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June 3, 2016

VIA EMAIL (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Investment Management
Office of Disclosure and Review
100 F Street, N.E.
Washington, D.C. 20549-8626

Re: Deutsche Multi-Market Income Trust
Securities Exchange Act of 1934 – Section 14(a), Rule 14a-8
Statement in Response to No-Action Letter regarding Shareholder Proposal

Ladies and Gentlemen:

Our client, Western Investment, LLC ("Western") submitted a shareholder proposal, pursuant to Rule 14a-8, promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to Deutsche Multi-Market Income Trust, a Massachusetts business trust ("KMM" of the "Fund") on April 18, 2016. On May 27, 2016, Western received a letter (the "No-Action Letter") from Vedder Price P.C., counsel to the Fund, requesting that the Staff (the "Staff") of the Securities and Exchange Commission (the "SEC" or the "Commission") confirm to the Fund that the Commission will not recommend enforcement action if the Fund excludes both Western's proposal (the "Proposal") and its supporting statement (the "Supporting Statement") from its proxy materials (the "Proxy Materials") for its 2016 Annual Meeting of Shareholders (the "2016 Annual Meeting"), which No-Action Letter is attached hereto as Exhibit A.

Pursuant to Rule 14a-8(k), Western has the right to submit this statement (the "Response Letter") to the Commission in response to the Fund's arguments set forth in the No-Action Letter. For the reasons discussed in this Response Letter, Western believes that the Proposal and Supporting Statement do not contain statements that are materially false and misleading in violation of Rule 14a-9 and therefore the Fund is not entitled to exclude the Proposal under Rule 14a-8(i)(3). In Section I below Western provides support and justification for each statement referenced in the No-Action Letter to show that such statements are not in violation of Rule 14a-8(i)(3). In addition, attached hereto as Exhibit B is a slightly revised version of the Proposal and Supporting Statement (the "Revised Proposal"), along with a comparison to the statement that was originally submitted.

Pursuant to Rule 14a-8(k), this Response Letter is being filed with the Commission as soon as possible following the Fund's submission of the No-Action Letter. Pursuant to Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), such submission is being made via electronic mail to the Staff. A copy of this submission is also being provided simultaneously to the Fund and their counsel via electronic mail. Pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D, the Fund is requested to copy the undersigned on behalf of Western on any correspondence the Fund may choose to make to the Staff.

I. The Proposal and Supporting Statement may not be excluded pursuant to Rule 14a-8(i)(3) because the Supporting Statement does not contain materially false and misleading statements in violation of Rule 14a-9.

Western believes that the Proposal and Supporting Statement may not be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) under the Exchange Act, because none of the statements contained in the Proposal or Supporting Statement include anything that is "contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials." Generally, unless the Commission considers a statement to violate Rule 14a-8(i)(3), and any changes that would be required to be made would also "require detailed and extensive editing in order to bring them into compliance with the proxy rules," the Staff has traditionally provided shareholders who are attempting to submit proposals under the proxy access rules some ability to make reasonable modifications if necessary.

The Commission drafted Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("Staff Bulletin 14B"), in part, to clarify its views with respect to the application of Rule 14a-8(i)(3). In Staff Bulletin 14B, the Commission expressed its frustration that Staff Legal Bulletin 14 (July 13, 2001) "has resulted in an unintended and unwarranted extension of Rule 14a-8(i)(3)" and that "many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety." As a result, the Commission specifically listed four circumstances where "it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3)" and those are: (i) the company objects to factual assertions because they are not supported; (ii) the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered; (iii) the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or (iv) the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such. The SEC stated that companies should not seek to exclude such statements, but to address their objections to them in their statements of opposition. The No-Action Letter calls out eight separate statements from the Supporting Statement, almost half of the total words used in Western's Proposal and attempts to do precisely what the Commission warned against in Staff Bulletin 14B – the assertion of excessive deficiencies as a means to justify exclusion of the proposal in its entirety.

Below we address each of the statements specifically called-out by the Fund in the No-Action Letter:

1. KMM's investment manager, Deutsche Investment Management Americas Inc. ("DIM"), has further blocked shareholder rights by requiring that directors be elected by a near-impossible absolute majority of shares outstanding, rather than a majority of shares voting, thereby enabling losing incumbents to remain in office following a contested election.

> This statement is in no way "materially false" and is not "an attempt by Western to impugn the character, integrity and reputation of DIM by casting DIM as unfriendly to shareholders" as alleged by the Fund in its No-Action Letter.
>
> - KMM is a Deutsche-sponsored closed-end fund ("CEF").
> - The By-Laws of KMM set forth the voting requirements for the election of Trustees.

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- DIM handpicked each of the directors on the Board.
- These By-Laws have been accepted by DIM during their many years of operation of the CEF.

This is not "irrelevant" to a shareholder's consideration of whether or not to ask the Board of KMM to take steps to declassify as argued by the Fund as it is one important piece, of many, that demonstrate KMM's and DIM's attempts to frustrate shareholders' ability to hold the Board accountable. In deciding whether to vote to declassify a board, a reasonable shareholder would want to know this information and will undoubtedly use it to determine whether or not to vote on the proposal.

Lastly, the Fund's assertion that Western's statement regarding getting a majority of shares outstanding is near-impossible is "misleading" and that there is "no basis" for such a statement is incorrect because it is simply a fact that it is extremely difficult given the low numbers of votes historically cast at contested Deutsche-sponsored CEF meetings, relative to the number of shares outstanding (excluding broker non-votes). For example, at the 2010 annual meeting of DWS RREEF World Real Estate Fund, Inc. (f/k/a DWS RREEF World Real Estate & Tactical Strategies Fund, Inc.) ("DRP"), Western's nominees received approximately 69% of the votes cast at the meeting, however, this only constituted approximately 29% of the total shares outstanding (holders of less than 45% of the outstanding common shares were present at the meeting). At the 2008 annual meeting of DWS Enhanced Commodity Strategy Fund, Inc. ("GCS"), Western's nominees received approximately 65% of the votes cast at the meeting, however, this constituted less than 36% of the shares outstanding (holders of less than 52% of the outstanding common shares were present at the meeting). Similarly, at the 2010 annual meeting of Deutsche High Income Opportunities Fund, Inc. (f/k/a DWS Dreman Value Income Edge Fund, Inc.) ("DHG"), Western's nominees received approximately 58% of the votes cast at the meeting, which constituted less than 23% of the shares outstanding (holders of less than 57% of the outstanding common shares were present at the meeting). As demonstrated by the above results, in contested elections where discretionary voting by brokers is not permitted, even obtaining a quorum at a meeting can be difficult, let alone a majority of outstanding votes which can be near-impossible.

2. Further, KMM's Board has a long history of acting in an undemocratic manner by failing to recognize all votes cast, failing to seat dissident directors who won the overwhelming majority of votes cast at annual meetings and failing to hold timely annual meetings.

First, let us provide some background information. The boards of directors of many Deutsche-sponsored CEFs are the exact same individuals, therefore, for all intents and purposes the KMM board is the same as the boards of these other Deutsche funds. By referencing "KMM's Board" in the statement above, Western was referring to not only past acts by the KMM board, but also such directors' actions on the boards of directors of other Deutsche-sponsored CEFs. While the Fund in its No-Action Letter continues to be hostile to legitimate shareholder concerns by not acknowledging past actions of boards of Deutsche-sponsored CEFs, there is ample evidence to establish the truth of this statement. With respect to failing to recognize all votes cast and failing to seat dissident directors who won the overwhelming majority of votes cast at annual meeting, see the discussion in Item 1 above regarding the annual meetings of DRP, GCS and DHG.[1] In

[1] 100% of the directors on KMM's board were directors on the boards of DRP, GCS and DHG during the relevant period.

each of those situations, Western's nominees received the vast majority of the votes cast at the meeting, but less than a majority of outstanding shares and therefore the incumbent directors, for whom shareholders did not vote, remained in office. In addition, at DHG's 2010 annual meeting there was a quorum present and Western's 14a-8 proposal to declassify the board passed with 68% of the vote, however, the board never took action to implement this clear shareholder mandate. With respect to failing to hold timely annual meetings, following the striking 2008 vote of no-confidence by shareholders of GCS, it recognized that if it repeated its shameful conduct in 2009, and declared a second consecutive "failed" election, under then-current law, any shareholder could have petitioned for GCS' dissolution, as well as raising concerns of failing to satisfy the requirement under the Investment Company Act of 1940 that at least two-thirds of the directors be elected by stockholders. So rather than repeal the majority vote provision bylaw and assure that shareholders could elect directors, GCS simply declined to hold an annual meeting in calendar 2009. It took a lawsuit from Western to compel GCS to even schedule a shareholder meeting in 2010. Other additional instances over the past several years where the boards of directors of Deutsche-sponsored CEFs have acted in an undemocratic manner include (i) in July 2010 GCS opted into the Maryland Control Share Acquisition Act, which protects the company from dissident shareholders and (ii) n March 2009, the board of DRP amended the bylaws of the fund to provide for a majority voting standard and to beef up its advance notice requirements with respect to shareholders nominating directors. It is clear to Western that the majority vote standard at KMM and the other Deutsche-sponsored funds is designed to make contested elections fail, and is in contradiction to ISS corporate governance standards.

3. Subsequently, the director of the SEC's Division of Investment Management has publicly criticized all of these shareholder-unfriendly behaviors.

This statement is not materially false and misleading, as alleged by the Fund in the No-Action Letter. First, the statement is referring to the behaviors of KMM (and other funds and companies) that are shareholder-unfriendly and we do not indicate or imply that the SEC's Division of Investment Management was publicly criticizing the KMM Board specifically. Western is not implying that the SEC "supports Western's position" or that the SEC "has taken a public position on classified boards or majority voting requirements," as alleged by the Fund. Rather, this statement does nothing more than reference a speech given by Andrew J. Donahue, the former Director of the SEC's Division of Investment Management on November 12, 2009, a transcript of which is attached hereto as Exhibit C. Perhaps the Fund was not familiar with this speech, but it is unclear to Western how, in light of such speech, the above statement is in any way misleading, let alone *materially* misleading. Third, it is true that the current Director of the Division of Investment Management, David Grim, did not make the speech which is referenced by Western, however, the speech was made by Mr. Grim's predecessor, who was at the time the Director of the Division of Investment Management. We are willing to add the word "former" in front of "director" in the above sentence to make this clearer, as set forth in the Revised Proposal attached hereto as Exhibit B. We do not believe this change constitutes "detailed and extensive editing."

4. Declassification of the Board is a positive step which will allow more productive shareholder engagement and will help KMM achieve its optimal valuation.

The Fund states that this statement is "materially misleading because it implies that, by declassifying the Board, the net asset value and/or the market value of KMM will increase. KMM's net asset value is based on the value of the underlying assets held by the Fund and not on whether or not KMM's Board is classified or de-classified. Further, there is no evidence that a de-classified board positively impacts a fund's market value." Western is not referring to the net asset value ("NAV") in the statement above, but rather the level of discount between the stock price and the NAV. That declassification of a board allows a greater and more immediate shareholder engagement and influence is simply a fact, and Western believes there is ample evidence showing that such shareholder engagement will lead to a more optimal valuation. Ultimately, Western's sentence falls squarely within the listed items which the Commission stated in Staff Bulletin 14B that are inappropriate for companies to exclude.

5. Sadly, KMM's shares have consistently traded at a persistent discount to its per share net asset value. For example, on September 29, 2015, the discount was an abysmal 17.76%.

Western does not believe that the example provided above makes the prior sentence materially misleading, as alleged by the Fund in its No-Action Letter, but rather emphasizes to shareholders the extent of KMM's discount. The use of the word "abysmal" strongly implies that the number referenced is a low point. Despite the Fund's reference to a premium in its No-Action Letter, the last time KMM traded at a premium was October 2, 2013. Therefore, during the last two and a half years KMM's stock has always traded at a discount, which Western believes is a "persistent" discount by any definition. Western does not believe that this statement should be excluded or that it provides grounds for the Fund to exclude the entire Proposal and Supporting Statement.

6. DIM has overseen significant losses in KMM and its seven taxable sister funds.

This statement is not materially false, as alleged by the Fund in its No-Action Letter. While the Fund may choose to argue that it has seen positive returns over the life of the fund in its opposition statement, it is a fact that DIM has overseen significant losses in KMM using other periods of reference. For the three-year period, a common return period, starting April 15, 2013 and ending April 15, 2016, KMM's share price has plummeted from $11.76 to $8.06, which constitutes a -31.46% return (-13.65% with dividends reinvested). Western does not believe the above statement is materially false and therefore should not be excluded from the Supporting Statement or used as grounds for the Fund to exclude the entire Proposal and Supporting Statement.

7. KMM's classified board and majority voting requirements also violate DIM's own corporate governance voting standards, an embarrassing contradiction.

This statement is not materially false, as alleged by the Fund. First, the Fund is steering the Commission's attention to the wrong portion of DIM's proxy voting guidelines. In Section I.B, the guidelines state: "AM policy is to vote against proposals to classify the Board and for proposals to repeal classified Boards and elect Directors annually. Rationale: Directors should be held accountable on an annual basis. By entrenching the incumbent Board, a classified Board may be used as an anti-takeover device to the detriment of the shareholders in a hostile take-over situation." This clearly states DIM's policy with respect to classified boards and succinctly expresses Western's rationale for submitting the Proposal. The Fund attempts to misdirect the Commission by pointing to extremely dubious language that is buried in the "Miscellaneous Items" section of the guidelines which conveniently makes an exception for closed-end investment companies – which, of course, includes KMM. We can think of no reason, nor do the proxy voting guidelines or the No-Action Letter provide any such reason, for closed-end investment companies to be treated differently than other companies with respect to staggered boards. Furthermore, the Fund fails to mention in its No-Action Letter that "proxies solicited by closed-end (and open-end) investment companies are voted in accordance with the pre-determined guidelines of an independent third-party" which is currently Institutional Shareholder

Services ("ISS"). ISS's voting policy with respect to classified or staggered boards is to vote for declassification and for annual elections. In Western's opinion, the Fund's argument in the No-Action Letter with respect to this statement is materially misleading.

8. It is our belief that the classification of the Board is strong proof that the Board is not acting in the best interests of shareholders. A classified board protects the incumbents, which in turn limits accountability to shareholders.

This statement is not materially false and misleading as is alleged by the Fund in the No-Action Letter. This statement is precisely of the type that the Commission has stated in Staff Bulletin 14B is not appropriate for companies to exclude as it "represent[s] the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such" and we do not think the Fund should request confirmation from the Commission with respect to such statement. With respect to the first sentence, this is clearly Western's belief, as explicitly stated in the Supporting Statement. With respect to the second sentence, it is both a fact and Western's opinion that a classified board protects incumbent boards, by preventing shareholders' ability to remove a majority of the board at any particular annual meeting and that such protection limits accountability to shareholders. The Fund attempts to argue that the Board that this statement is *materially* misleading because members of a classified board remain fully subject to their fiduciary responsibilities and to election by shareholder. By accountability, Western is referring to shareholders' ability to remove or choose not to elect directors and it is clear that by limiting the number of directors who are subject to that process at an annual meeting *limits* the accountability of the Board to shareholders. Western is certainly not alone in believing that classified boards limit their accountability to shareholders and that this is not in the best interest of shareholder. Both ISS and DIM take this position in their proxy voting guidelines.

II. Conclusion

The Fund alleges that there are at least eight statements in the Western Supporting Statement that may be excluded from the Fund's Proxy Materials pursuant to Rule 14a-8(i)(3) as materially false and/or misleading. As we have established above, none of the statements referred to in the No-Action Letter are materially false or misleading and that the Fund's actions of seeking exclusion fly in the face of the Commission's position in Staff Bulletin 14B. Furthermore, we believe the Fund is trying to prevent criticism of their shareholder-unfriendly conduct from being publicized. Rather than try to explain their actions in a statement in opposition, they are seeking to block any disclosure of their acts. We have offered to make certain minor modifications to the Supporting Statement, as set forth in the Revised Proposal attached hereto as Exhibit B, which we feel may address any concerns the Commission may have. These changes do not constitute "detailed and extensive" editing. If the Commission believes appropriate, we would also consider additional changes, although we do not believe any further changes are necessary

On behalf of Western, we hereby respectfully request that the Staff confirm to the Fund that it is unable to concur with the Fund's view that the Proposal and Supporting Statement may be excluded from the Proxy Materials.

Should you have any questions regarding this Response Letter or a need for additional information or clarification, please call me at (212) 245-2289 or by email at afinerman@olshanlaw.com.

We would appreciate it if you would please acknowledge receipt of this Response Letter via electronic mail. Thank you for your consideration to this matter.

Respectfully submitted,

Adam W. Finerman

cc: Arthur Lipson (via email)
John S. Marten, Esq. (via email)
David Sturms, Esq. (via email)
Thomas Hiller, Esq. (via email)
Caroline Pearson, Esq. (via email)

Exhibit A

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May 27, 2016

VIA EMAIL (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Investment Management
Office of Disclosure and Review
100 F Street, N.E.
Washington, D.C. 20549-8626

Re: Deutsche Multi-Market Income Trust
Securities Exchange Act of 1934 - Section 14(a), Rule 14a-8
Exclusion of Shareholder Proposal Submitted by Western Investment, LLC

Ladies and Gentlemen:

Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as counsel to Deutsche Multi-Market Income Trust, a Massachusetts business trust registered under the Investment Company Act of 1940, as amended, as a closed-end management investment company ("KMM" or the "Fund"), we request confirmation that the Staff (the "Staff") of the Securities and Exchange Commission (the "SEC" or the "Commission") will not recommend enforcement action if the Fund excludes from its proxy materials (the "Proxy Materials") for its 2016 Annual Meeting of Shareholders (the "2016 Annual Meeting") the shareholder proposal (the "Proposal") and supporting statement (the "Supporting Statement") described herein.

On April 18, 2016, the Fund received the Proposal and Supporting Statement from Western Investment, LLC ("Western") for inclusion in the Proxy Materials for the 2016 Annual Meeting. The Proposal and Supporting Statement are reproduced in their entirety in Section I below and also attached hereto as Exhibit A.

For the reasons discussed in Section II below, the Fund believes that the Proposal and Supporting Statement may be excluded from the Proxy Materials for the 2016 Annual Meeting pursuant to Rule 14a-8(i)(3) under the Exchange Act because the Supporting Statement contains materially false and misleading statements in violation of Rule 14a-9.

Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than 80 calendar days before the Fund plans to file its definitive proxy statement. Pursuant to Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), such submission is being made via electronic mail to the Staff. A copy of this submission is also being provided simultaneously to Western via electronic mail. Pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D, Western is requested to copy the undersigned on behalf of the Fund on any correspondence Western may choose to make to the Staff.

I. Western's Proposal and Supporting Statement

Proposal

> RESOLVED, that the shareholders of Deutsche Multi-Market Income Trust ("KMM") hereby request that the Board of Directors of KMM (the "Board") take the necessary steps to declassify the Board so that all directors are elected on an annual basis. Such declassification shall be completed in a manner that does not affect the unexpired terms of the previously elected directors.

Supporting Statement:

We believe the annual election of all directors encourages board accountability to its shareholders and when directors are held accountable for their actions, they perform better. This view is shared by most, who believe it to be the standard for corporate governance best practices. According to FactSet Research Systems, the vast majority of companies in the S&P 500 and Russell 1000 indexes elect all directors annually, with only approximately 10.5% and 25%, respectively, of companies retaining classified boards.

Currently, the KMM Board is divided into three classes serving staggered three-year terms. It is our belief that the classification of the Board is strong proof that the Board is not acting in the best interests of shareholders. A classified board protects the incumbents, which in turn limits accountability to shareholders.

KMM's investment manager, Deutsche Investment Management Americas Inc. ("DIM"), has further blocked shareholder rights by requiring that directors be elected by a near-impossible absolute majority of shares outstanding, rather than a majority of shares voting, thereby enabling losing incumbents to remain in office following a contested election.

Further, KMM's Board has a long history of acting in an undemocratic manner by failing to recognize all votes cast, failing to seat dissident directors who won the overwhelming majority of votes cast at annual meetings and failing to hold timely annual meetings.

Subsequently, the director of the SEC's Division of Investment Management has publicly criticized all of these shareholder-unfriendly behaviors.

We remain committed to improving corporate governance at KMM for the benefit of all shareholders. Declassification of the Board is a positive step which will allow more productive shareholder engagement and will help KMM achieve its optimal valuation.

In this challenging economic environment, accountability for performance must be given to the shareholders whose capital has been entrusted in the form of share investments in KMM. Sadly, KMM's shares have consistently traded at a persistent discount to its per share net asset value. For example, on September 29, 2015, the discount was an abysmal 17.76%.

DIM has overseen significant losses in KMM and its seven taxable sister funds. Due to shareholder pressures (including overwhelming losses in proxy contests), six of the seven funds have, or are scheduled to be, liquidated or converted into open-end funds.

KMM's classified board and majority voting requirements also violate DIM's own corporate governance voting standards, an embarrassing contradiction.

If this proposal is approved and adopted by the Board, all directors would be subject to annual election after the phase-in period.

For a greater voice in KMM's corporate governance and to increase the accountability of the Board to shareholders, we urge you to vote **FOR** this proposal.

II. The Proposal and Supporting Statement may be excluded pursuant to Rule 14a-8(i)(3) because the Supporting Statement contains materially false and misleading statements in violation of Rule 14a-9.

The Fund believes that the Proposal and Supporting Statement properly may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) under the Exchange Act, which permits the exclusion of a shareholder proposal or supporting statement that "is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials." As stated in Staff Legal Bulletin No. 14 (July 13, 2001) and reiterated in Staff Legal Bulletin No. 14B (Sept. 15, 2004), "when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading." The Fund believes that the Supporting Statement is rife with materially false and misleading statements that would require extensive editing to bring them into compliance with the proxy rules and, therefore, the entire Proposal and Supporting Statement may be excluded from the Proxy Materials. Specifically, the following statements are materially false and misleading:

1. KMM's investment manager, Deutsche Investment Management Americas Inc. ("DIM"), has further blocked shareholder rights by requiring that directors be elected by a near-impossible absolute majority of shares outstanding, rather than a majority of shares voting, thereby enabling losing incumbents to remain in office following a contested election.

> This statement is materially false. Deutsche Investment Management Americas Inc. ("DIMA") does not require that directors be elected by a majority of shares outstanding. Rather, it is the By-Laws of KMM that set forth the voting requirements for the election of Trustees. Specifically, Section 2.11 of KMM's By-Laws provides that "[a] majority of the Shares outstanding and entitled to vote on the matter shall elect a Trustee." This statement is obviously an attempt by Western to impugn the character, integrity and reputation of DIMA by casting DIMA as unfriendly to shareholders. In addition, this statement is irrelevant to a shareholder's consideration of whether or not to ask the Board of KMM to take steps to declassify. Furthermore, claiming that getting an absolute majority of shares outstanding is "near-impossible" is misleading. There is no basis for this statement.

2. Further, KMM's Board has a long history of acting in an undemocratic manner by failing to recognize all votes cast, failing to seat dissident directors who won the overwhelming majority of votes cast at annual meetings and failing to hold timely annual meetings.

> This statement is materially false and is an obvious attempt by Western to impugn the character, integrity and reputation of the KMM Board. KMM has timely held an annual meeting in each year since the Fund was launched, all shareholder votes have been counted at each of those meetings and no dissident trustee nominee has ever been properly brought before a KMM shareholder meeting, let alone won an overwhelming majority of votes. In 2010, Western attempted to nominate a dissident director for election at KMM's annual meeting held that year, but Western's notice relating to such nomination was not timely received (in fact, it was received approximately four months after the deadline for submitting such nominations set forth in KMM's By-Laws) and therefore, Western's purported nominee was not eligible for election at KMM's 2010 annual shareholder meeting. Other than 2010, KMM has received no nominations for a dissident trustee, and at no time has a dissident trustee won the overwhelming majority of votes cast at an annual meeting of KMM shareholders. In addition to the foregoing, this statement is irrelevant to a shareholder's consideration of whether or not to ask the Board of KMM to take steps to declassify.

3. Subsequently, the director of the SEC's Division of Investment Management has publicly criticized all of these shareholder-unfriendly behaviors.

> This statement is materially false and misleading for multiple reasons. First, based on its placement in the Supporting Statement immediately following Western's statement in #2 above, it implies that the director of the SEC's Division of Investment Management was publicly criticizing the KMM Board. Second, it implies that the SEC supports Western's position that classified boards and majority voting requirements are shareholder-unfriendly corporate governance practices. The Fund is not aware that the SEC has ever taken a public position on classified boards or majority voting requirements, and expects that the SEC does not want to take one now by allowing this misleading statement to be included in KMM's Proxy Materials. Finally, the Fund is not aware of any public statements by David Grim, the Director of the Division of Investment Management, regarding the topics of classified boards or majority voting requirements.

4. Declassification of the Board is a positive step which will allow more productive shareholder engagement and will help KMM achieve its optimal valuation.

> This statement is materially misleading because it implies that, by declassifying the Board, the net asset value and/or the market value of KMM will increase. KMM's net asset value is based on the value of the underlying assets held by the Fund and not on whether or not KMM's Board is classified or de-classified. Further, there is no evidence that a de-classified board positively impacts a fund's market value.

5. Sadly, KMM's shares have consistently traded at a persistent discount to its per share net asset value. For example, on September 29, 2015, the discount was an abysmal 17.76%.

> The example provided by Western makes this statement materially misleading. By cherry-picking the one day on which KMM traded at its largest discount over the past five years, the statement clearly seeks to mislead shareholders regarding KMM's trading history. Like all closed-end funds, KMM typically trades at either a discount or premium to its per share net asset value. For the five-year period ended May 18, 2016, while KMM has traded at an average discount of 2.70%, it has also experienced periods where it has traded at a premium, including trading at a premium of 15.21% on April 19, 2013. Given the fluctuations in discounts and premiums, it is misleading to specifically state the discount for just one day.

6. DIM has overseen significant losses in KMM and its seven taxable sister funds.

> This statement is materially false. Over the life of the Fund (inception on January 23, 1989), the Fund's average annual total returns for the period ended April 30, 2016 have

been 9.42% and 8.79% based on net asset value and market price, respectively. An investment of $10,000 (excluding sales charges) in the Fund at inception would have grown to $116,272 based on net asset value and $99,482 based on market price at April 30, 2016. It is patently false to say there have been significant losses in KMM or any of the other unspecified "sister funds".

7. KMM's classified board and majority voting requirements also violate DIM's own corporate governance voting standards, an embarrassing contradiction.

This statement is materially false. DIMA's proxy voting guidelines clearly contradict this statement. (The guidelines are posted on the Deutsche Funds' website https://fundsus.deutscheam.com/EN/ at the bottom of the page through the "proxy voting" link.) In the guidelines, Section VIII.J "Investment Company Proxies" sets forth DIMA's policies with respect to voting investment company proxies and specifically states: "Investment companies, particularly closed-end investment companies, are different from traditional operating companies. These differences may call for differences in voting positions on the same matter. For example, AM could vote "for" staggered Boards of closed-end investment companies, although AM generally votes "against" staggered Boards for operating companies." KMM's classified Board is consistent with DIMA's proxy voting guidelines. In addition, DIMA's proxy voting guidelines do not include any statement about majority voting requirements for directors.

8. It is our belief that the classification of the Board is strong proof that the Board is not acting in the best interests of shareholders. A classified board protects the incumbents, which in turn limits accountability to shareholders.

These statements are materially false and misleading. In the first sentence, while Western attempts to frame its misleading statement as a statement of opinion, there is no basis to say that a classified board is "proof" that the Board is not acting in the best interests of shareholders and is clearly an attempt by Western to impugn the character, integrity and reputation of the KMM Board. With respect to the second sentence, there is no basis to say that a classified board "protects" the incumbents or "limits accountability" to shareholders. Members of a classified board remain fully subject to their fiduciary responsibilities to the fund and to election by shareholders of the fund.

III. Conclusion

As detailed above, Western's Supporting Statement includes at least eight statements (229 out of Western's 500-word limit) that are materially false and/or misleading, with multiple statements also impugning the character, integrity and reputation of DIMA and the KMM Board or simply being irrelevant to a shareholder's consideration of the Proposal. The Fund believes that it has objectively demonstrated that Western's statements are materially false and/or misleading and therefore, may be excluded from the Proxy Materials for the 2016 Annual Meeting pursuant to Rule 14a-8(i)(3). In addition, because the Supporting Statement would require detailed and extensive editing to bring it into compliance with Rule 14a-9, the Fund believes it would be consistent with the Staff's position in Staff Legal Bulletin No. 14 and Staff Legal Bulletin No. 14B to exclude the entire Proposal and Supporting Statement. On the basis of the foregoing and on behalf of the Fund, we respectfully request that the Staff confirm that it will not recommend any enforcement action to the Commission if the Proposal and Supporting Statement are excluded from the Proxy Materials for the 2016 Annual Meeting.

If you have any questions with respect to this letter or need any additional information, please call John S. Marten at 312-609-7753 or David A. Sturms at 312-609-7589. If the Staff is unable to agree with our conclusion without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Kindly acknowledge receipt of this letter by return electronic mail. Thank you for your consideration on this matter.

Respectfully submitted,

VEDDER PRICE P.C.

By: John S. Marten
John S. Marten

JSM/gk

cc: David Sturms, Esq. (via email)
Thomas Hiller, Esq. (via email)
Caroline Pearson, Esq. (via email)
Arthur Lipson (via email)
Adam Finerman, Esq. (via email)

Exhibit A

WESTERN INVESTMENT LLC
P.O. Box 71279
Salt Lake City, UT 84171

April 18, 2016

BY OVERNIGHT MAIL, ELECTRONIC MAIL AND FACSIMILE

Deutsche Multi-Market Income Trust
c/o Deutsche Investment Management Americas Inc.
One Beacon Street
Boston, MA 02108
Attn: John Millette, Secretary

Re: Submission of Proposal pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, for the 2016 Annual Meeting of Shareholders of Deutsche Multi-Market Income Trust

Dear Sir:

Western Investment, LLC ("Western Investment") is submitting the resolution and supporting statement (the "Proposal"), attached hereto as Exhibit A, for inclusion in the proxy statement of Deutsche Multi-Market Income Trust (the "Fund") relating to the 2016 annual meeting of shareholders of the Fund (the "Annual Meeting").

As of the date hereof, Western Investment is the beneficial owner of 1,038,712 shares of common stock of the Fund (the "Shares"), including 900 shares which it owns directly. Over $2,000 in market value of the Shares are currently held in Western Investment's brokerage account with National Financial Services LLC ("Fidelity"). Cede & Co., as the nominee of The Depository Trust Company, is the holder of record of the Shares. As of the date hereof, Western Investment has continuously held at least $2,000 in market value of the Fund's securities entitled to be voted on the proposal for at least one year. Beginning on or about April 9, 2010 through August 4, 2015, such shares were held in record name of Western Investment at the Fund's transfer agent and from August 4, 2015 through the date hereof, such shares were held in the brokerage account with Fidelity, as evidenced by the letter from Fidelity attached hereto as Exhibit B. Western Investment will continue to hold at least $2,000 in market value of the Fund's securities through the date of the Annual Meeting.

Western Investment's representatives will appear in person or by proxy to present the Proposal at the Annual Meeting.

* * *

This notice is submitted in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended. Western Investment will assume the Proposal will be included in the Fund's proxy material for the Annual Meeting unless advised otherwise in writing (with a copy to Western Investment's counsel in this matter, Olshan Frome Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, New York 10022, Attention: Adam W. Finerman, Esq., telephone (212) 451-2289, facsimile (212) 451-2222).

Western Investment LLC

By: Arthur D Lipson

Arthur D. Lipson, Managing Member

Exhibit A

Proposal

RESOLVED, that the shareholders of Deutsche Multi-Market Income Trust ("KMM") hereby request that the Board of Directors of KMM (the "Board") take the necessary steps to declassify the Board so that all directors are elected on an annual basis. Such declassification shall be completed in a manner that does not affect the unexpired terms of the previously elected directors.

Supporting Statement:

We believe the annual election of all directors encourages board accountability to its shareholders and when directors are held accountable for their actions, they perform better. This view is shared by most, who believe it to be the standard for corporate governance best practices. According to FactSet Research Systems, the vast majority of companies in the S&P 500 and Russell 1000 indexes elect all directors annually, with only approximately 10.5% and 25%, respectively, of companies retaining classified boards.

Currently, the KMM Board is divided into three classes serving staggered three-year terms. It is our belief that the classification of the Board is strong proof that the Board is not acting in the best interests of shareholders. A classified board protects the incumbents, which in turn limits accountability to shareholders.

KMM's investment manager, Deutsche Investment Management Americas Inc. ("DIM"), has further blocked shareholder rights by requiring that directors be elected by a near-impossible absolute majority of shares outstanding, rather than a majority of shares voting, thereby enabling losing incumbents to remain in office following a contested election.

Further, KMM's Board has a long history of acting in an undemocratic manner by failing to recognize all votes cast, failing to seat dissident directors who won the overwhelming majority of votes cast at annual meetings and failing to hold timely annual meetings.

Subsequently, the director of the SEC's Division of Investment Management has publicly criticized all of these shareholder-unfriendly behaviors.

We remain committed to improving corporate governance at KMM for the benefit of all shareholders. Declassification of the Board is a positive step which will allow more productive shareholder engagement and will help KMM achieve its optimal valuation.

In this challenging economic environment, accountability for performance must be given to the shareholders whose capital has been entrusted in the form of share investments in KMM. Sadly, KMM's shares have consistently traded at a persistent discount to its per share net asset value. For example, on September 29, 2015, the discount was an abysmal 17.76%.

DIM has overseen significant losses in KMM and its seven taxable sister funds. Due to shareholder pressures (including overwhelming losses in proxy contests), six of the seven funds have, or are scheduled to be, liquidated or converted into open-end funds.

KMM's classified board and majority voting requirements also violate DIM's own corporate governance voting standards, an embarrassing contradiction.

If this proposal is approved and adopted by the Board, all directors would be subject to annual election after the phase-in period.

For a greater voice in KMM's corporate governance and to increase the accountability of the Board to shareholders, we urge you to vote **FOR** this proposal.

Exhibit B

[Attached.]

NATIONAL FINANCIAL
Services LLC

499 Washington Blvd.
Newport Office Center
Jersey City, NJ 07310

April 18, 2016

Deutsche Funds
One Beacon Street – 14th Floor
Boston, MA 02108

Re: Certification of ownership

To Whom It May Concern:

Please be advised that National Financial Services LLC has held a minimum of $2,000 in market value of Deutsche Multi-Market Income Trust, CUSIP 25160E102, on behalf of Western Investment LLC continuously since August 4th 2015.

As custodian for Western Investment LLC, National Financial Services LLC holds these shares with the Depository Trust and Clearing Corporation under participant number 0226.

If there are any questions concerning this matter, please do not hesitate to contact me directly.

Sincerely,

Peter Closs

National Financial Services LLC
499 Washington Blvd
Jersey City, NJ 07310
Tel: 201-915-7658
Peter.Closs@FMR.com
http://www.nationalfinancial.com/

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
NATIONAL FINANCIAL
SERVICES LLC
National Financial Services LLC
(VOL4)
AUTHORIZED SIGNATURE
Z0061671
NYSE, INC. MEDALLION SIGNATURE PROGRAM

Exhibit B

Revised Proposal

Proposal

RESOLVED, that the shareholders of Deutsche Multi-Market Income Trust ("KMM") hereby request that the Board of Directors of KMM (the "Board") take the necessary steps to declassify the Board so that all directors are elected on an annual basis. Such declassification shall be completed in a manner that does not affect the unexpired terms of the previously elected directors.

Supporting Statement:

We believe the annual election of all directors encourages board accountability to its shareholders and when directors are held accountable for their actions, they perform better. This view is shared by most, who believe it to be the standard for corporate governance best practices. According to FactSet Research Systems, the vast majority of companies in the S&P 500 and Russell 1000 indexes elect all directors annually, with only approximately 10.5% and 25%, respectively, of companies retaining classified boards.

Currently, the KMM Board is divided into three classes serving staggered three-year terms. It is our belief that the classification of the Board is strong proof that the Board is not acting in the best interests of shareholders. A classified board protects the incumbents, which in turn limits accountability to shareholders.

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Further, KMM's Board has a long history of acting in an undemocratic manner by failing to recognize all votes cast, failing to seat dissident directors who won the overwhelming majority of votes cast at annual meetings and failing to hold timely annual meetings.

Subsequently, the former director of the SEC's Division of Investment Management has publicly criticized all of these shareholder-unfriendly behaviors.

We remain committed to improving corporate governance at KMM for the benefit of all shareholders. Declassification of the Board is a positive step which will allow more productive shareholder engagement and will help KMM achieve its optimal valuation.

In this challenging economic environment, accountability for performance must be given to the shareholders whose capital has been entrusted in the form of share investments in KMM. Sadly, KMM's shares have consistently traded at a persistent discount to its per share net asset value. For example, on September 29, 2015, the discount was an abysmal 17.76%.

DIM has overseen significant losses in KMM and its seven taxable sister funds. Due to shareholder pressures (including overwhelming losses in proxy contests), six of the seven funds have, or are scheduled to be, liquidated or converted into open-end funds.

KMM’s classified board and majority voting requirements also violate DIM’s own corporate governance voting standards, an embarrassing contradiction.

If this proposal is approved and adopted by the Board, all directors would be subject to annual election after the phase-in period.

For a greater voice in KMM’s corporate governance and to increase the accountability of the Board to shareholders, we urge you to vote **FOR** this proposal.

Comparison to Original Proposal

Proposal

> RESOLVED, that the shareholders of Deutsche Multi-Market Income Trust ("KMM") hereby request that the Board of Directors of KMM (the "Board") take the necessary steps to declassify the Board so that all directors are elected on an annual basis. Such declassification shall be completed in a manner that does not affect the unexpired terms of the previously elected directors.

Supporting Statement:

We believe the annual election of all directors encourages board accountability to its shareholders and when directors are held accountable for their actions, they perform better. This view is shared by most, who believe it to be the standard for corporate governance best practices. According to FactSet Research Systems, the vast majority of companies in the S&P 500 and Russell 1000 indexes elect all directors annually, with only approximately 10.5% and 25%, respectively, of companies retaining classified boards.

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KMM's classified board and majority voting requirements also violate DIM's own corporate governance voting standards, an embarrassing contradiction.

If this proposal is approved and adopted by the Board, all directors would be subject to annual election after the phase-in period.

For a greater voice in KMM's corporate governance and to increase the accountability of the Board to shareholders, we urge you to vote **FOR** this proposal.

Exhibit C

Speech by SEC Staff: Keynote Address at the Independent Directors Council Investment Company Directors Conference

by

Andrew J. Donohue[1]

Director, Division of Investment Management
U.S. Securities and Exchange Commission

Amelia Island, Florida
November 12, 2009

I. Introduction

Thank you for the warm introduction. As many of you are aware, since I began my tenure at the Commission I have expressed a keen interest in understanding the oversight that you — the independent directors — perform in fund governance. To this end, I have participated in more than 30 board meetings of independent directors and deeply appreciate the insight you have shared with me and my colleagues in the Division of Investment Management. This insight has afforded us a greater understanding of the vital role that you perform, which role is fundamental to the efficient operation of funds and the protection of shareholder interests.

In the short time that I have been allotted, I would like to focus my remarks identifying some of the challenges you face and highlighting the necessity for your continued vigilance in the performance of your independent director duties. However, before I continue, now is a good time for me to give the standard disclaimer that my remarks represent my own views and not necessarily the views of the Commission, individual Commissioners or my colleagues on the Commission staff.

Rather than discuss the challenges associated with the usual list of tasks that you regularly perform, such as the annual review and approval of a fund's contract with its investment adviser or the review of transactions with affiliates, instead I would like to address challenges that are perhaps less obvious, but every bit as important. In order to do so, a little background may provide some context so bear with me a few minutes while I set the stage. I will begin with a quote:

"Let me try my hand at a general description of investment trusts and investment companies. Essentially these organizations are large liquid pools of the public's savings entrusted to managements to be invested…. The sales emphasis by promoters of investment companies has been upon the necessity for providing security for old age and for emergencies, and upon the claim that by expert management and diversification of risk, this security can be furnished by these organizations….

In addition, investment companies at present control or are in a position to control or influence various industrial, banking, utility and other enterprises…. Furthermore, these investment trusts and investment companies, because of their very substantial trading in securities on stock exchanges, are a most substantial factor in our securities markets."[2]

I think we can all agree that the foregoing passage does a very good job of summarizing the current state of the investment company industry. You might be surprised, therefore, to learn that the source is the statement that then-Commissioner Robert E. Healy of the Securities and Exchange Commission made before a Senate subcommittee nearly 70 years ago in support of the enactment of legislation that ultimately became what we now know as the Investment Company Act of 1940 (the "Act").[3] At that time the Commission had recently completed a congressionally mandated report detailing fund corporate structures, investment policies and their economic impact, and the roles played by management, affiliates and boards of directors.[4] The report, which took four years to complete and spans five volumes, also chronicled "abuses and deficiencies" in the organization and operation of investment trusts and investment companies.[5] The report identified a variety of objectionable practices that were rampant in the industry. Examples include share repurchase programs prevalent among closed-end funds that operated for the benefit of affiliates, self-dealing and entrenchment by insiders through various means, such as the creation of multiple share classes in order for insiders with only a nominal economic interest to maintain voting control over funds, and dumping of unmarketable or illiquid securities and other assets into funds by affiliates.

As ultimately adopted, the Act addresses many of the concerns identified in the report. For example, Section 23 of the Act and rules subsequently promulgated thereunder, prescribe the parameters for when a closed-end fund may repurchase shares.[6] Section 18 prescribes the capital structure required for funds, and prohibits multiple share classes and restricts the issuance of senior securities except in accordance with strict capital requirements.[7] As for self-dealing by insiders, numerous provisions in the Act and accompanying rules impose fiduciary duties on a board to act in the best interests of the fund and shareholders, and restrict the ability of affiliates to transact with a fund to the detriment of its shareholders.[8]

Given the restraints contained in the Act, one might conclude that the likelihood of a recurrence of the problems that existed in the investment management industry prior to 1940 is slim. Then again, one might be wrong. I do not mean to suggest that the industry is fraught with problems or that investors are at risk. Nonetheless, my Division has observed a variety of situations which confirm that you, the independent directors, must remain vigilant in your oversight of fund management to ensure that funds operate in the best interests of their shareholders.

II. Challenges Independent Directors Face Today

Let me now discuss with you five categories of challenges that exist today that in some respects bear resemblance to challenges that existed in Commissioner Healy's era. Although some of these challenges are perhaps most germane to the management of closed-end funds, open-end funds are not immune, and directors with both types of funds are equally tasked with the obligation to remain steadfast in their oversight responsibilities.

Expense Recapture

A situation commonly associated with the start-up of a new fund involves the fund adviser's agreement to waive a portion of its fees. In consideration for the waiver, the adviser asks that the fund allow it to recapture the waived fees if the fund's total expenses fall below a benchmark. Hypothetically, let's assume that the adviser agrees, in year one, to cap the fund's expenses at 75 basis points and to waive that portion of the adviser's fee necessary to ensure that the expenses do not exceed this cap. The adviser simultaneously sets up a recapture plan that provides for the adviser to recapture all or a portion of its waived fees within the subsequent three year period if the fund generates sufficient assets. Under this scenario, in order for the adviser to recapture the fees it waived in year one, the fund would have to generate enough assets in the next three years so that the expense ratio falls below 75 basis points. In such event, the adviser could collect or "recapture" the difference between the expense ratio amount that has fallen below 75 basis points and the 75 basis point cap.

Now further assume that in year two the adviser determines that the fund has not attracted as many assets as originally anticipated and calculates that the expense ratio, excluding the effects of the waiver, is at 150 basis points. The adviser then asks the fund to change the expense cap to 160 basis points, recognizing that the adviser will no longer have to waive expenses based on the current asset levels. If the fund approves the higher expense cap, what happens when the adviser subsequently seeks to recapture that portion of its waived fees from year one when the then-existing expense cap was 75 basis points?

It has been the staff's position that in order for advisers to recapture waived fees, the adviser may do so only in accordance with the original recapture plan. In other words, the fund's expense ratio should be below the expense cap upon which the waiver was initially based in order for the adviser to recapture the difference between the lower ratio and the expense cap. A subsequent increase in the expense cap does not create an opportunity for the adviser to recapture waived fees from a previous period that are below the higher cap. In this hypothetical, independent directors should be cautious if an adviser asks the fund to increase the expense cap in order to allow the recapture of fees already waived by the adviser. Absent some extraordinary circumstance which I cannot now imagine, it is difficult to articulate how a board would find such a transaction to be in the best interests of fund investors.

Management Entrenchment

Some funds employ a variety of tactics to thwart takeover attempts. To be fair, it must be acknowledged that a fund's proposed response to certain challenges, particularly in the closed-end space, may have a salutary purpose, such as to defend against arbitrageurs attempting to make a short-term profit in funds trading at a discount to net asset value potentially at the expense of long-term investors. In this situation, the interests of arbitrageurs may conflict with the interests of long-term fund investors and the funds must perform a difficult balancing act. In reacting to these challenges, fund boards must be prudent in their responses in order to fulfill their fiduciary duty to the fund and its shareholders.

One tactic is the adoption of "shareholder rights agreement" commonly referred to as a "poison pill." Under such an agreement, a fund board declares a dividend of one "right" for each outstanding share of common stock which entitles the holder to purchase from the fund on a "distribution date" additional shares of the fund at a price equal to the par value of such shares (e.g., one penny per share). The distribution date is triggered following the public announcement that a person has acquired a beneficial ownership interest of some percentage (such at 11%) or more of the fund's outstanding shares of common stock. The poison pill further provides that the "rights" of the person who acquired the beneficial shares in excess of the triggering threshold become void, meaning that the acquiring person does not have the ability to participate in the shareholder rights agreement to obtain additional shares at par. The effect of the poison pill is to dilute the acquiring person's interest in the fund.

Another tactic involves a fund's reliance on state law provisions that restrict the voting rights of a person deemed to own "control shares" of a fund. An example of this is in Maryland — the domicile of many closed-end funds. Under the Maryland Control Share Acquisition Act (MCSAA), closed-end funds may opt-in to its provisions and restrict the ability of a shareholder who owns control shares (defined in the statute as greater than 10% of the company) from voting those shares above 10% without two-thirds approval from the other, disinterested shareholders at a special meeting.[9]

A federal district court in Maryland has held that a closed-end fund's serial use of poison pills was valid and was consistent with provisions in the Act.[10] The same court ultimately concluded that a dissident shareholder's ability under the MCSAA to vote its control shares was capped at the number of shares the shareholder held at the time that the fund opted into the MCSAA.[11] As such, one might conclude that such actions by a fund, or more particularly its board, may be in the best interests of a fund. In my view, however, I submit that the adoption of a poison pill, or restricting the voting rights of a "dissident" shareholder even where state law authorizes it, may be inconsistent with federal law and not in the best interest of the fund and its shareholders. Let me explain.

Section 1(b) of the Act, referencing the Commission's report to Congress, declares that the national public interest and the interest of investors are adversely affected when, among eight enumerated conditions, investment companies are organized, operated, managed, or their securities are selected in the interests of affiliates, special classes of security holders and others rather than in the interests of all classes of such companies' shareholders.[12] This section further declares that the policy and purposes of the Act, in accordance with which the provisions of the Act shall be interpreted, are to mitigate and where feasible to eliminate the enumerated conditions which adversely affect the national public interest and the interest of investors.[13]

In this context, two provisions in the Act call into question the validity of a close-end fund's use of poison pills. Under Section 18(d), it is generally unlawful for funds to issue any warrant or right to subscribe to or purchase a security issued by the fund except in the form of warrants or rights to subscribe expiring within 120 days after their issuance and issued exclusively and ratably to a class or classes of the fund's security holders.[14] Furthermore, under Section 23(b), closed-end funds are prohibited from selling their own common stock at a price below the current net asset value of such stock subject to certain exceptions, including upon the exercise of a warrant issued in accordance with the provisions of Section 18(d).[15]

In light of the foregoing provisions of the Act, I believe it could be very difficult for fund counsel to advocate for, or fund directors to approve, a fund's use of a poison pill and the restrictions on the voting shares of a dissident shareholder. While Section 18(d) recognizes the ability of a fund to issue warrants for a limited period of time (not to exceed 120 days), importantly, the fund must do so exclusively and ratably to a class or classes of the fund's shareholders. By its very nature, the poison pill excludes from its purview any shareholder who owns shares above a certain percentage. As such, I question whether such device constitutes a "ratable" issuance. Moreover, although Section 23(b) recognizes circumstances where a fund may sell its own shares below net asset value, the exception that allow for such sale requires that it be in conformance with the requirements of Section 18(d). If, as I have questioned, a poison pill does not constitute a ratable distribution, then a fund does not fit within the exception of Section 23(b) for selling its shares at less than net asset value.

Similarly, the use of a state law control share statute to restrict the ability of a shareholder to vote "control shares" in a closed-end fund is likely inconsistent with Section 18(i) of the Act. Under Section 18(i), subject to certain exceptions, every share of stock issued by a fund shall be a voting stock and have equal voting rights with every other outstanding voting stock.[16] In my view, a provision which denies a shareholder deemed to possess "control shares" the right to vote those shares constitutes a denial of equal voting rights and may violate the fundamental requirement that every share of fund stock be voting stock.

I raise these points today to highlight for your consideration as directors that these are issues which you must consider carefully when faced with a request by management to adopt a poison pill, to invoke voting restrictions on control shares, or to pursue other strategies that have the effect of entrenching existing management. When considering such options and determining what is in the best interests of the fund and its shareholders, directors should take guidance from Section 1(b) of the Act and should heed that section's declared skepticism of actions that would tend to entrench management if such action is harmful to shareholders.

While I am still on the subject of management entrenchment, three other management strategies bear mention. The first involves delaying a fund's annual meeting. Under NYSE rules, listed companies, including closed-end funds, are required to conduct an annual meeting.[17] Moreover, Investment Company Act Section 16(a) requires that, if a fund has a classified board, the term of one class expires each year.[18] Nevertheless, some closed-end funds, including those listed on the NYSE, have delayed for many months the holding of an annual meeting and some have changed their by-laws to give the board discretion on when to call a shareholder meeting. If a dissident shareholder has enough shares to elect an insurgent slate of directors, the effect of the delay is to postpone the ability of the shareholder to replace the existing board.

The second tactic is the imposition of a requirement that election of directors requires the affirmative vote of a majority of outstanding shares. For the vast majority of funds, election of a director requires a plurality of the votes cast. For a few funds, however, election of a director requires the affirmative vote of a majority of the outstanding shares. In a contested election, neither incumbents nor insurgents can garner the required vote. However, under Maryland law, incumbents are entitled to hold over until a successor is elected. In my view, this amounts to an anti-takeover device that keeps the existing board in place.

The third tactic, also typically found in a fund's by-laws, relates to director qualifications. Specifically, a fund board will adopt a by-law that mandates certain qualifications for director nominees, but exempts existing directors, including those affiliated with the fund's adviser. Again, this results in additional hurdles for the replacement of existing directors and the entrenchment of existing management.

While the foregoing tactics may be in conformance with state corporate laws and I appreciate why management may favor them, nonetheless you — the independent directors — must still determine whether such actions, if taken, will be in the best interest of the fund and its shareholders. The question you must always ask yourself is not just whether the action is legal under state and federal law, but whether it is truly in the best interests of fund shareholders. This is not an easy task, but one that is critically important. My staff and I are always available if you have questions.

Mergers

Another area requiring careful consideration by directors is the merger of funds. This year we have witnessed a significant increase in the number of fund mergers. A merger can be beneficial to shareholders for numerous reasons, including if it reduces expenses or results in better performance. However, as a recent Wall Street Journal article notes, some of these mergers appeared to be structured for the sole purpose of merging away a fund with poor performance.[19] This raises a variety of considerations. Assume, for example, that a closed-end fund trading at a discount to its net asset value decides to merge with a larger affiliated closed-end fund that is also trading at a discount. From the perspective of the larger fund, the merger would appear in the best interests of the larger fund's shareholders. What about the interests of the shareholders in the smaller fund? Since the fund is trading at a discount, would the interests of the smaller fund's shareholders be better served if the fund liquidated and eliminated the discount? What is the purpose of the merger with the affiliate? Does the affiliate benefit by keeping all of the assets under management to the detriment of the small fund's shareholder interests?

More broadly, other questions arise when funds contemplate a merger. For instance, how does a merger affect the investment strategy of the fund? Will the merger result in higher costs for shareholders of the acquired fund? What are the tax consequences?

Another merger concern involves the accounting treatment that arises from the merger. If a poorly performing fund is merged into another fund, directors must be cognizant of the accounting survivor analysis that determines which fund's performance is carried over to the new entity. In some cases, it appears to Division staff that a newer fund or the fund that was chosen to be the accounting survivor had only a few months of operations, had net assets that were much smaller than the target, and that the shareholders were affiliated with the adviser. In contrast, the fund that was being merged away had a significantly longer track record, much more assets and its shareholder base was not made up of affiliated entities. However, due to market declines, particularly those experienced in 2008, the merged away fund's performance was very poor.

Obviously, each merger transaction has its own particular facts and circumstances. To the extent that you contemplate a merger transaction, you should be asking a lot of questions to make sure that the merger is in fact in the best interests of your fund's shareholders.

Fulcrum Fees

The application of fulcrum fees is another area that presents challenges. The application of a fulcrum fee can be tricky and it is important that you understand its calculation and the ramifications before you undertake this arrangement.

In a nutshell, a fulcrum fee is a performance based fee that an adviser charges a fund when the adviser achieves a return above a certain benchmark.[20] A benefit of a performance based fee is that it aligns the interest of management with the interests of investors. The fulcrum fee has two components: a base fee which represents the midpoint of the entire fulcrum fee; and an incentive adjustment. These components are tied to or conditioned upon the fund's performance relative to an index benchmark. In practice, the adviser receives the base fee if the fund's performance matches the performance of the index. Applying the incentive adjustment, an additional fee is generally added to the base fee when the fund out-performs its benchmark but is subtracted from the base fee when the fund underperforms the benchmark.

Under Commission Rule 205-2, the incentive portion of the fulcrum fee is always calculated using the fund's average net assets over a rolling performance measurement period.[21] However, when establishing a fulcrum fee arrangement, a fund has the option either to apply the rate to the average net assets over the rolling measurement period or to apply the rate to current level average net assets, i.e., the "most recent subperiod" which represents the period between payments. Once the fund has selected which option to apply it must be applied consistently.

Many funds that implement a fulcrum fee structure opt to pay the adviser with the base portion of the fee being calculated on current level net assets as permitted by the rule. What advisers sometimes fail to realize, however, is that when the base fee is calculated on current level net assets, the adviser runs the risk of having to reimburse the fund when there is a significant decline in assets coupled with poor performance. We have observed that some funds, when relying on Rule 205-2, try to implement a floor total fee, which would limit the downside to an adviser by providing it a minimum cash payment and prevent the adviser from ever having to reimburse the fund. The problem with this approach, however, is that a floor only limits the downside without proportionally limiting the adviser's upside. As such, a floor is not permissible because the incentive adjustments must be symmetrical — hence the term "fulcrum."

As with the other challenges discussed today, the implementation of a fulcrum fee requires your careful consideration. In particular, it must be clear to you and the adviser what the fulcrum fee represents, including that the adviser, in addition to incurring a decline or elimination of its fee, may owe the fund money under certain conditions.

"Yield" and Managed Distribution Plans

The last challenge that I would like to discuss with you today involves disclosures associated with a fund's yield or its managed distribution plan. Closed-end funds sometimes tout a high, level dividend or a managed distribution plan to investors. Investors may incorrectly believe that the dividend rate is "yield," i.e., earned income or gain. In fact, the dividend rate often includes a return of capital. As directors, you must make sure that the fund's disclosures explain what the distribution yield represents and what it does not represent and that it is not confused with the fund's actual performance. In particular, if a fund with a managed distribution plan does not earn enough income to sustain a distribution, it must be clear that distributions to investors may be paid from a return of capital which has the effect of depleting the fund's assets. Moreover, in exercising your oversight, you should carefully consider whether managed distribution plans continue to be in the best interests of the fund and its shareholders.

Let me highlight one additional managed distribution plan disclosure issue for your consideration. As you know, funds are required under Rule 19a-1 to provide notice when distributions include a return of capital.[22] In reviewing these notices, my staff has found inconsistencies between 19a-1 notices and other information posted on a fund's website. In particular, the 19a-1 notices show the return of capital while other charts on a fund's website show distributions consisting of all income. Funds have indicated to us that the reason for any differences is because the disclosures are prepared under different bases with 19a-1 notices disclosing book values and other disclosures based on tax considerations. However, fund websites do not always include an explanation discussing why the information is inconsistent in different online sections. Accordingly, I suggest that you review your fund's disclosures to make sure that the information is disclosed consistently and, if not, that the reason or reasons for any inconsistencies are adequately explained to investors.

One final point regarding 19a-1 notices is worth mentioning and that is whether investors who hold a beneficial interest in a fund through a financial intermediary, such as a broker-dealer or a bank, actually receive the notice. In practice, we have witnessed funds sending 19a-1 notices to record holders of fund shares and to the Depository Trust Company (DTC). DTC in turn posts copies of these notices on its website.[23] Whether a beneficial owner of a fund periodically checks the DTC website for such notices is unknown — all the more reason why funds should make an effort to ensure that all beneficial shareholders receive the notice and should be careful that the information a fund discloses on its own website is clear and consistent.

IV. Conclusion

I appreciate being afforded time today to highlight some of the many, but often less obvious, challenges that you face as independent directors. I wish to underscore the vital role that you perform and to thank you for your continued vigilance on behalf of funds and their investors. If anyone has any questions, please do not hesitate to contact me or my staff and we will be glad to help. Thank you again and enjoy the rest of the conference.

Endnotes

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[1] *The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any*

private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission.

[2] Statement of Commissioner Robert E. Healy before subcommittee of Committee on Banking and Currency on Wagner-Lea Act, S. 2580, to regulate investment trusts and investment companies (Apr. 2, 1940), *available at* http://www.sec.gov/news/speech/1940/040240healy.pdf.

[3] Commissioner Healy's statement was actually in support of a Senate bill which the business community strongly opposed. S. 3580, 76th Cong., 3d Sess. (Mar. 14, 1940). Eventually, a compromise bill was negotiated (S. 4108, 76th Cong. 3d Sess. (1940)) and was ultimately enacted as the Investment Company Act of 1940. Pub. L. No. 768, 54 Stat. 789 (1940).

[4] The report was conducted pursuant to Section 30 of the Pubic Utility Holding Company Act of 1935, entitled Study of Public-Utility and Investment Companies, which authorized and directed the Commission to conduct a study and to make public its recommendations. *See* 15 U.S.C. 79z-4 (1935) (repealed).

[5] For an overview of the Commission 1939 report on investment trusts, see generally Robert A. Robertson, Fund Governance Legal Duties of Investment Company Directors § 1.02 (2004).

[6] 15 U.S.C. § 80a-23; 17 C.F.R. § 270.23c-1, *et seq*.

[7] 15 U.S.C. § 80a-18. *See also* 17 C.F.R. § 18f-3 (providing for an exception to prohibition against multiple share classes).

[8] *See, e.g.*, 15 U.S.C. § 80a-17 (prohibiting transactions of certain affiliated persons and underwriters absent exemptive relief); 15 U.S.C. § 80a-35 (authorizing the Commission bring an action for a breach of fiduciary duty involving personal misconduct and authorizing shareholders to bring an action against investment advisers for a breach of fiduciary duty with respect to the receipt of compensation for services or of payments of a material nature).

[9] *See* Md. Code Ann., Corps. & Ass'ns § 3-701 *et seq*.

[10] *See* Neuberger Berman Real Estate Income Fund, Inc. ver. Lola Brown Trust No. 1B et al., 485 F.Supp.2d 631 (D. Md. 2007); Neuberger Berman Real Estate Income Fund, Inc. ver. Lola Brown Trust No. 1B et al., 342 F.Supp.2d 371 (D. Md. 2004)

[11] 485 F.Supp.2d at 641.

[12] 15 U.S.C. § 80a-1(b).

[13] *Id*.

[14] 15 U.S.C. § 80a-18(d).

[15] 15 U.S.C. § 80a-23(b).

[16] 15 U.S.C. § 80a-18(i).

[17] NYSE Listed Company Manual § 302.00 Annual Meetings ("Listed companies are required to hold an annual shareholders' meeting during each fiscal year.").

[18] 15 U.S.C. § 80a-16(a).

[19] Eleanor Laise, *Investing in Funds: A Monthly Analysis — Fund Investors Can Lose Out When Portfolios Are Merged*, Wall St. J., Sept. 2, 2009, at R1.

[20] *See* Investment Advisers Act of 1940 § 205(b), 15 U.S.C. § 80b-5(b).

[21] Commission Rule 205-2, 17 C.F.R. § 275.205-2.

[22] Commission Rule 19a-1, 17 C.F.R. § 270.19a-1.

[23] For a sample of 19a-1 notices posted by DTC, a subsidiary of the Deposit Trust & Clearing Corporation, see http://search.dtcc.com/search/?sp_q=19a-1&sp_a=sp1003a122&sp_k=imp_notices&sp_p=all&sp_f=ISO-8859-1.

http://www.sec.gov/news/speech/2009/spch111209ajd.htm