</sup> CREF participants will receive a detailed information statement on Form N-14 regarding the Combination prior to the closing of the Combination, which will also serve to register the securities issued by the Post-Combination Account in connection with the Combination.

As a separate account of TIAA, the Post-Combination Account could be considered to be under common control with CREF and therefore an "affiliated person" of CREF under Section 2(a)(3) of the 1940 Act. As a result, the Combination could constitute a merger involving affiliated registered investment companies (CREF and the Post-Combination Account), to which the prohibitions in Sections 17(a)(1) and (2) of the 1940 Act would apply, absent an exemption. CREF and the Post-Combination Account plan to rely on the exemption in Rule 17a-8 under the 1940 Act to the extent the Combination constitutes a transaction subject to Section 17(a).

## **THE CREF EXEMPTIVE ORDERS AND SEC STAFF NO-ACTION LETTER**

We are seeking the SEC Staff's assurance that TIAA and the Post-Combination Account can rely on those existing and unmodified exemptive orders (or specified portions thereof) and SEC Staff no-action letter enumerated below that CREF has obtained (collectively, the "Existing Relief").<sup>14</sup> The Existing Relief that TIAA and the Post-Combination Account intend to rely on

---

removing mortality experience as a factor in the pricing of annuity units, Rule 2a-4 under the 1940 Act will no longer be implicated.

<sup>13</sup> The CREF Contracts by their terms do not require consent of CREF participants to effect the Combination.

<sup>14</sup> The first exemptive order that CREF obtained, the Omnibus Order, was issued in 1989. See *supra* note 4. Since the issuance of the Omnibus Order, changes in CREF's business practices and regulatory changes have made some

following the closing of the Combination includes the following exemptive orders and SEC Staff no-action letter:

1. **1990 Externalization Relief.**<sup>15</sup> Exemptive order granting CREF an exemption from Section 17(d) of the 1940 Act and Rule 17d-1 thereunder to enable CREF to reimburse TCIM, TIAA, and T-C Services on an at cost basis for TIAA's long standing obligation (since CREF's inception) to incur advisory, administrative and distribution expenses on CREF's behalf. The order, insofar as it pertains to the ongoing operation of the expense reimbursement arrangement between TCIM, TIAA, T-C Services and the Post-Combination Account, remains necessary following the Combination.

2. **1993 Rule 12b-1 Relief.**<sup>16</sup> Exemptive order granting CREF an exemption from Section 12(b) and Rule 12b-1 under the 1940 Act to permit CREF's adoption of a plan of distribution without participant approval. The order also exempts CREF's distribution financing arrangement from certain provisions of Sections 26(a)(2) and 27(c)(2) of the 1940 Act. CREF also obtained an exemption pursuant to Section 17(d) and Rule 17d-1 thereunder because CREF's at cost distribution arrangement involves allocation of CREF's distribution expenses to each CREF Account on equal terms. TIAA and the Post-Combination Account will not rely on the relief from Sections 26(a)(2) and 27(c)(2) following the Combination due to the Post-Combination Account's ability to rely on Sections 26(f) and 27(i) of the 1940 Act. All payments by CREF for distribution services are made "at cost" to T-C Services, a wholly controlled subsidiary of TIAA, and all payments by the Post-Combination Account for distribution services will be made "at cost" to TC-Services. Thus, the Post-Combination Account and T-C Services will continue to rely on the Section 12(b) and Rule 12b-1 relief to the extent necessary to operate the Post-Combination Account's plan of distribution. Moreover, the Post-Combination Account will continue to allocate distribution expenses equally to each of its investment sub-accounts in reliance on CREF's Section 17(d) and Rule 17d-1 relief. Thus, the relief in the order from Section 12(b) and Rule 12b-1, and Section 17(d) and Rule 17d-1, remains necessary following the Combination.

3. **2014 Multi-Class Relief.**<sup>17</sup> Exemptive order granting CREF an exemption from Sections 18(f)(1) and 18(i) of the 1940 Act to allow the CREF Accounts to issue multiple classes of units with varying administrative and/or distribution expenses and other expenses in a manner

---

of CREF's prior exemptive relief and SEC Staff no-action assurances obsolete. In addition, some of the prior relief obtained by CREF will not be needed following the Combination either due to the structure of the Post-Combination Account or because TIAA and the Post-Combination Account will be modifying the manner in which certain benefits under the CREF contracts will be calculated and administered. Therefore, this request for SEC Staff no-action assurance relates only to those enumerated exemptive orders (or specified portions thereof) and a SEC Staff no-action letter listed herein that TIAA and the Post-Combination Account will rely upon following the Combination.

<sup>15</sup> Investment Company Act Release Nos. 17861 (November 20, 1990) (notice) and 17906 (December 19, 1990) (order).

<sup>16</sup> Investment Company Act Release Nos. 19591 (July 23, 1993) (notice) and 19645 (August 19, 1993) (order).

<sup>17</sup> Investment Company Act Release Nos. 31092 (June 23, 2014) (notice) and 31204 (August 11, 2014) (order).

consistent with the requirements of Rule 18f-3 under the 1940 Act, except that CREF is not registered on Form N-1A.<sup>18</sup> The relief is subject to multiple express conditions, all of which would apply, as is, to the Post-Combination Account in the same manner as they apply to CREF. The Post-Combination Account will also be registered on Form N-3 and will operate a multiple class system, and therefore the relief remains necessary following the Combination.

4. **2009 CREF No-Action Letter.**<sup>19</sup> SEC Staff no-action letter granting no-action assurance to CREF to enable the CREF Money Market Account (the “MMA”) to use amortized cost to value its portfolio holdings as a result of its longstanding practice of not maintaining a constant price per unit at a single value to avoid the adverse tax consequences that would result from otherwise having to distribute income on a daily basis given that the MMA is a “government money market fund” as defined in Rule 2a-7 under the 1940 Act. Although the SEC has amended Rule 2a-7 three times since the SEC Staff provided its no-action assurance to CREF in 2009, none of those amendments impacted the Rule 2a-7 provisions on which CREF sought no-action assurance.<sup>20</sup> Following the Combination, the money market investment sub-account of the Post-Combination Account will continue to operate in the same manner as the MMA does today, including in compliance with amended Rule 2a-7 under the 1940 Act and the risk-limiting conditions thereunder. As a result, the no-action assurance in the 2009 SEC Staff no-action letter remains necessary following the Combination.

## **DISCUSSION OF RELEVANT NO-ACTION LETTER PRECEDENT**

Given the unique nature of CREF and the Combination, there are no precedents with identical facts that addressed the ability of the successor entity to continue to rely on the SEC or Staff regulatory relief the predecessor entity had obtained prior to the structural change. However, there is a line of SEC Staff no-action letters that is very closely analogous, in that it provides for continuation of prior SEC or SEC Staff regulatory relief where the operations of the surviving investment companies were not affected by the merger transaction notwithstanding a change in organizational structure.

**Insurance Company Merger No-Action Letters.** The Combination is closely analogous to numerous insurance company merger transactions where the SEC Staff has provided no-action assurance that the surviving insurance company and its separate accounts that formerly were separate accounts of the merged company can rely on exemptive orders and no-action letters that the merged company had previously obtained relating to its separate accounts.<sup>21</sup> These SEC Staff no-action letters involve a merger of insurance companies, where

---

<sup>18</sup> We note that the SEC subsequently granted similar relief to another Form N-3 registrant on conditions that do not differ from those in CREF’s 2014 relief. *See* *Fortune V Separate Account, Investment Company Act Release Nos. 34429 (Nov. 30, 2021) (notice) and 34453 (Dec. 23, 2021) (order).*

<sup>19</sup> CREF SEC Staff No-Action Letter (April 3, 2009) (the “Letter”).

<sup>20</sup> Prior to the 2014 Amendments, the SEC adopted amendments to Rule 2a-7 in 2010. *See* *Money Market Fund Reform, SEC Rel. No. IC-29132 (Feb. 23, 2010).* Most recently, the SEC adopted amendments to Rule 2a-7 in 2023. *See* *Money Market Fund Reforms, SEC Rel. No. IC-34959 (Jul. 12, 2023).*

<sup>21</sup> *See, e.g.,* *Ameritas Life Insurance Corp., et al. (Apr. 5, 2007); CUNA Mutual Life Insurance, et al. (Dec. 27, 2007); IDS Life Insurance Company, et al. (Dec. 14, 2006); Acacia National Life Insurance Company (Dec. 19,*

there was an accompanying intact transfer to the surviving insurer of the registered separate accounts of the insurer being merged out of existence. Notably, the SEC Staff no-action letter issued to Voyager Life Insurance Company<sup>22</sup> involved separate accounts transferred through an insurance company merger where the separate accounts were, like CREF, registered open-end management investment companies.

The Combination will be closely comparable to the facts in this long line of SEC Staff no-action letters. As in these letters, the Combination will involve the assets and liabilities of CREF moving to the Post-Combination Account intact and they will not be combined with the assets and liabilities of TIAA or any of its other separate accounts.

These letters set forth a number of key considerations or representations. For example, the letters state that the financial history of the separate accounts would carry forward after the merger.<sup>23</sup> As in these letters, the financial and performance history of CREF and the CREF Accounts will carry forward to the Post-Combination Account and its sub-accounts. The letters also represent that the investment operations of the separate accounts subject to the merger transactions would not change following the closing.<sup>24</sup> As in these letters, the investment objectives, investment strategies and investment risks of each of the CREF Accounts will not be affected by the Combination. In addition, TCIM, T-C Services, and TIAA will provide investment advisory, principal underwriting and distribution, and administrative services, respectively, to the Post-Combination Account on the same terms (*i.e.*, at cost) and in the same manner that such services have been provided to each of the CREF Accounts.

The Combination will differ in certain respects from the facts in the insurance company merger no-action letters, but we submit those differences should not affect whether TIAA and the Post-Combination Account should be able to rely on CREF's Existing Relief.<sup>25</sup>

---

2003); Allstate Life Insurance Company (December 23, 2002); The Manufacturers Life Insurance Company (U.S.A.) (Dec. 27, 2001); Aid Association for Lutherans (Dec. 21, 2001); The Equitable Life Assurance Society of the United States (Dec. 18, 1996); Metropolitan Life Insurance Company (May 17, 1996); Massachusetts Mutual Life Insurance Company (Feb. 15, 1996).

<sup>22</sup> Voyager Life Insurance Company (January 10, 1986).

<sup>23</sup> *See, e.g.*, Sun Life Assurance Company of Canada (U.S.) et al. (December 23, 2003); Acacia National Life Insurance Company (December 19, 2003); Allstate Life Insurance Company (December 23, 2002); The Manufacturers Life Insurance Company (U.S.A.) (December 27, 2001); AUSA Life Insurance Company et al. (September 18, 1998).

<sup>24</sup> *See, e.g.*, Acacia National Life Insurance Company (December 19, 2003); Aid Association for Lutherans et al. (December 21, 2001); Jefferson Pilot Financial Insurance Company et al. (August 1, 2000); AUSA Life Insurance Company et al. (September 18, 1998); Voyager Life Insurance Company (January 10, 1986).

<sup>25</sup> The insurance company merger "intact transfer" SEC Staff no-action letters cited above typically sought and obtained no-action assurance that the transfer would not result in the offer or sale of any new or different security, in the creation of a new or different investment company issuer, or in an exchange offer for purposes of Section 11 of the 1940 Act. The Combination will involve a merger of CREF into the Post-Combination Account in reliance on Rule 17a-8 under the 1940 Act; therefore, in order to comply with Section 5 of the 1933 Act, TIAA and the Post-Combination Account will register the new securities issued by the Post-Combination Account in connection with the Combination on Form N-14. Prior to the Combination, the Post-Combination Account will register as a new investment company on Forms N-8A and N-3 pursuant to Section 8 of the 1940 Act. Consequently, we are not

The insurance company merger SEC Staff no-action letters each contemplated the merger of insurance companies and the intact transfer of their separate accounts. Here, no merger of insurers is involved nor is there a transfer of a separate account.<sup>26</sup> However, the critical element from a 1940 Act perspective in the insurance company merger no-action letters was the fact that the separate accounts were transferred intact, which supported the assertion that the separate accounts' investment company identity should continue. Although CREF will merge out of existence into the Post-Combination Account, its investment company attributes will be preserved (*e.g.*, its assets, how they are managed, and its at cost expense structure). Preservation of those investment company features will be facilitated by the fact that CREF's assets and operations will be completely segregated from TIAA's other assets and operations and will be insulated from TIAA general creditors as required by NYIL.

In addition, the insurance company merger SEC Staff no-action letters each contemplated entities that are subject to the same basic statutory schemes. Unlike the letters, CREF is organized under the NY-NPCL, whereas TIAA is organized under the NYIL and is subject to supervision by the NYDFS. But as noted above, CREF is subject to general supervision by the NYDFS. Moreover, although CREF is a not-for-profit membership corporation subject to the NY-NPCL, the fact that TIAA and CREF are subject to a different body of law does not affect the analysis under the insurance company merger no-action letters.<sup>27</sup> It is particularly noteworthy that CREF's current organizational structure does not provide CREF participants with any substantive or procedural rights that will be negatively impacted as a result of the Combination.<sup>28</sup>

---

seeking SEC Staff no-action assurances relating to Section 5 of the 1933 Act or Section 8 of the 1940 Act here. As noted, the Form N-14 will register the Post-Combination Account securities issued to existing CREF participants in exchange for the CREF Contracts. However, no consent or vote of CREF participants will be required, and in any event the exchange will be on the basis of the relative net asset values of the respective securities to be exchanged as permitted by Section 11(a) of the 1940 Act. Therefore, SEC Staff no-action assurance from Section 11 also is not being requested.

<sup>26</sup> Although there will be no transfer of a separate account, in the Omnibus Order CREF received exemptive relief to be treated as a separate account for purposes of several rules under the 1940 Act. In the Amended and Restated Application, *supra* note 4, CREF stated its belief that it should be viewed as the functional equivalent of a separate account and represented that, in substance, it satisfies the conditions of Rule 0-1(e) under the 1940 Act which defines "separate account."

<sup>27</sup> In the context of insurance company mergers where the two companies are domiciled in different states, there also can be a change in applicable law. The surviving company and its separate accounts, including the separate accounts transferred from the merged company, are subject to the laws of the surviving company's domiciliary state. Therefore, where the two companies are domiciled in different states, there is also a change in applicable law.

<sup>28</sup> Participants are not "members" of CREF as a nonprofit corporation and therefore they do not have membership rights under the NY-NPCL, nor are they the equivalent of shareholders under New York law because that concept does not apply to nonprofit corporations under the NY-NPCL. Participants have no statutory voting, dissent, valuation or any other shareholder-type rights by virtue of CREF being a non-charitable nonprofit corporation subject to the NY-NPCL; indeed, the CREF Board of Governors does not have dissent or valuation rights, either. Rather, the right of participants to elect members of the CREF Board of Trustees, which is the only governance or other right they have, and which was a right delegated to the participants when the CREF Bylaws were amended as a result of CREF being registered as an open-end investment company with the SEC, derives from the terms of their CREF Contracts and the applicable provisions of the 1940 Act. State laws governing nonprofit corporations do not address contract owners or other customers or clients of nonprofit corporations.

Indeed, as contract owners of a life insurance company after the Combination, Post-Combination Account participants will be protected by the full applicability of the NYIL to TIAA and its operations.

Finally, as noted above, there will be certain variable annuity contract changes that will be made in connection with the closing of the Combination in order to (i) reflect the TIAA separate account structure and memorialize the Combination and (ii) provide mortality and expense guarantees that TIAA will be required to provide under the insurance laws and regulations of the various states. These changes will be incorporated through the contract endorsement process described above in connection with closing of the Combination.

**Federated No-Action Letter.** In a no-action letter issued to Federated Investors, Inc.,<sup>29</sup> the SEC Staff provided assurance that certain newly formed entities could rely on exemptive relief previously obtained by the predecessor entity. Specifically, Federated Investors, Inc. (“Old Federated”) and funds it advised had obtained three exemptive orders under Sections 6(c), 17(b) and/or 17(d) of the 1940 Act (the “Federated Orders”). Old Federated was proposed to be sold to a newly formed company (“New Federated”). The voting stock of New Federated was to be owned by a trust, the trustees of which were John F. Donahue, his wife, and son. Mr. Donahue was the president of Old Federated and also was to become the president of New Federated. Three new subsidiaries were proposed to advise most of the funds subject to the Federated Orders. The Federated Orders applied only to Old Federated and its affiliates, but the SEC Staff provided assurance that New Federated and its subsidiaries could rely on the Federated Orders.

The SEC Staff cited certain representations by Old Federated in support of providing assurance to permit New Federated to rely on the Federated Orders, including, among others, that: there would be no change in the investment objectives and policies of the funds; there would be no change in the personnel managing the funds’ portfolios<sup>30</sup>; the same entities would continue to provide distribution and administrative services to the funds; the funds and the investment advisers would comply with the terms and conditions of the Federated Orders; and the material facts set forth in the applications for the Federated Orders were not changing.

Each of the foregoing representations also is applicable in the context of the Combination: the investment objectives and policies of each CREF Account will not change following the Combination; the same individual portfolio managers of each CREF Account will continue managing the applicable sub-account of the Post-Combination Account; T-C Services and TIAA will continue providing distribution and administrative services, respectively, on the same terms and in the same manner as before the Combination; each sub-account of the Post-Combination Account and TCIM will continue to comply with the conditions of the applicable Existing Relief and the material facts that related to the basis for the requested relief. In addition, the SEC Staff’s assurance to Old Federated noted that “the only reason such entities

---

<sup>29</sup> Federated Investors, Inc. (September 22, 1989).

<sup>30</sup> In the Federated Investors SEC Staff no-action letter, there were newly-created investment advisers, but Federated assured the SEC Staff that the same personnel would manage the portfolios. Here, there will be more continuity, in that CREF’s current adviser (TCIM) also will manage the Post-Combination Account.

would not otherwise be entitled to rely on the Federated Orders is the reorganization of Old Federated into New Federated.”<sup>31</sup> We submit that the same principle applies in the context of the Combination.

For the reasons discussed above, we respectfully request that the SEC Staff provide no-action assurance that TIAA and the Post-Combination Account may rely on the exemptive orders (or specified portions thereof) and SEC Staff no-action letter identified above. Please do not hesitate to contact the undersigned should you have any questions or concerns regarding the foregoing.

Thank you for your time and attention to this matter.



F. Scott Thomas, Esq.  
Senior Director and Associate General Counsel, TIAA

cc: Deirdre Hykal, Esq. (TIAA Legal)  
Rachel Mendelson, Esq. (TIAA Legal)  
Adam Teufel, Esq. (Dechert LLP)  
Stephen Roth, Esq. (Eversheds Sutherland (US) LLP)

---

<sup>31</sup> See also *Fiduciary Capital Partners, L.P.* (January 24, 1990) (allowing the new managing general partner of a limited partnership, which had not been a party to a prior exemptive order, to rely on the order).