ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

In the Matter of

Assurance No. 21-035

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

TIAA-CREF Individual & Institutional Services, LLC,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to the Martin Act (N.Y. General Business Law § 352 *et seq.*), N.Y. Executive Law § 63(12), and the common law of the State of New York, into allegations of fraudulent conduct at TIAA-CREF Individual & Institutional Services, LLC ("TIAA Services" or "Respondent"), a subsidiary of Teachers Insurance and Annuity Association of America (together with TIAA Services, "TIAA"). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and TIAA Services, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").

OAG's FINDINGS

1. Beginning in or about 2012, TIAA Services and its salespeople used a false and misleading marketing pitch to convince investors to roll over assets from low-fee employer-sponsored retirement plans to individual managed accounts in TIAA Services' Portfolio Advisor program, on which TIAA Services charged lucrative management fees. TIAA Services trained its salespeople to describe themselves as "objective, non-commissioned" advisors. In truth, TIAA

Services' salespeople had a serious conflict of interest, since they were heavily incentivized – through financial compensation and supervisory and disciplinary pressures – to identify clients' "pain points" and recommend Portfolio Advisor as the preferred solution. In many cases, TIAA Services' salespeople also presented clients with a misleading comparison of their investment options, promoting managed accounts as the only alternative to self-directed investment while downplaying or omitting advantages of employer-sponsored plans.

2. TIAA Services has earned hundreds of millions of dollars in management fees on Portfolio Advisor accounts that clients opened with assets rolled over from employer-sponsored plans.

Background

3. TIAA is a large financial services firm that describes its mission as "serving those who do good in the world" by addressing "the financial needs of people in academic, government, medical, cultural and other nonprofit fields." TIAA was founded in 1918 to offer annuities and life insurance products to employees of colleges and universities. Over time, TIAA grew to become an industry leader in providing administrative and recordkeeping services to retirement and pension plans sponsored by educational institutions and other nonprofit employers. Today, TIAA administers retirement plans for more than 15,000 institutional clients, and those plans have more than five million individual participants.

4. By 2011, TIAA faced several challenges to its institutional business. Other financial firms were competing aggressively for TIAA's institutional clients. Meanwhile, demographic trends meant that many participants in TIAA-administered plans were nearing retirement, and new retirees were becoming more likely to move their retirement assets to other financial services providers. Both factors threatened to erode TIAA's assets under management.

In 2011, TIAA projected that its net flows of assets would become negative beginning in 2018 if the company did not take action.

5. In response to these threats, TIAA developed a strategic plan to expand TIAA Services' individual advisory business, which provided advice, products and services directly to individual investors rather than through employer-sponsored plans. TIAA hoped that the individual advisory business could help retain assets that otherwise might have flowed to competitors, and also attract new assets under management.

6. TIAA recognized that it had certain competitive advantages to draw upon; in particular, the fact that it was the most trusted brand in the financial services and insurance industries. TIAA relied on the trust of its clients in growing its individual business.

7. TIAA's growth strategy for its individual advisory business centered on marketing Portfolio Advisor, a wrap fee–based managed account program in which TIAA Services matches each client to one of approximately 1,500 model portfolios based on the client's risk tolerance and investment time horizon in combination with the client's other investment preferences – such as active or passive management style, socially responsible investing, and the use of TIAA-affiliated funds. Assets invested in a Portfolio Advisor account are automatically rebalanced if fund balances diverge from the model portfolio allocation by more than a minimum threshold.

8. TIAA Services charges a variable asset-based management fee for Portfolio Advisor of up to 1.15%. Portfolio Advisor clients also pay fund expenses on their assets under management, although TIAA Services rebates fees on assets invested in TIAA's proprietary funds. Together, these fees and expenses make Portfolio Advisor more expensive for the average investor than retaining retirement assets in an employer-sponsored plan.

9. Between 2012 and 2018, TIAA Services clients opened nearly 23,000 Portfolio Advisor accounts with assets rolled over from low-fee employer-sponsored retirement plans.

10. To market Portfolio Advisor, TIAA Services greatly expanded its sales force. In 2011, TIAA Services employed fewer than 300 sales representatives, referred to as wealth management advisors ("Advisors"). By 2017, the total number of Advisors had more than tripled, to nearly 900.

11. TIAA Services trained its expanding sales force in a highly structured sales practice, known as the Consultative Sales Process ("Sales Process"). The first step of the Sales Process was for Advisors to cold-call preselected participants in TIAA-administered employer-sponsored retirement plans to offer free financial planning services. These services were often described as included in, or a benefit of, the investor's retirement plan. If an investor accepted the offer, Advisors held a "discovery" meeting with the client to gather information about the client's finances, goals, and risk profile.

12. TIAA Services trained Advisors to use the discovery meeting to uncover "pain points" that could be used to help motivate an investor to make changes to their financial portfolio. Under the Sales Process, Advisors were coached to frame the discussion around four financial planning challenges – asset management and allocation, income distribution, incapacity, and estate planning – and to get the client to "self-realize" that they needed help in one or more of these areas. Some Advisors expressed discomfort with this approach, describing it as a form of "fear selling."

13. TIAA Services used the financial information collected in the discovery meeting to prepare financial planning documents that incorporated projections and asset allocation recommendations sourced from third-party investment research firm Morningstar.

14. In follow-up meetings, Advisors were trained to review key pages of the financial planning documents with the client and to recommend Portfolio Advisor as a solution to each of the four main challenges. TIAA Services' policy directed Advisors to also provide investors Morningstar-based allocation advice for their employer-sponsored plan accounts, but not all Advisors did so.

TIAA's Representations

15. In marketing Portfolio Advisor to clients, TIAA Services and its Advisors made repeated material misrepresentations and omissions. First, TIAA Services and its Advisors represented that they provided objective advice and acted solely in the client's best interests. Advisors were also trained to stress TIAA's "non-profit heritage" and tell clients that they worked on a salaried, non-commissioned basis.

16. These representations appeared in TIAA marketing brochures and were communicated by Advisors to clients both orally and in writing. For example, a 2012 brochure advertising TIAA Services' advisory services and managed accounts repeatedly stated that TIAA Services and its Advisors provided "objective advice," and described TIAA Services' advisory team as "a trusted partner providing…specific investment recommendations" and "working in your best interest." Similarly, TIAA Services' training materials for new Advisors taught them to highlight TIAA's "non-profit heritage [and] our culture of objectivity and acting solely in the best interest of our clients," and to describe themselves as "objective, [and] non-commissioned."

17. As they had been trained, Advisors repeated these and similar talking points in communications to and meetings with clients. For instance, one Advisor's initial meeting agenda included talking points on "salaried, non-commissioned" Advisors and TIAA Services' "comprehensive planning with objective advice." Another Advisor used a template client outreach

letter stating that Advisors "provide objective advice [and] are salaried employees not focused on commission."

18. In addition, TIAA Services and its Advisors sometimes told clients that they provided advice as fiduciaries, a role that under common law includes an affirmative duty of utmost good faith to act solely in the best interest of the client and to fully disclose any potential conflicts. For instance, TIAA Services' 2012 marketing brochure referenced the "trusted advice and guidance you'll receive – meeting a fiduciary standard requiring us to ensure that our recommendations are always in your best interest." One Advisor's standard outreach email for new clients included the statement that all TIAA Services Advisors "are held to the fiduciary standard," which the Advisor claimed helped to avoid the conflicts of interest presented by competitors who were not fiduciaries.

19. These statements were false and misleading. TIAA's Advisors were neither objective nor disinterested. Rather, they had significant incentives – through financial compensation, supervisory pressure, and disciplinary processes – to recommend that clients roll over assets into Portfolio Advisor accounts. Furthermore, when reviewing Advisors' recommendations, TIAA Services did not confirm whether those recommendations were actually in clients' best interests, but instead treated them as subject only to the less rigorous "suitability" standard.

Advisor Incentives

20. TIAA's compensation plan for Advisors included a base salary and a performance-based bonus, referred to as variable compensation. The variable compensation included components for an Advisor's annual and cumulative asset growth, as well as performance against a "scorecard" – sales goals that were customized for each Advisor based on seniority and prior

performance. All three components rewarded Advisors for convincing investors to roll over assets from low-cost employer-sponsored plans to Portfolio Advisor, which charged higher fees.

21. Throughout the time period at issue, assuming the Advisor met certain threshold asset growth targets, the annual growth award provided a bonus of 10 basis points (0.10%) for all assets rolled over from employer-sponsored plan accounts into Portfolio Advisor. In other words, rolling over $500,000 of client assets from an employer-sponsored plan to Portfolio Advisor was worth $500 to the Advisor. In contrast, an Advisor earned no annual growth credit for recommending that a client keep assets in the employer-sponsored plan or transfer those assets to a self-directed IRA on which TIAA earned no management fees.

22. On top of that, from 2013 to 2018, the cumulative growth award provided a larger long-term incentive, based on the total amount of assets under TIAA management during the Advisor's tenure with the firm. During this time period, once the Advisor met the minimal threshold for cumulative growth, all client assets that remained under TIAA management formed the basis for a recurring award. From 2013 to 2016, assets in Portfolio Advisor earned eight to sixteen times as much credit as assets in employer-sponsored plans. From 2017 to 2018, assets in Portfolio Advisor earned three times as much credit as assets in employer-sponsored plans. For example, from 2013 through 2016, $500,000 maintained in an employer-sponsored plan would generate a cumulative growth award of only $12.50 per year. The same $500,000, if rolled over to Portfolio Advisor account, would generate $100 to $200 for the Advisor every year that the account remained open.

23. Together, the annual and cumulative awards produced an incentive structure in which Portfolio Advisor assets were significantly more valuable to an Advisor than assets held in an employer-sponsored plan. For example, an Advisor in 2013 would expect, based on the then–

existing compensation scheme, to earn approximately $62.50 in combined annual and cumulative growth awards for $500,000 retained in an employer-sponsored plan over the next five years. If, instead, the Advisor convinced the client to roll over the $500,000 to a Portfolio Advisor account, the Advisor would expect to earn up to $1,500 in annual and cumulative growth awards – twenty-four times as much – over the same period.

24. Finally, until 2017, the scorecard component of variable compensation included a "relationship complexity" factor that rewarded Advisors based on the proportion of new assets enrolled in complex products, including Portfolio Advisor. Rollovers from employer-sponsored plan accounts to Portfolio Advisor would increase the Advisor's overall relationship complexity score and thus the size of the Advisor's scorecard-based bonus.

25. Combining all of these components, the variable compensation award could represent a substantial portion, sometimes a majority, of an Advisor's total compensation. The highest-paid Advisors received variable compensation awards that were up to seven times as large as their base salaries. These financial incentives contributed to an increase in the number of employer-sponsored plan to Portfolio Advisor rollovers that Advisors recommended to their clients.

26. To the extent that TIAA Services disclosed these conflicts of interest, the disclosures were insufficient, or were themselves misleading. For example, TIAA Services at times disclosed in the Form ADVs provided to investors that Advisors could earn additional compensation for placing clients in so-called "complex" products based on the "degree of effort generally required" for those accounts. In truth, there was nothing more "complex" from an Advisor's perspective about placing the client in a managed account, which did not involve

materially more work than placing clients in what TIAA Services considered non-complex or "core" products, including retaining assets in employer-sponsored plans.

27. Advisors also experienced supervisory pressure to sell Portfolio Advisor. For instance, one supervisor instructed his team that managed accounts "should be presented to 100%" of clients and that they were "the right fit for most if not all" TIAA clients.

28. Advisors who identified clients with large amounts of investable assets were required to participate in "WHALE calls" with other Advisors and supervisors to discuss the client's situation and strategize ways to sell Portfolio Advisor or other TIAA products or accounts. Supervisors discouraged the option of clients directing their own investments and pushed Advisors to identify "pain points" that could make clients "uncomfortable" and motivate them to change their investment approach. Advisors also were required to report back to their supervisors about the outcome of the sales process for all opportunities presented on WHALE calls.

29. Advisors' scorecards and progress toward their sales targets were tracked on internal TIAA databases and were visible to other Advisors and supervisors at all times. Advisors were ranked on their performance against the scorecard. Many supervisors for local or regional sales teams emailed their teams with weekly or monthly updates on sales rankings. Supervisors congratulated Advisors for the number or size of new Portfolio Advisor accounts and exhorted Advisors with fewer new managed accounts to increase their efforts.

30. When Advisors failed to meet their sales goals, TIAA Services placed them on performance improvement plans. A significant number of Advisors who were put on performance improvement plans resigned from TIAA Services rather than face potential termination. On the other hand, when Advisors met or exceeded their annual sales goals, TIAA Services increased

those goals for the following year, resulting in consistent pressure to increase production and asset growth.

The "Hat Switch"

31. During the relevant period, TIAA Services' compliance training materials instructed Advisors that they wore two hats: at times they were a fiduciary (when they acted as an investment adviser representative), and at other times they were not (when they acted as a registered broker-dealer representative. In practice, this distinction was counterintuitive and inherently misleading. TIAA Services applied an investment adviser fiduciary standard to all the preliminary stages of the Sales Process right up to but not including the moment when an Advisor provided an actionable investment recommendation.[1] Many Advisors were themselves confused about their dual roles and did not fully understand when TIAA Services expected them to act as fiduciaries and when TIAA Services treated them only as broker-dealer registered representatives.

32. At times, TIAA Services' compliance training materials were in direct conflict with the firm's Sales Process training materials. For instance, the compliance training materials warned Advisors against using terms like "objective" and "non-commissioned" because they "may be misleading" in the context of the full Sales Process. However, TIAA Services' Sales Process training materials taught Advisors to use both terms as part of scripted talking points for clients.

33. TIAA Services' written disclosures to clients were themselves misleading in that they described the financial planning process as an investment adviser activity (hence subject to a fiduciary duty) but did not make clear that TIAA Services viewed the recommendation to roll over assets to Portfolio Advisor as separate from and not included in that planning process.

[1] TIAA Services maintains that it was permitted to offer investment advice as a non-fiduciary because any recommendation of Portfolio Advisor was "solely incidental" to its role as a broker-dealer. OAG disagrees.

34. The "hat switch" was also improper and misleading because it took place during a single meeting or discussion without notice to the investor. Follow-up meetings in the later stages of the Sales Process, for example, usually included both a discussion of the investor's financial circumstances and goals (which TIAA Services regarded as fiduciary investment advice) and a recommendation that the client roll over assets from the employer-sponsored plan account to Portfolio Advisor (which TIAA Services regarded as a non-fiduciary brokerage activity). TIAA Services did not require Advisors to – and most Advisors did not – make any real-time disclosure to the client when "switching hats."

Misleading Comparisons Between Portfolio Advisor and Employer-Sponsored Plans

35. When recommending Portfolio Advisor, Advisors also presented investors with an incomplete and misleading comparison of their options, particularly the option of retaining assets within their employer-sponsored plans.

36. With respect to fees and expenses, Advisors generally did not provide a comparison of an investor's employer-sponsored plan fund expenses with the all-in cost of a proposed Portfolio Advisor account. Some TIAA Services supervisors and trainers told Advisors to avoid discussing fees and costs in connection with Portfolio Advisor recommendations. TIAA Services disclosed in writing the amount of the Portfolio Advisor management fee, but until mid-2017 did not require Advisors to gather detailed fee and expense information for the investor's employer-sponsored plan. Not until late 2018 did TIAA Services provide Advisors with access to programs to calculate the total fee and expense differential for an individual investor, which could vary significantly.

37. With respect to services, some TIAA Services supervisors and trainers encouraged Advisors to tell clients that they effectively had two options for addressing their investment assets: (a) rolling over funds to a Portfolio Advisor account; or (b) managing funds in their employer-

sponsored plan entirely by themselves. For instance, some training materials suggested that Advisors itemize the difficulties of self-directed investment – such as portfolio design, investment selection and monitoring, rebalancing, and income management – and contrast that with the convenience of a managed account such as Portfolio Advisor.

38. This framing was misleading because many of the advertised features of Portfolio Advisor were also available for free in clients' employer-sponsored plans. For instance, most investors in employer-sponsored plans had on-demand access to detailed fund-level asset allocation and rebalancing advice provided by the neutral third-party investment research firm Morningstar. TIAA would also execute rebalancing transactions within employer-sponsored plans for free at the client's request. Clients in employer-sponsored plans also had access to guidance on income distribution. Some employer-sponsored plans even offered an optional in-plan automated portfolio management and rebalancing service for an annual fee that was typically less than half of the management fee charged on Portfolio Advisor accounts. Advisors failed to consistently and meaningfully disclose these options to clients. In some cases, Advisors recommended Portfolio Advisor in isolation, omitting any reference to Morningstar's rebalancing advice or the services available in employer-sponsored plans.

39. Advisors also failed to consistently disclose that employer-sponsored plans had certain advantages over Portfolio Advisor. For instance, employer-sponsored retirement plans offer greater protections from creditors, and often provide greater flexibility with regard to loans, withdrawals and distributions. In addition, some TIAA clients reported that they experienced better service in their employer-sponsored plans than in Portfolio Advisor.

40. TIAA Services' recommendations of Portfolio Advisor accounts as in the client's best interests also were unsupported by performance data. Between 2012 and 2017, TIAA Services

had no comparative data that showed that assets invested in Portfolio Advisor outperformed similarly allocated investments in clients' employer-sponsored plans on an absolute, net-of-fees, or risk-adjusted basis. Indeed, in February 2018, TIAA Services was alerted to client complaints that their projected performance in Portfolio Advisor was worse than the projected performance of assets in employer-sponsored plans rebalanced according to Morningstar advice. A more recent TIAA analysis, conducted pursuant to the OAG's investigation, showed that assets invested in a sample employer-sponsored plan and regularly rebalanced according to Morningstar advice had superior risk-adjusted net-of-fee returns (as measured by the Sharpe ratio) at every risk level on both a retrospective and prospective basis compared to Portfolio Advisor.

TIAA's Reforms

41. TIAA has taken a number of actions to improve its practices with regard to the conduct described above, both before and since the commencement of the OAG's investigation.

42. On June 9, 2017, the Department of Labor's Fiduciary Rule ("Fiduciary Rule") went into effect. In preparation, TIAA undertook reviews of its internal procedures and made enhancements to the training, supervision, and oversight of the wealth management business to comply with the Fiduciary Rule. The enhancements included explicit guidance to Advisors to consider fees and expenses when making recommendations for Portfolio Advisor rollovers. TIAA also for the first time required Advisors to gather relevant information about each investor's fees and expenses and to document the substance of their conversations with clients about those issues. TIAA also directed its Centralized Principal Review ("CPR") unit to scrutinize Portfolio Advisor rollovers from employer-sponsored plans more closely in light of the fact that "employer-sponsored retirement plans often enjoy low expenses, advice services, and other features like loans or lifetime income options."

43. While the Fiduciary Rule was later vacated by a court decision, TIAA continued to adhere to the enhanced training and supervisory procedures it had adopted in preparation.

44. Following the publication of a critical article in the New York Times and the commencement of the OAG's investigation in late 2017, TIAA continued to augment the training, supervision, and disclosures in the wealth management business.

45. Most significantly, TIAA has made two major changes that impact rollovers from employer-sponsored plans to Portfolio Advisor. First, in June 2020, prior to the implementation of the SEC's Regulation Best Interest, TIAA announced that it would treat managed account rollover recommendations as an investment adviser service subject to a fiduciary duty. This transition eliminated the misleading "hat switch" between financial planning and recommendation of a managed account and established a single internal standard of conduct for all discussions of rollovers to managed accounts. Second, effective in 2021, TIAA has substantially revised its compensation policy to remove differential compensation between managed account sales and other retirement product sales.

OAG's Conclusions

46. The OAG finds that Respondent's actions are in violation of the Martin Act, N.Y. Executive Law § 63(12), and the New York common law.

47. Respondent neither admits nor denies the OAG's Findings, paragraphs 1-45 above. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the Martin Act, Executive Law § 63(12), and the New York common law based on the conduct described above during the time period January 1, 2012 to March 30, 2018.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

48. Compliance with Applicable Laws: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to the Martin Act and Executive Law § 63(12), and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 47, supra, in addition to any other appropriate investigation, action, or proceeding.

49. Programmatic Relief:

a. TIAA shall continue to treat all recommendations to roll over assets from employer-sponsored plans to managed accounts as investment adviser activities subject to a fiduciary duty.

b. TIAA shall eliminate or fully disclose in plain language any Advisor conflicts in recommending managed accounts.

c. TIAA shall provide clients with plain-language written disclosures that clearly delineate which Advisor activities and recommendations are investment adviser activities subject to a fiduciary duty and which are broker-dealer activities not subject to a fiduciary duty.

d. TIAA shall provide clients with plain-language oral disclosures in real time to ensure that clients are adequately informed any time an Advisor is no longer acting as a fiduciary.

e. TIAA shall train Advisors to offer a fair comparison between managed accounts and employer-sponsored plans recordkept by TIAA ("Plan" or "Plans") and shall monitor Advisors' compliance with this requirement. This includes:

i. Before any managed account is sold based on a rollover from a Plan, Advisors shall make a fair presentation to clients of (1) the option (where available) of adopting an Implementation Plan, (2) an all-in fee comparison between the managed account and the Plan, and (3) an illustration of how fees may impact overall returns.

ii. Requiring that Advisors affirmatively represent that TIAA representatives are available to assist in implementing third-party in-Plan rebalancing advice at no charge to the client (where the client's Plan makes such services available), and that they affirmatively inform clients of any rebalancing programs available in the Plans.

f. Respondent will implement the relief described in this paragraph by December 13, 2021, and continue to implement the relief through at least July 13, 2026.

g. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of Respondent's policies practices or procedures, and Respondent shall make no representation to the contrary.

50. Oversight/Monitoring:

a. *Initial Compliance Report:* Respondent shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraph 49 (Programmatic Relief), to be submitted to the OAG by February 13, 2022. This report shall be in writing and shall set forth in detail the manner and

form of compliance with this Assurance. This report shall be signed by Respondent.

b. *Compliance Report on Demand:* At any time through July 13, 2026, and upon forty-five (45) days written notice from the OAG, Respondent shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraph 49 (Programmatic Relief).

c. Respondent expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 47, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 46, pursuant to Executive Law § 63(15).

51. Monetary Relief

a. *Restitution*: Respondent shall administer a program to provide restitution to all investors who rolled over assets from Plans to Portfolio Advisor between January 1, 2012 and March 30, 2018, with restitution totaling $97,000,000. Respondent shall submit its calculation of planned restitution to the OAG for review and approval prior to any distribution.

b. This monetary relief shall be deemed satisfied by Respondent's payment of $97,000,000 to an escrow account at a financial institution in accord with the U.S. Securities and Exchange Commission's Order Instituting Administrative and

Cease-and-Desist Proceedings ("SEC OIP"), Administrative Proceeding File No. 3-20392, and Respondent's successful completion of the distribution to current and former affected clients in accord with the provisions identified in Section IV.D. of the SEC OIP, subject to review and approval by the OAG.

MISCELLANEOUS

Subsequent Proceedings:

52. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 60, and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. the OAG may use statements, documents, or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

53. In the event that the OAG believes that TIAA has defaulted in the performance of any obligation set forth in this Assurance, the OAG will provide written notice of such default to the designated representative of TIAA. TIAA shall then have fourteen (14) days to respond and an

additional thirty (30) days to certify that any default has been cured, which periods may be extended by OAG ("Response and Cure Period"). Unless the OAG in its sole discretion determines that exigent circumstances exist, the OAG will not initiate any civil action or other proceeding to enforce or for violations of this Assurance until after the expiration of the Response and Cure Period.

54. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

55. This Assurance is not intended for use by any third party in any other proceeding.

56. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

57. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

58. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

59. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-035, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to both:

Phillip T. Rollock
Chief Legal Officer
TIAA
730 Third Avenue
12th Floor
New York, NY 10017
(212) 916-4218
prollock@tiaa.org

or in his absence, to the person holding the title of Chief Legal Officer of TIAA;

and to:

Lori A. Martin
WilmerHale LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 295-6412
lori.martin@wilmerhale.com

If to the OAG, to:

Jesse Devine
Assistant Attorney General
Investor Protection Bureau
New York State Office of the Attorney General
28 Liberty Street
New York, NY 10005
(212) 416-8741
jesse.devine@ag.ny.gov

or in his absence, to the person holding the title of Bureau Chief, Investor Protection Bureau.

Representations and Warranties:

60. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-45 above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

61. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

62. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Pamela Lewis Marlborough is duly authorized to execute this Assurance and is acting at the direction of the Board of Managers of TIAA Services.

General Principles:

63. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

64. Respondent shall not in any manner discriminate or retaliate against any of its employees, including but not limited to employees who cooperated or are perceived to have

cooperated with the investigation of this matter or any future investigation related to enforcing this agreement.

65. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Respondent may advance defenses in litigation or regulatory proceedings with other parties regarding the same or similar conduct.

66. This Assurance is not intended to subject the Respondent to, or form the basis for, any disqualifications contained in the federal securities laws or the Commodity Exchange Act, the rules and regulations thereunder, the rules and regulations of any self-regulatory organizations, or various states' securities laws, including any disqualifications from replying upon registration exemptions or safe harbor provisions. This Assurance is not a final order of any court.

67. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

68. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

69. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

70. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

71. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

72. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

73. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

74. The effective date of this Assurance shall be July 13, 2021.

LETITIA JAMES
Attorney General of the State of New York

By: 

Jesse A. Devine
Assistant Attorney General
Investor Protection Bureau

TIAA-CREF Individual & Institutional Services, LLC

By: _____
Pamela Lewis Marlborough
General Counsel

STATE OF Colorado)
) ss.:
COUNTY OF Denver)

On the 9th day of July in the year 2021 before me personally came Pamela Lewis Marlborough, to me known, who, being by me duly sworn, did depose and say that she resides in Denver, Colorado
[if the place of residence is in a city, include the street and street number, if any, thereof]; that she is the General Counsel of TIAA-CREF Individual & Institutional Services, LLC, the corporation described in and which executed the above instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that she signed her name thereto by like authority.

Sworn to before me this
9th day of July, 2021

_____
NOTARY PUBLIC

LORA MICHELLE BUMANN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144022247
MY COMMISSION EXPIRES JUNE 04, 2022