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March 24, 2020

VIA ELECTRONIC MAIL (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Office of the Chief Counsel
Division of Investment Management
100 F Street, N.E.
Washington, D.C. 20549

RE: Dividend and Income Fund
Securities and Exchange Act of 1934
Notice of Intent to Exclude from Proxy Materials a Shareholder Proposal Pursuant to Rule 14a-8

Ladies and Gentlemen:

This letter is to inform the staff of the ("Staff") of the Securities and Exchange Commission (the "Commission") that, in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, Dividend and Income Fund (the "Fund") intends to exclude the shareholder proposal and supporting statement (collectively, the "Proposal") submitted by Alison Pampinella (the "Proponent") from the proxy materials (the "Proxy Materials") to be distributed by the Fund in connection with its 2020 annual meeting of shareholders (the "Annual Meeting").

We refer to our letter dated February 21, 2020 (the "Initial Letter"), pursuant to which we previously requested that the staff (the "Staff") of the Division of Investment Management concur with our view that the Fund may exclude the Proposal from the Proxy Materials, and the letter dated January 30, 2020 that Godfrey & Kahn, S.C. sent, on behalf of the Fund, to the Proponent, pointing out certain procedural and eligibility deficiencies with the

Proposal (the "Deficiency Letter"). We also submitted a legal opinion on February 24, 2020, in support of the Initial Letter (the "Opinion"), and a subsequent letter to the Staff on March 4, 2020 (the "Supplemental Letter").

The Fund is not requesting that the Staff respond to this letter. Instead, because the Proponent has, as of the date of this letter, failed to respond to the Deficiency Letter and all other correspondence from the Fund, and because Phillip Goldstein, who separately submitted a purported notice to the Fund regarding certain matters he has proposed to present at the Annual Meeting, has taken it upon himself to improperly use the Rule 14a-8 no action request process with respect to the Proposal to advance his own interests in regards to his own separate proposals to the distraction of the Fund and its management and at cost to the Fund and its shareholders, the Fund is notifying the Staff of its intent to exclude the Proposal from its Proxy Materials pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1). Should the Staff disagree with the Fund's position and determine to issue a response to this letter, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

As noted in the Initial Letter, the Fund currently intends to begin distribution of its definitive Proxy Materials on or after May 11, 2020. Accordingly, pursuant to Rule 14a-8(j), the Fund's original notice of its intent to exclude the Proposal, as expressed in the Initial Letter, was submitted not less than 80 days before the Fund currently intends to file its definitive Proxy Materials with the Commission.

Relevant Correspondence

The Fund received the Proposal on January 22, 2020, which was accompanied by a cover letter from the Proponent and a letter from Muriel Siebert & Co., Inc. ("Muriel Siebert"). In accordance with Rule 14a-8(f)(1), on January 30, 2020, Godfrey & Kahn, S.C. sent the Deficiency Letter to the Proponent. The Deficiency Letter notified the Proponent that the correspondence from Muriel Siebert indicated that the Proponent's ownership in the Fund was based on "historical statements" and did not specifically verify that the Proponent owned the Fund's shares continuously for a period of one year as of the time of submitting the Proposal, as required under *Staff Legal Bulletin No. 14F (CF)* (October 18, 2011). The Deficiency Letter also stated that based on the Fund's review of the most recent version of the Depository Trust Company's ("DTC") eligible participant list, Muriel Siebert is not a DTC participant, in which case the firm is not the "record" holder of the securities and is not eligible to provide the required verification of the Proponent's share ownership. A copy of the confirmation of Federal Express priority overnight delivery of the Deficiency Letter is attached as Exhibit D to the Initial Letter. The Proponent did not respond to the Deficiency Letter within 14 calendar days after the Proponent received the Deficiency Letter, as required by Rule 14a-8(f).

On February 21, 2020, the Fund submitted the Initial Letter to the Staff, which described grounds for exclusion of the Proposal under Rule 14a-8. A copy of the confirmation of Federal Express priority overnight delivery of the Initial Letter is attached hereto as Exhibit A.

As we noted in our Supplemental Letter, the Fund finally received an email, dated March 2, 2020, from Phillip Goldstein, which included as an attachment a response (the "Late Response") to the Deficiency Letter and to the Opinion (see Exhibit A of the Supplemental Letter). In the Late Response, Mr. Goldstein asserted that the Proponent was his daughter and claimed that the Proponent did not know the date she received the Deficiency Letter and did not receive a copy of the Initial Letter.

Upon receipt of the Late Response, on March 2, 2020, we sent, on behalf of the Fund, a second copy of the Initial Letter to the Proponent. See Exhibit B. To ensure the protection of the Proponent's personal information consistent with the Fund's Privacy Policy, the Fund separately sent a letter to the Proponent on March 3, 2020, requesting that the Proponent submit sufficient documentation to the Fund appointing Mr. Goldstein as the Proponent's representative (the "Privacy Verification Request"). See Exhibit C. As of the date of this letter, the Fund has not received a response from the Proponent regarding the Privacy Verification Request.

On March 7, 2020, the Fund received an email from Mr. Goldstein, in which he purported to respond to the Fund's March 2, 2020 letter to the Proponent. He also responded in this email to a request by the Fund relating to his *own* purported notice submitted to the Fund on February 21, 2020 with respect to certain matters he has proposed to present for consideration at the Annual Meeting. See Exhibit D. In his email, Mr. Goldstein did not provide the requested documentation authorizing him to act as the Proponent's representative.

On March 9, 2020, Mr. Goldstein submitted a letter to the Commission, requesting the Commission's consideration of certain Rule 14a-8 matters. See Exhibit E. On March 11, 2020, Mr. Goldstein emailed the Fund a copy of his comment letter to the Commission in response to the Commission's request for comments on the proposed rule entitled "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" (the "Proposed Rule"). Finally, on March 12, 2020, Mr. Goldstein submitted a response to the Staff regarding the Supplemental Letter. See Exhibit F.

As noted above, as of the date of this letter, the Proponent has not responded to any correspondence from the Fund, including the Deficiency Letter and the Privacy Verification Request.

Basis for Exclusion

In light of the Proponent's failure to respond to the Deficiency Letter and the Privacy Verification Request, the Fund respectfully notifies the Staff that the Fund intends to exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal and failed to timely respond to the Deficiency Letter. The Late Response and Mr. Goldstein's subsequent correspondence are clearly attempts by Mr. Goldstein to circumvent the procedural and eligibility requirements of Rule 14a-8 and create distraction and expense for the Fund. As discussed in the Initial Letter and

the Supplemental Letter, Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements of Rule 14a-8; *provided* that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice. The Fund timely notified the Proponent of the procedural deficiencies under Rule 14a-8(b) by transmitting the Deficiency Letter and specifically called to the Proponent's attention to the 14 days' time limitation to reply to the Fund with the required information, writing: "The rules of the SEC require that your response to this letter be postmarked or transmitted electronically no later than 14 days from the date you receive this letter." (See Exhibit D to the Initial Letter).

The Fund did not receive a response to the Deficiency Letter until 31 days after the Deficiency Letter was delivered to the Proponent. As noted above, Mr. Goldstein's recent March 12, 2020 letter (even assuming that Mr. Goldstein is authorized to act for the Proponent) failed to correct the deficiencies identified in the Deficiency Letter.

In light of these events and the clear failure of the Proponent to comply with the requirements of Rule 14a-8 (even assuming that Mr. Goldstein is authorized to act for the Proponent), the Fund has determined that it is in the best interests of the Fund to provide notice to the Staff of the Fund's determination to exclude the Proposal.

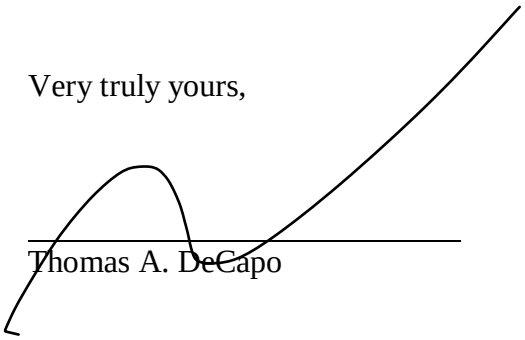
*** * ***

CONCLUSION

For the reasons stated above, the Fund has determined to exclude the Proposal in accordance with Rule 14a-8(b) and Rule 14a-8(f). Although the Fund intends to exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f), the Fund continues to believe that the other grounds for exclusion under Rule 14a-8, as identified in the Initial Letter, are each adequate grounds for exclusion, and the Fund does not waive any rights to challenge and/or exclude the Proposal under those other grounds, if it becomes necessary.

If the Staff has any questions or comments regarding the foregoing, please contact the undersigned at 617-573-4814.

Very truly yours,



Thomas A. DeCapo

cc: Alison Pampinella
Thomas B. Winmill, President, Dividend and Income Fund
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund

Exhibit A

Huynh, Michelle (BOS)

From: TrackingUpdates@fedex.com
Sent: Saturday, February 22, 2020 10:18 AM
To: Huynh, Michelle (BOS)
Subject: [Ext] FedEx Shipment 390566003025 Delivered

Your package has been delivered

Tracking # 390566003025

Ship date:
Fri, 2/21/2020

Michelle Huynh
Skadden,Arps,Slate,Meagher&FlomLLP
Boston, MA 02116
US

Delivered

Delivery date:
Sat, 2/22/2020 10:15 am

Alison Pampinella
267 84TH ST
BROOKLYN, NY 11209
US

Personalized Message

PSShip eMail Notification

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	390566003025
Status:	Delivered: 02/22/2020 10:15 AM Signed for By: Signature not required
Reference:	22346000002Michelle Huynh
Signed for by:	Signature not required
Delivery location:	BROOKLYN, NY
Delivered to:	Residence
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	1.00 lb.
Special handling/Services:	Saturday Delivery
	No Signature Required
	Residential Delivery

Standard transit:	2/22/2020 by 12:00 pm

This tracking update has been requested by:

Company name:	Skadden,Arps,Slate,Meagher&FlomLLP
Name:	Michelle Huynh
Email:	Michelle.Huynh@skadden.com

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:17 AM CST on 02/22/2020.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

This tracking update has been sent to you by FedEx on behalf of the Requestor Michelle.Huynh@skadden.com. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update.

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Thank you for your business.

Exhibit B

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March 2, 2020

Alison Pampinella
267 84th Street
Brooklyn, NY 11209-4315

RE: Your Shareholder Proposal for the 2020 Annual Meeting of Shareholders of Dividend and Income Fund

Dear Ms. Pampinella:

We are in receipt of a letter dated March 2, 2020 from Phillip Goldstein to Dividend and Income Fund (the "Fund"), claiming to be your father and asserting that you did not receive a copy of our no action request (and related exhibits thereto), dated February 21, 2020 (the "Request"), submitted on behalf of the Fund to the staff of the Securities and Exchange Commission, regarding your shareholder proposal submitted under Rule 14a-8 of the Securities Exchange Act of 1934. Enclosed please find another copy of the Request, which includes a copy of the confirmation of overnight delivery by Federal Express of the letter dated January 30, 2020 addressed to you from Godfrey & Kahn S.C. on behalf of the Fund, and a copy of the confirmation of overnight delivery by Federal Express of the Request on February 22, 2020.

Very truly yours,

Thomas A. DeCapo

Enclosures

cc: Securities and Exchange Commission, Division of Investment Management
Thomas B. Winmill, President, Dividend and Income Fund
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund

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February 21, 2020

VIA ELECTRONIC MAIL (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Office of the Chief Counsel
Division of Investment Management
100 F Street, N.E.
Washington, D.C. 20549

RE: Dividend and Income Fund
Securities and Exchange Act of 1934
Omission of Shareholder Proposal Pursuant to Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the Dividend and Income Fund (the "Fund"), pursuant to Rule 14a-8(j) promulgated under the Securities and Exchange Act of 1934 (the "Exchange Act") to request that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Fund's view that, for the reasons stated below, the shareholder proposal and supporting statement (collectively, the "Proposal") of Alison Pampinella (the "Proponent") may be properly omitted from the proxy materials (the "Proxy Materials") to be distributed by the Fund in connection with its 2020 annual meeting of shareholders ("2020 Annual Meeting"). The Proposal and other materials submitted by the Proponent to the Fund on January 22, 2020 are attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its attachments are being emailed to imshareholderproposals@sec.gov. In accordance with Rule 14a-8(j)(1), a copy of this letter and its attachments are being sent simultaneously to the Proponent. We take this opportunity to inform the Proponent that if the Proponent elects to

submit correspondence to the Commission or the Staff with respect to the Proposal or this letter, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Fund pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D. We request that such copy be emailed to me at thomas.decapo@skadden.com.

The Fund advises that it currently intends to begin distribution of its definitive Proxy Materials on or after May 11, 2020. Accordingly, pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before the Fund currently intends to file its definitive Proxy Materials with the Commission.

BACKGROUND

The Fund is a statutory trust formed under the Delaware Statutory Trust Act (the "DSTA"). The Fund's governing documents are its Amended and Restated Declaration of Trust, dated December 13, 2018, as amended (the "Fund's Declaration of Trust"), a copy of which is attached hereto as Exhibit B, and its Bylaws, dated December 13, 2018, as amended (the "Fund's Bylaws"), a copy of which is attached hereto as Exhibit C.

The Proposal states: "RESOLVED**:** the Fund's rigged election bylaw should be replaced with the following one: 'The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees.'"

The Fund received the Proposal on January 22, 2020, which was accompanied by a cover letter from the Proponent and a letter from Muriel Siebert & Co., Inc. (collectively, the "Submission"). In accordance with Rule 14a-8(f)(1), on January 30, 2020, the Fund sent a letter to the Proponent, pointing out certain procedural and eligibility deficiencies with the Submission (the "Deficiency Letter"). As suggested in Section G.3 of Staff Legal Bulletin No. 14 (July 13, 2001), the Deficiency Letter included a copy of Rule 14a-8. The Deficiency Letter notified the Proponent that the Proposal failed to comply with Rule 14a-8(b) because the correspondence from Muriel Siebert & Co., Inc. was insufficient to verify the Proponent's eligibility to submit a proposal under Rule 14a-8. The Fund also pointed out that the Proposal may be excluded under Rule 14a-8(i)(3). The Fund requested that the Proponent respond no later than 14 calendar days after the date the Proponent received the Deficiency Letter. A copy of the Deficiency Letter is attached hereto as Exhibit D.

As of the date of this letter, the Proponent has not responded to the Deficiency Letter and has not provided proof of the Proponent's ownership of the Fund's shares as required by Rule 14a-8(b).

BASES FOR EXCLUSION

The Fund believes that the Proposal may properly be excluded from the Proxy Materials for the following reasons:

- The Fund may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal and failed to timely respond to the Deficiency Letter.

- The Fund may exclude the Proposal pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal.

- The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders at the 2020 Annual Meeting under state law.

- The Fund may exclude the Proposal because it contains false and misleading statements in violation of Rule 14a-8(i)(3) and Rule 14a-9.

    - The Proposal is misleading as to the identity of the Proponent.

    - The Proposal contains false and misleading statements that directly and indirectly impugn the character of the Fund and constitute charges concerning improper, illegal or immoral conduct without factual foundation.

ANALYSIS

1. The Fund may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal and failed to timely respond to the Deficiency Letter.

Rule 14a-8(b)(1) provides that "[i]n order to be eligible to submit a proposal, [a shareholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal. [Such shareholder] must continue to hold those securities through the date of the meeting." Shareholders who are not registered holders of the subject company's shares (and who have not filed an ownership report with the Commission) must prove eligibility under Rule 14a-8(b)(2) by submitting "to the company a written statement from the 'record' holder of [such shareholder's] securities (usually from a broker or a bank) verifying that, at the time [the shareholder] submitted [such shareholder's] proposal, [such

shareholder] continuously held the securities for at least one year." Further, in accordance with the Staff's position as set forth in *Staff Legal Bulletin No. 14F (CF)* (October 18, 2011) ("SLB 14F"), "for Rule 14a-8(b)(2)(i) purposes, *only DTC participants should be viewed as 'record' holders of securities that are deposited at DTC.*" [Emphasis added.]

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8; *provided* that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.

According to the Fund's records, the Proponent is not a registered holder of the Fund's outstanding shares. Further, the correspondence from Muriel Siebert & Co., Inc. that the Proponent submitted with the Proposal indicated that the Proponent's ownership in the Fund was based on "historical statements" and did not specifically verify that the Proponent owned the Fund's shares continuously for a period of one year *as of the time of submitting the Proposal*, as required under SLB 14F. Based on the Fund's review of the most recent version of DTC's eligible participant list,[1] Muriel Siebert & Co., Inc. is not a DTC participant, in which case the firm is not the "record" holder of the securities and is not eligible to provide the required verification of the Proponent's share ownership. The Fund timely notified the Proponent of the procedural deficiency under Rule 14a-8(b) by transmitting the Deficiency Letter.

The Staff has consistently granted no-action relief to registrants where proponents have failed, following a timely and proper request by a registrant, to provide any evidence of eligibility to submit a shareholder proposal in response to a deficiency notice from the company. *See, e.g.*, *DigitalGlobe, Inc.* (Feb. 27, 2015) and *E.I. du Pont de Nemours and Company* (Dec. 31, 2014).

Accordingly, the Fund has concluded that the Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-8(b)(2), and respectfully requests the Staff's concurrence with this conclusion.

2. The Fund may exclude the Proposal pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal.

As discussed above, to be eligible to submit a shareholder proposal for inclusion in a company's proxy materials under Rule 14a-8(b), a shareholder must have held at least

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[1] *See* DTC Participant Report, Month Ending – December 31, 2019, http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx

$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date such shareholder submits her proposal.

The Fund's Declaration of Trust clearly and unambiguously states that shareholders of the Fund are permitted to vote only on specific matters that are enumerated in the Fund's Declaration of Trust. Under Delaware law, beneficial owners of a statutory trust such as the Fund are only entitled to vote on those matters as specified in the statutory trust's governing instruments. Article IV, Section 2(a) provides as follows:

> The Shareholders ***shall have power to vote only with respect to*** the election or removal of Trustees as provided in Article III hereof, and with respect to the approval of certain transactions as provided in Article V and Article VI, Section 3 hereof, and such additional matters relating to the Trust or the applicable Series as may be required by applicable law, this Declaration, the Bylaws, or any registration of the Trust with the Commission (or any successor agency), or as the Trustees may consider necessary or desirable.[2] [Emphasis added.]

Neither a right to vote to amend the Fund's Bylaws nor a right to vote on a proposal that the Fund's Bylaws should be amended is within the enumerated voting rights. In addition, Article III, Section 5(c) of the Fund's Declaration of Trust expressly and unambiguously states that only the trustees and not shareholders have the power to adopt, alter or repeal a Bylaw provision and to adopt new Bylaws: "Except as otherwise expressly provided in the Bylaws, the [trustees] ***shall have the exclusive power to adopt, alter or repeal any provision of the Bylaws and to make new Bylaws***."[3] [Emphasis added.] The Fund's Bylaws do not otherwise provide that shareholders have any such power.

The Proposal asks that shareholders of the Fund adopt a resolution to change the voting standard in trustee elections. The subject matter of the Proposal, as well as the Proposal itself, are not among those enumerated matters that shareholders of the Fund are permitted to vote on pursuant to Article IV, Section 2(a) of the Fund's Declaration of Trust. Moreover, Article III, Section 5(c) of the Fund's Declaration of Trust specifically provides that only trustees

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2 This enumerated list is repeated in Article VII, Section 4 of the Fund's Declaration of Trust, which also provides that shareholders have a right to vote on any amendment to Article VII, Section 4 (relating to amendments to the Fund's Declaration of Trust). Article III relates to the election and removal of Trustees; Article V relates to a merger, sale of assets or liquidation of the Fund; and Article VI, Section 3 relates to the conversion of the Fund's shares to "redeemable securities."

3 Article IX of the Fund's Bylaws reinforces the rights of the Trustees to take action on any Bylaw amendment: "Except as otherwise expressly provided in these Bylaws, the [trustees] shall have the exclusive power to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws." The Fund's Bylaws do not otherwise provide that shareholders have any such power.

have the power to alter a Bylaw provision. Further, the Board of Trustees (the "Board," and each member, a "Trustee") does not consider it necessary or desirable that shareholders have the power to vote on the Proposal. Accordingly, the Fund believes that the shares are not entitled to be voted on the Proposal as required under Rule 14a-8(b).

The Staff has concurred with the view that a statutory trust may exclude a shareholder proposal pursuant to Rule 14a-8(b) in circumstances where its declaration of trust does not permit the shareholder proponent to vote on the subject of the proposal. In *Senior Housing Properties Trust* (February 20, 2018), the Staff accepted the position of Senior Housing Properties Trust, a Maryland REIT ("*SNH*"), that its shareholders were entitled to vote only on certain enumerated matters in its declaration of trust, which did not include the proposal in question, and that, therefore, the shareholder proponent did not hold securities entitled to be voted on the proposal as required by Rule 14a-8(b). Notably, the *Senior Housing Properties Trust* no action letter, like the present case, involved a proposal that a trustee election standard in the company's bylaws should be changed.[4] The pertinent language of SNH's declaration of trust, Article VIII, Section 8.2, provides as follows:

> Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, ***the shareholders shall be entitled to vote only on the following matters***: (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X; (c) termination of the Trust as provided in Section 12.2; (d) merger or consolidation of the Trust to the extent required by Title 8, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees. [Emphasis added.]

See Government Properties Income Trust (Feb. 20, 2018) (concurring with the exclusion of a proposal to eliminate the classification of the board of trustees of the company); *RAIT Financial*

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[4] The proposal submitted to SNH reads as follows: "RESOLVED, that the shareholders of Senior Housing Properties Trust ("SNH," or the "Company") recommend that the Board of Trustees ("the Board") take all steps necessary to require Trustee nominees to be elected by an affirmative vote of the majority of votes cast for uncontested Trustee elections, that is, when the number of Trustee nominees is the same as the number of board seats (with a plurality vote standard retained for contested Trustee elections, that is, when the number of Trustee nominees exceeds the number of board seats)."

Trust (March 10, 2017) (concurring with the exclusion of a proposal to externalize the management of the company by entering into an advisory agreement with an external adviser).

For the reasons discussed above, the Fund has concluded that the Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-8(b)(2), and respectfully requests the Staff's concurrence with this conclusion.

The Fund did not provide the Proponent with the 14-day notice described in Rule 14a-8(f)(l) on this eligibility requirement because such notice is not required if a proposal's deficiency cannot be remedied. The lack of entitlement of the shares held by the Proponent to vote on the Proposal under Delaware law cannot be remedied. Accordingly, the Fund was not required to send a 14-day notice to cure the eligibility deficiency in order for the Proposal to be excluded under Rule 14a-8(b).

An opinion of special Delaware counsel to the Fund with respect to certain matters of Delaware state law pertinent to the exclusion of the Proposal under Rule 14a-8(b)(1) will be supplementally filed with the Staff shortly following the submission of this letter.

3. The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under state law.

A company is permitted to omit a proposal from its proxy materials under Rule 14a-8(i)(1) if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of organization of the company. The Fund believes that it may exclude the Proposal from the Proxy Materials under Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders of the Fund under the laws of the State of Delaware.

The DSTA provides maximum flexibility to those forming a statutory trust to select and construct their own governance structure and provides broad power and discretion to trustees to determine the best way to manage the business and affairs of the statutory trust.[5] Consistent with these principles of Delaware law, Article II, Section 2(b) of the Fund's Declaration of Trust expressly states that "[e]very [s]hareholder, by virtue of having become a [s]hareholder, shall be held to have expressly assented and agreed to be bound by the terms of

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[5] *See* 12 Del. C. § 3825(b) ("It is the policy of this subchapter to give the maximum effect to the principle of freedom of contract and to the enforceability of governing instruments"); *PHL Variable Ins. Co. v. Price Dawe Ins. Tr.*, 28 A.3d 1059, 1077 (Del. 2011) ("The policy of the Delaware Statutory Trust Act is to give maximum effect to freedom of contract and the enforceability of governing instruments, and its provisions are to be construed broadly even if in derogation of the common law.").

this Declaration and the Bylaws."[6] In addition, the Fund's Declaration of Trust confers no general powers or rights on to shareholders and confers broad power on the Fund's Board. Article III, Section 5 of the Fund's Declaration of Trust states:

> Subject to the provisions of this Declaration, the business of the Trust shall be managed by the Trustees, and the Trustees shall have all powers necessary or convenient to carry out that responsibility . . . The Trustees may perform such acts as, in their sole discretion, are proper for conducting the business of the Trust.
>
> The Trustees shall have exclusive and absolute control over the Trust Property and over the business of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property and business in their own right, but with such powers of delegation as may be permitted by this Declaration.

Moreover, the Fund's Declaration of Trust provides that "[a]ny determination as to what is in the interests of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration, ***the presumption shall be in favor of a grant of power to the Trustees***." [Emphasis added.] Article III, Section I of the Fund's Bylaws reinforces the broad authority of the Trustees, stating that "[e]xcept as otherwise provided by law, by the Declaration or by these Bylaws, the business and affairs of the Trust shall be managed under the direction of, and all the powers of the Trust shall be exercised by or under authority of, its Board of Trustees."

As noted above, the Fund's Declaration of Trust expressly sets forth the voting rights of shareholders of the Fund, and under Delaware law, beneficial owners of a statutory trust such as the Fund are only entitled to vote on those matters as specified in the statutory trust's governing instruments. Article IV, Section 2(a) of the Fund's Declaration of Trust specifically enumerates the matters that the Fund's shareholders may vote on, and the subject matter of the Proposal and the Proposal itself are not within those enumerated matters. Article III, Section 5(c) of the Fund's Declaration of Trust, moreover, specifically states that only trustees have the power to alter a Bylaw provision. Article IX of the Fund's Bylaws reinforces that the trustees have the exclusive power to adopt, alter or repeal any provision of the Fund's Bylaws and to make new bylaws.

The Fund's Declaration of Trust is clear that the Board has authority over the business and affairs of the Fund, including the decision of whether shareholders should vote on the Proposal. Nothing in the Fund's Bylaws or under the DSTA creates a right for shareholders

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[6] Each of the Fund's Declaration of Trust and Bylaws are documents filed publicly with the Commission and available for inspection before a person decides to buy shares in the Fund.

to vote on the Proposal. Therefore, the Fund believes it may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under the laws of the State of Delaware.

4. The Fund may exclude the Proposal because it contains false and misleading statements in violation of Rule 14a-8(i)(3) and Rule 14a-9.

a. *The Proposal is misleading as to the identity of the Proponent.*

The Proposal purports to be made by Alison Pampinella as an individual proponent. However, the facts indicate that this assertion is false and misleading, in violation of Rule 14a-9, including Note (c) thereto. Note (c) to Rule 14a-9 specifies that a statement may be misleading if it fails "to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter."

On January 21, 2020, a Schedule 13D (the "Schedule 13D") relating to the Fund was filed on behalf of Bulldog Investors, LLC, Phillip Goldstein and Andrew Dakos (collectively, the "Bulldog Group"). "Item 4. Purpose of the Transaction" of the Schedule 13D contained the following statement: "See exhibit B - Letter to the Secretary from a Fund shareholder." Exhibit B to the Schedule 13D is a copy of the Proposal, including the accompanying cover letter. Further, the envelope received by the Fund containing the Proposal had the following return address: Andrew Dakos, Bulldog Investors, Park 80 West – 250 Pehle Ave, Suite 708, Saddle Brook, NJ 07663, indicating a material relationship between the Proponent and the Bulldog Group. Moreover, on information and belief, it is the Fund's understanding that the Proponent is a family member of Mr. Goldstein, a member of the Bulldog Group.

Pursuant to Rule 13d-5(b) under the Exchange Act, a "group" is defined as "two or more persons [that] agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer." It is not necessary under the rule that such an agreement to act together be in writing; such an agreement can be inferred by the Commission or a court from the concerted actions or common objective of the group members. Under the circumstances described above, the Fund believes that the Proponent's Proposal is, in fact, a proposal on behalf of the Bulldog Group as a whole, rather than a proposal on behalf of the Proponent as an individual.

The Fund believes that the facts reveal that the Proponent is a part of the Bulldog Group, and that they have acted together such that the Proponent and the Bulldog Group are one and the same "group." Yet, the Proponent has not disclosed in her Proposal her membership in

the Bulldog Group.[7] This failure is all the more egregious in view of the Bulldog Group's Schedule 13D/A filing on February 3, 2020, pursuant to which the Bulldog Group disclosed its intention to nominate a candidate for election as a Trustee of the Fund and present a proposal for the 2020 Annual Meeting.

The Fund believes that there is a substantial likelihood that a reasonable shareholder would consider the information described above to be important in deciding how to vote. Therefore, the Fund views the omission of this information from the Proposal to be materially misleading, in violation of Rule 14a-9, including Note (c) thereto. The Fund also believes that the omission of this information was designed to obfuscate and, potentially, manipulate the market, particularly in view of the Bulldog Group's self-identification as an "activist" market participant (as described on its website).[8]

b. ***The Proposal contains false and misleading statements that directly and indirectly impugn the character of the Fund and constitute charges concerning improper, illegal or immoral conduct without factual foundation.***

Rule 14a-8(i)(3) permits a company to omit a shareholder proposal and related supporting statement from its proxy materials if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Note (b) to Rule 14a-9 specifies that a statement may be misleading if it "directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation." The Staff has concurred that a company may properly exclude entire shareholder proposals and supporting statements where they contain false and misleading statements or omit material facts necessary to make such statements not false and misleading. *See Entergy Corp.* (Feb. 14, 2007) (permitting the exclusion of the entire proposal which contained false and misleading statements relating to management and the

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[7] The Schedule 13D to which the Proponent's Proposal was attached also did not disclose anything about the Proponent's relationship with the named filers of the Schedule 13D or the circumstances under which her Proposal ended up in the hands of the Bulldog Group. For example, "Item 5. Interest In Securities Of The Issuer" of the Schedule 13D made no reference to the Proponent as a part of the Bulldog Group, nor is the Proponent included as a signatory to the joint filing agreement attached as Exhibit A to the Schedule 13D. We further note that the Proponent has not filed a separate Schedule 13D disclosing (1) her share ownership in the Fund or her relationship with Bulldog Investors, LLC, Phillip Goldstein, Andrew Dakos or the Bulldog Group, of whose shares the Proponent may be deemed to be a beneficial owner due to her status as part of the same "group," or (2) any of the other information required under Schedule 13D. In addition, neither the Schedule 13D nor the Proposal explains how or why the Proposal was mailed to the Fund by Mr. Dakos, a member of the Bulldog Group, or what familial and other relationships, arrangements or agreements the Proponent may have with Mr. Goldstein, another member of the Bulldog Group.

[8] *See, e.g.*, https://bulldoginvestors.com/services/. e

board); *The Swiss Helvetia Fund, Inc.* (April 3, 2001) (permitting exclusion of entire proposal due to unsupported statements insinuating that directors may have violated, or may choose to violate, their fiduciary duties); and *General Magic, Inc.* (May 1, 2000) (permitting exclusion of proposal relating to change of name of company which contained false and misleading statements). Additionally, Section B.4 of Staff Legal Bulletin No. 14B (CF) (Sept. 15, 2004) provides that the Staff "may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules."

From the first sentence to the very end, the Proposal is riddled with statements and assertions that are clearly intended to mislead readers into believing that the Fund has and is continuing to engage in behavior that is improper, illegal or immoral. Among such false and misleading statements are the following:

- "*The Fund's rigged election bylaw should be replaced with the following one . . .*"
- "*To illustrate how that requirement rigs elections in favor of incumbent Trustees . . .*"
- "*Sham elections may occur in dictatorships like Cuba or Venezuela, but they are prohibited in the United States of America . . .*"
- "*Therefore, the rigged election bylaw should be replaced with the following one . . .*"

[Emphasis added.] Perhaps the most important assets of any firm, and particularly of investment companies such as the Fund, are its reputation and the confidence of its investors, potential investors and the investment community at large. Therefore, any false and misleading statements intended to directly or indirectly impugn the character of a firm in a direct communication to investors are inherently material in that there is a substantial likelihood that a reasonable shareholder would consider them important in deciding how to vote. The Fund's Declaration of Trust and the Fund's Bylaws, including the Fund's election bylaw provision, were adopted in compliance with the DSTA. The Proponent's statements that the Fund's election process or governing documents are "rigged," or that the Fund improperly "rigs" elections in favor of its preferred candidates, or comparing the Fund or its processes to those of "dictatorships like Cuba or Venezuela" – all made without any semblance of legal or factual foundation (as opposed to the Proponent's own subjective, inflammatory beliefs) – clearly constitute charges that the Fund's processes, governing documents and behavior are improper, illegal and immoral. The Fund emphatically denies the Proponent's implication of any such improper, illegal or immoral

conduct, which is even more egregious in light of being part of a group with Bulldog who intends to wage a hostile proxy contest against the Fund for the purpose of electing its own trustee.

Based on the foregoing, the Fund believes that the entire Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-(8)(i)(3) as materially false and misleading in violation of Rule 14a-9 and respectfully requests the Staff's concurrence with this conclusion.

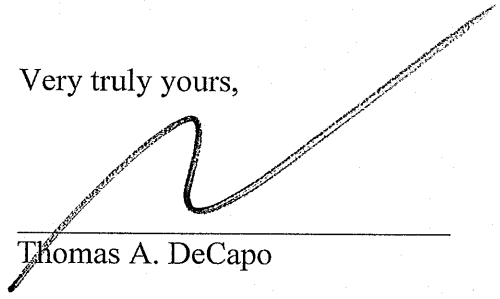
Accordingly, the Fund believes the Proposal violates Rule 14a-9, including Note (c) thereto. As a result, the Fund has concluded that the Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-(8)(i)(3), and respectfully requests the Staff's concurrence with this conclusion.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Fund excludes the Proposal from its Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Fund's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response.

If the Staff has any questions or comments regarding the foregoing, please contact the undersigned at 617-573-4814.

Very truly yours,



Thomas A. DeCapo

cc: Alison Pampinella
Thomas B. Winmill, President, Dividend and Income Fund
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund

Exhibit A

Alison Pampinella, 267 84th St, Brooklyn NY 11209-4315

January 16, 2020

Dividend and Income Fund
11 Hanover Square, 12th Floor
New York, New York 10005

Attn: Russell Kamerman, Secretary

Dear Mr. Kamerman:

I am the beneficial owner of shares of Dividend and Income Fund with a value in excess of $2,000.00. I have held these shares for over 12 months and plan to continue to hold them through the next meeting of shareholders.

I hereby submit the following proposal and supporting statement pursuant to rule 14a-8 of the Securities Exchange Act of 1934 for inclusion in management's proxy materials for the next meeting of stockholders for which this proposal is timely submitted.

****

RESOLVED: The Fund's rigged election bylaw should be replaced with the following one: "The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees."

SUPPORTING STATEMENT

The Fund's Trustees have adopted a voting requirement that provides that, unless they run unopposed, "the affirmative vote of the holders of at least 75% of the outstanding Shares of the Trust entitled to be voted shall be required to elect a Trustee." On the other hand, if the incumbent Trustees run unopposed, they only need one vote to be elected. To illustrate how that requirement rigs elections in favor of the incumbent Trustees, consider that at the Fund's last annual meeting, fewer than 40% of the outstanding shares (excluding shares voted by brokers on routine matters) were actually voted. Thus, in any election for Trustees in which shareholders have a choice of nominees, it is almost certain than no Trustees will be elected. The result would then be a so-called "failed election" which would leave the incumbent Trustees in their positions as "holdover" (or unelected) Trustees – even if they receive fewer votes than their opponents.

That is patently unfair and makes a mockery of the word "election" which is supposed to be a means to allow voters to choose the persons they want to represent them. Sham elections may occur in dictatorships like Cuba or Venezuela but they are prohibited in the United States of

America. In this country, the incumbent office holders may not adopt election requirements that virtually guarantee they can never lose an election. Therefore, the rigged election bylaw should be replaced with the following one: "The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees."

Very truly yours,

Alison Pampinella

Alison Pampinella

SIEBERT MURIEL SIEBERT & CO., INC.
MEMBER NYSE, FINRA & SIPC

January 16,2020

Re: Alison Pampinella: Dividend and Income Fund (symbol DNI)

To whom it may concern:

Based on historical statements, Muriel Siebert & Co. can confirm that Alison Pampinella has held shares of DNI (Dividend and Income Fund) valued at greater than $2000.00 continuously for a period of at least 12 months.

Please contact us at 1-800-993-2002 if any supporting documentation is necessary.

Scott Halverson

Senior Vice President

4950 Northdale Blvd | Suite 105 | Tampa, FL 33624
(800) 872-0444 | Fax: (212) 486-2784

Exhibit B

AMENDED AND RESTATED

AGREEMENT AND DECLARATION OF TRUST

of

Dividend and Income Fund

(a Delaware Statutory Trust)

As of December 13, 2018

TABLE OF CONTENTS

AMENDED AND RESTATED

AGREEMENT AND DECLARATION OF TRUST OF DIVIDEND AND INCOME FUND

AGREEMENT AND DECLARATION OF TRUST initially made as of May 8, 2012, by the Trustees hereunder, and amended and/or restated from time to time, most recently as of December 13, 2018.

WHEREAS, this Trust has been formed to carry on business as set forth more particularly hereunder;

WHEREAS, the Trustees have agreed to manage all property coming into their hands as Trustees of a Delaware statutory trust in accordance with the provisions hereinafter set forth and;

WHEREAS, the parties hereto intend that the Trust created by this Declaration (as defined below) and the Certificate of Trust filed with the Secretary of State of the State of Delaware on May 8, 2012, shall constitute a statutory trust under the Delaware Statutory Trust Act and that this Declaration shall constitute the governing instrument of such statutory trust.

NOW, THEREFORE, the Trustees hereby declare that they will hold all cash, securities and other assets that they may from time to time acquire in any manner as Trustees hereunder IN TRUST to manage and dispose of the same upon the following terms and conditions for the benefit of the holders from time to time of shares of beneficial interest in this Trust as hereinafter set forth.

ARTICLE I.
Name and Definitions

Section 1. *Name*

This Trust shall be known as the "Dividend and Income Fund," and the Trustees shall conduct the business of the Trust under that name or any other name as they may from time to time determine.

Section 2. *Definitions*

Whenever used herein, unless otherwise required by the context or specifically provided:

(a) "1940 Act" means the Investment Company Act of 1940, and the rules and regulations promulgated thereunder and exemptions granted therefrom, as amended from time to time;

(b) "Administrator" means a party furnishing services to the Trust pursuant to any administration contract described in Article III, Section 7(a) hereof;

(c) "Affiliated Person" has the applicable meaning given it in the 1940 Act;

(d) “Assignment” has the meaning given it in Section 2(a)(4) of the 1940 Act;

(e) “Bylaws” mean the Bylaws of the Trust as amended or restated from time to time, which Bylaws are expressly herein incorporated by reference as part of the “governing instrument” within the meaning of the Delaware Act;

(f) “Certificate of Trust” means the certificate of trust as amended or restated from time to time, filed by Peter K. Werner in the Office of the Secretary of State of the State of Delaware in accordance with the Delaware Act;

(g) “Class” means any division of Shares within a Series established in accordance with the provisions of Article II hereof;

(h) “Code” means the Internal Revenue Code of 1986 (or any successor statute), as amended from time to time, and the rules and regulations thereunder, as adopted or amended from time to time;

(i) “Commission” has the meaning given it in the 1940 Act;

(j) “Continuing Trustee” means (i) each of Roger Atkinson, Jon Tómasson, Peter K. Werner, and Thomas B. Winmill (the “Current Trustees”), (ii) trustees whose nomination for election by the Trust’s Shareholders or whose election by the trustees to fill vacancies on the Trust’s board of trustees (the “Board of Trustees”) is approved by a majority of the Current Trustees then serving on the Board of Trustees or (iii) any successor trustees whose nomination for election by the Shareholders or whose election by the trustees to fill vacancies is approved by a majority of Continuing Trustees or the successor Continuing Trustees then in office. Notwithstanding anything to the contrary herein, this definition of “Continuing Trustee” can only be amended by a written instrument signed by a majority of the Continuing Trustees then in office;

(k) “Declaration” means this Agreement and Declaration of Trust, as amended, supplemented or amended and restated from time to time;

(l) “Delaware Act” means the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 et seq., as amended from time to time;

(m) “Exchange Act” means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder and exemptions granted therefrom, both as amended from time to time;

(n) “Interested Person” has the meaning given it in Section 2(a)(19) of the 1940 Act;

(o) “Investment Adviser” means a party furnishing services to the Trust pursuant to any investment advisory contract described in Article III, Section 7(a) hereof;

(p) “Person” means and includes natural persons, corporations, partnerships, limited partnerships, statutory trusts and foreign statutory trusts, trusts, limited liability companies, associations, joint ventures, estates, custodians, nominees and any other individual or entity in its own or any representative capacity, any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act, and governments and agencies and political subdivisions thereof, in each case whether domestic or foreign;

(q) “Principal Underwriter” has the meaning given it in Section 2(a)(29) of the 1940 Act;

(r) “Securities Act” means the Securities Act of 1933, as amended;

(s) “Series” or “Series of Shares” means a series of Shares of the Trust established in accordance with the provisions of Article II hereof;

(t) “Shareholder” means as of any particular time the holders of record of outstanding Shares of the Trust, at such time;

(u) “Shares” means the transferable units of beneficial interest into which the beneficial interest in the Trust shall be divided from time to time and includes fractions of Shares as well as whole Shares; “Shares” also means (1) any preferred shares which may be issued from time to time, and (2) if more than one Series or Class of Shares is authorized by the Trustees, the transferable units of beneficial interest (including fractions of Shares as well as whole Shares) into which each Series or Class of shares shall be divided from time to time;

(v) “Trust” means the Delaware statutory trust established by this Declaration, as amended from time to time, inclusive of each amendment;

(w) “Trust Property” means as of any particular time any and all property, real or personal, tangible or intangible, which is from time to time owned or held by or for the account of the Trust or any Class or Series, or the Trustees on behalf of the Trust or any Class or Series;

(x) “Trustee” means the person or persons who are Continuing Trustees and all other persons who may from time to time be duly elected or appointed and have qualified to serve as Trustees in accordance with the provisions hereof, in each case so long as such person shall continue in office in accordance with the terms of this Declaration, and reference herein to a Trustee or the Trustees shall refer to such person or persons in his or her or their capacity as Trustees hereunder.

ARTICLE II.
Shares

Section 1. *Beneficial Interest*

The beneficial interest in the Trust shall be divided into such transferable Shares of one or more separate and distinct Series and Classes within a Series as the Trustees shall from time to time create and establish. The number of Shares authorized hereunder is unlimited. Each Share shall have a par value of $0.01, unless otherwise determined by the Trustees in connection with the creation and establishment of a Series or Class. All Shares issued in accordance with the terms hereof, including, without limitation, Shares issued in connection with a dividend in Shares or a split or reverse split of Shares, shall be fully paid and non-assessable when the consideration determined by the Trustees (if any) therefor shall have been received by the Trust.

Section 2. *Other Securities*

The Trustees may, subject to the Trust's investment policies and the requirements of the 1940 Act, authorize and issue such other securities of the Trust as they determine to be necessary, desirable or appropriate, having such terms, rights, preferences, privileges, limitations and restrictions as the Trustees see fit, including rights to purchase Shares, preferred interests, debt securities or other senior securities. To the extent that the Trustees authorize and issue preferred shares of the Trust or any Series or Class, they are hereby authorized and empowered to amend or supplement this Declaration, as they deem necessary or appropriate, including to comply with the requirements of the 1940 Act or requirements imposed by the rating agencies or other Persons, all without the approval of Shareholders. Any such supplement or amendment shall be filed as is necessary. The Trustees are also authorized to take such actions and retain such persons as they see fit to offer and sell such securities.

Section 3. *Status of Shares*

(a) The Shares shall be personal property giving only the rights in this Declaration specifically set forth.

(b) Every Shareholder, by virtue of having become a Shareholder, shall be held to have expressly assented and agreed to be bound by the terms of this Declaration and the Bylaws.

(c) The ownership of the Trust Property of every description is vested exclusively in the Trust, and the right to conduct any business herein before described is vested exclusively in the Trustees. Shareholders shall have no interest therein other than the beneficial interest conferred by their Shares.

(d) Other than (1) distribution charges of any agent or any Person, including, without limitation, the custodian, transfer agent, shareholder servicing agent or similar agent, lawyer, accountant or broker, for which the Trustees shall have the power to cause each Shareholder to pay directly, in advance or arrears, a pro rata amount as defined from time to time by the Trustees and (2) as otherwise provided in this Declaration (including, without limitation, Article II, Section 12(h) regarding damages) and the Bylaws, no Shareholder shall be personally liable for the debts, liabilities, obligations and expenses incurred by, contracted for, or otherwise existing with respect to, the Trust or any Series or Class.

(e) Shareholders shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust or any Series.

(f) The death, incapacity, dissolution, termination, or bankruptcy of a Shareholder during the existence of the Trust or any Series shall not operate to terminate the Trust or any Series, not entitle the representative of any such Shareholder to an accounting or to take any action in court or elsewhere against the Trust or any Series or the Trustees, but entitle such representative only to the rights of such Shareholder under this Declaration.

Section 4. *No Preemptive Rights*

The Shares shall not entitle the holder to preference, preemptive, appraisal, conversion or exchange rights or privileges or to cumulative voting rights, except as specified in this Article II or as specified by the Trustees when creating the Shares, as in preferred shares. Any or all of the Shares, whenever authorized, may be issued, or may be reissued and transferred if such Shares have been reacquired and have treasury status, to any person, firm, corporation, trust, partnership, association or other entity for such lawful consideration and on such terms as the Board of Trustees determines in its discretion without first offering the Shares to any such holder.

Section 5. *Derivative Claims.*

No Shareholder shall have the right to bring or maintain any action, proceeding, claim, or suit ("Action") on behalf of the Trust or any Series or Class of Shares or Shareholders (a)(i) unless such Shareholder is a Shareholder at the time such Action is commenced and such Shareholder continues to be a Shareholder throughout the duration of such Action and (a)(ii)(1) at the time of the transaction or event underlying such Action, such Shareholder was a Shareholder or (2) such Shareholder's status as a Shareholder devolved upon the Shareholder by operation of law or pursuant to the terms of this Declaration from a person who was a Shareholder at the time of the transaction or event underlying such Action and (b) without first making demand on the Trustees requesting the Trustees to bring or maintain such Action and such demand has the support of Shareholders owning a majority of the outstanding Class or Series of Shares affected by the proposed Action. Such demand shall not be excused under any circumstances, including allegations or claims of interest on the part of the Trustees, unless the plaintiff makes a specific showing that irreparable non-monetary injury to the Trust or Series or Class of Shares or Shareholders would otherwise result. Such demand shall be mailed to the Secretary at the Trust's principal office and shall set forth with particularity the nature of the proposed Action and the essential facts relied upon by the Shareholder to support the allegations made in the demand. The Trustees who are not Interested Persons of the Trust (the "Independent Trustees") shall consider such demand. In their sole discretion, the Independent Trustees may decide to bring, maintain, or settle such Action or to not bring, maintain, or settle such Action, or may submit the matter to a vote of Shareholders of the Trust or a Series or Class thereof, as appropriate. Any decision by the Independent Trustees to bring, maintain, or settle such Action, or to submit the matter to a vote of Shareholders, shall be binding upon all Shareholders who will be prohibited from maintaining a separate competing Action relating to the same subject matter. Any decision by the Independent Trustees not to bring or maintain an Action on behalf of the Trust or a Series or Class shall be subject to the right of the Shareholders to vote on whether or not such Action should or should not be brought or maintained as a matter presented for Shareholder consideration pursuant to the provisions of the Bylaws regarding Shareholder requested special meetings; and the vote of Shareholders required to override the Independent Trustees' decision and to permit the Shareholder(s) to proceed with the proposed Action shall be seventy-five (75) percent of the outstanding Shares of the Trust or seventy-five (75) percent of the outstanding Shares of the Series or Class affected by the proposed Action, as applicable.

Section 6. *[Reserved]*

Section 7. *Trust Only*

It is the intention of the Trustees to create a statutory trust pursuant to the Delaware Act, thus only creating the relationship of Trustee and beneficiary between the Trustees and each Shareholder from time to time. It is not the intention of the Trustees to create a general partnership, limited partnership, joint stock association, corporation, bailment, or any form of legal relationship other than a statutory trust pursuant to the Delaware Act. Nothing in this Declaration shall be construed to make the Shareholders, either by themselves or with the Trustees, partners, or members of a joint stock association.

Section 8. *Issuance of Shares*

(a) The Trustees, in their discretion, may from time to time issue shares without vote of the Shareholders, including preferred shares that may have been established pursuant to Section 2 of this Article II, in addition to the then-issued and outstanding Shares and Shares held in the treasury, to such party or parties and for such amount and type of consideration, including cash or property, at such time or times, and on such terms as the Trustees may determine, including pursuant to shareholder rights or similar plans that provide for the issuance of Shares to certain Shareholders, to the extent permissible under Delaware law and the 1940 Act, and may in such manner acquire other assets (including the acquisition of assets subject to, and in connection with, the assumption of, liabilities) and businesses.

(b) The Trustees may from time to time divide or combine the Shares of the Trust or of any Series or Class thereof into a greater or lesser number without thereby materially changing the proportionate beneficial interest in such Shares, provided that nothing in this Section 8(b) shall limit the ability of the Trustees to cause Shares to be issued pursuant to Section 8(a) of this Article II;

(c) Issuance and redemptions of Shares may be made in whole Shares and/or 1/1,000ths of a Share or multiples thereof as the Trustees may determine.

Section 9. *Establishment and Designation of Series or Class*

(a) The establishment and designation of any Series or Class thereof shall be effective upon the adoption by a majority of the then Trustees of a resolution that sets forth such establishment and designation and the relative rights and preferences of such Series or Class, whether directly in such resolution or by reference to another document including, without limitation, any registration statement of the Trust, or as otherwise provided in such resolution.

(b) Shares of each Series or Class established pursuant to this Article II, unless otherwise provided in the resolution establishing such Series or Class, shall have the following relative rights and preferences:

(i) *Assets Held with Respect to a Particular Series*

All consideration received by the Trust, including on behalf of or with respect to a Series, for the issue or sale of Shares of a particular Series, together with all assets in which such consideration is invested or reinvested, all income, earnings, profits, and proceeds thereof from whatever source derived (including, without limitation, any proceeds derived from the sale, exchange or liquidation of such assets and any funds or payments derived from any reinvestment of such proceeds in whatever form the same may be), shall irrevocably be held separately with respect to that Series for all purposes, subject only to the rights of creditors of such Series, from the assets of the Trust and every other Series and shall be so recorded upon the books of account of the Trust and its Series. Such consideration, assets, income, earnings, profits and proceeds thereof, from whatever source derived (including, without limitation, any proceeds derived from the sale, exchange or liquidation of such assets, and any funds or payments derived from any reinvestment of such proceeds), in whatever form the same may be, are herein referred to as "assets held with respect to" that Series. In the event that there are any assets, income, earnings, profits and proceeds thereof, funds or payments which are not readily identifiable as assets held with respect to any particular Series (collectively "General Assets"), the Trustees shall allocate such General Assets to, between or among any one or more of the Series in such manner and on such basis as the Trustees, in their sole discretion, deem fair and equitable, and any General Assets so allocated to a particular Series shall be held with respect to that Series. Each such allocation by the Trustees shall be conclusive and binding upon the Shareholders of all Series for all purposes. Separate and distinct records shall be maintained for each Series and the assets held with respect to each Series shall be held and accounted for separately in such separate and distinct records from the assets held with respect to all other Series and the General Assets of the Trust not allocated to such Series.

(ii) *Liabilities Held with Respect to a Particular Series*

The assets of the Trust held with respect to each particular Series shall be charged against the liabilities of the Trust held with respect to that Series and all expenses, costs, charges, and reserves attributable to that Series, except that liabilities and expenses allocated solely to a particular Class shall be borne by that Class. Any general liabilities of the Trust which are not readily identifiable as being held with respect to any particular Series or Class shall be allocated and charged by the Trustees to and among any one or more of the Series or Classes in such manner and on such basis as the Trustees in their sole discretion deem fair and equitable. All liabilities, expenses, costs, charges, and reserves so charged to a Series or Class are herein referred to as "liabilities held with respect to" that Series or Class. Each allocation of liabilities, expenses, costs, charges, and reserves by the Trustees shall be conclusive and binding upon the Shareholders of all Series or Classes for all purposes. Without limiting the foregoing, but subject to the right of the Trustees to allocate general liabilities, expenses, costs, charges or reserves as herein provided, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular Series shall be enforceable against the assets held with respect to such Series only and not against the assets of the Trust generally or against the assets held with respect to any other Series. Notice of this contractual limitation on liabilities among Series shall be set forth in the Certificate of Trust (whether originally or by amendment) as filed or to be filed in the Office of the Secretary of State of the State of Delaware pursuant to the Delaware Act, and upon the giving of such notice in the Certificate of Trust, the statutory provisions of Section 3804 of the Delaware Act relating to limitations on liabilities among Series (and the statutory effect under Section 3804 of setting forth such notice in the Certificate of Trust) shall become applicable to the Trust and each Series. Any person extending credit to, contracting with or having any claim against any Series may look only to the assets of that Series to satisfy or enforce any debt with respect to that Series. No Shareholder or former Shareholder of any Series shall have a claim on or any right to any assets allocated or belonging to any other Series or the Trust generally.

(iii) *Dividends and Distributions*

Notwithstanding any other provisions of this Declaration, including, without limitation, Article VI, no dividend or distribution, including, without limitation, any distribution paid upon termination of the Trust or of any Series or Class with respect to, nor any redemption or repurchase of, the Shares of any Series or Class, shall be effected by the Trust other than from the assets held with respect to such Series, nor shall any Shareholder or any particular Series or Class otherwise have any right or claim against the assets held with respect to any other Series except to the extent that such Shareholder has such a right or claim hereunder as a Shareholder of such other Series or a Class associated with such Series. The dividends and distributions or other payments, including those for any Series or Class that hereafter may be created, shall be in such amounts as may be declared from time to time by the Trustees, whether by specifying the amounts, establishing formulas, or otherwise, and such dividends and distributions may vary from Series to Series or Class to Class to such extent and for such purposes as the Trustees may deem appropriate, including, but not limited to, the purposes of complying with requirements of regulatory or legislative authorities or the terms of any preference attaching to one or more Series or Classes. The Trustees shall have full discretion, to the extent not inconsistent with the 1940 Act, to determine which items shall be treated as income and which items as capital, and each such determination and allocation shall be conclusive and binding upon the Shareholders.

(iv) *Equality*

All the Shares of each particular Series shall represent an equal proportionate interest in the assets held with respect to that Series (subject to the liabilities held with respect to that Series or Class thereof and such rights and preferences as may have been established and designated with respect to any Class within such Series). Subject to the adoption of shareholder rights or similar plans as set forth in Section 8(a) of this Article II, each Share of any particular Series shall be equal to each other Share of that Series and, with respect to any Class of a Series, each such Class shall represent interests in the assets of that Series and have the same voting, dividend, liquidation and other rights and terms and conditions as each other Class of that Series, except that expenses allocated to a Class may be borne solely by such Class as determined by the Trustees and a Class may have exclusive voting rights with respect to matters affecting only that Class.

(v) *Fractions*

Any fractional Share of a Series or Class thereof shall carry proportionately all the rights and obligations of a whole Share of that Series or Class, including rights with respect to voting, receipt of dividends and distributions, redemption of Shares and termination of the Trust.

(vi) *Combination of Series*

The Trustees shall have the authority, without the approval of the Shareholders of any Series or Class, unless otherwise required by applicable law, to combine the assets and liabilities held with respect to any two or more Series or Classes into assets and liabilities held with respect to a single Series or Class; provided, however, that the Trustees may not change Outstanding Shares in a manner materially adverse to Shareholders of such Series or Class.

Section 10. *Register of Shares*

(a) The ownership of Shares shall be recorded on the books of the Trust or those of a transfer or similar agent for the Trust, which books shall be maintained separately for the Shares of each Series or Class.

(b) No certificates certifying the ownership of Shares shall be issued except as the Trustees may otherwise determine from time to time. Notwithstanding the foregoing, upon request, every Shareholder shall be entitled to have a certificate stating the number and the class and the designation of the series, if any, of the Shares held by such Shareholder, in such form as shall, in conformity to law, be prescribed from time to time by the Trustees. Such certificates shall be executed on behalf of the Trust by the President or a Vice President and by the Treasurer or secretary. Such signatures may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Trust with the same effect as if such individual were such officer at the time of its issue.

(c) Subject to Section 10(b) of this Article II, the Trustees may make such rules as they consider appropriate for the issuance of Share certificates, the transfer of Shares of each Series or Class and similar matters. The Trustees may at any time discontinue the issuance of Share certificates and may, by written notice to each Shareholder, require the surrender of Share certificates to the Trust for cancellation. Such surrender and cancellation shall not affect the ownership of Shares in the Trust.

(d) The record books of the Trust as kept by the Trust or any transfer or similar agent, as the case may be, shall be conclusive as to the identity of the Shareholders of each Series or Class and as to the number of Shares of each Series or Class held from time to time by each Shareholder.

(e) No Shareholder shall be entitled to receive any payment of a dividend or distribution, nor to have notice given to him as provided herein or in the Bylaws, until he or she has given his or her address to the Trust or to the Trust’s transfer or similar agent.

Section 11. *Transfer Agent and Registrar*

(a) The Trustees shall have power to employ a transfer agent or transfer agents, and a registrar or registrars, with respect to the Shares. The transfer agent or transfer agents may keep the applicable record books therein, the original issues and transfers, if any, of the said Shares.

(b) Any transfer agents and/or registrars that the Trustees employ shall perform the duties that are usually performed by transfer agents and registrars of certificates of stock in a corporation, as modified by the Trustees.

Section 12. *Transfer of Shares; Limitations on Ownership*

(a) Except as otherwise provided by the Trustees, Shares shall be transferable on the record books of the Trust only by the record holder thereof or by his or her duly authorized agent upon delivery to the Trustees or the Trust's transfer or similar agent of a duly executed instrument of transfer (together with a Share certificate if one is outstanding), and such evidence of the genuineness of each such execution and authorization and of such other matters as may be required by the Trustees, including compliance with any securities laws and contractual restrictions as may reasonably be required. Upon such delivery, and subject to any further requirements specified by the Trustees or contained in this Declaration or in the Bylaws, the transfer shall be recorded on the record books of the Trust. Until a transfer is so recorded, the Shareholder of record of Shares shall be deemed to be the holder of such Shares for all purposes hereunder, and neither the Trustees nor the Trust, nor any transfer agent or registrar or any officer, employee, or agent of the Trust, shall be affected by any notice of a proposed transfer.

(b) Any person becoming entitled to any Shares in consequence of the death, bankruptcy, or incompetence of any Shareholder, or otherwise by operation of law, shall be recorded on the applicable record books of Shares as the holder of such Shares upon production of the proper evidence thereof to the Trustees or a transfer agent of the Trust, but until such record is made, the Shareholder of record shall be deemed to be the holder of such for all purposes hereof, and neither the Trustees nor any transfer agent or registrar nor any officer or agent of the Trust shall be affected by any notice of such death, bankruptcy, or incompetence, or other operation of law.

(c) *Certain Acquisitions Prohibited.*

(i) Restrictions on Certain Acquisitions of Shares. If a Person shall attempt to purchase or acquire in any manner whatsoever, whether voluntarily or involuntarily, by operation of law or otherwise, any Shares or any option, warrant, or other right to purchase or acquire Shares (such warrant, option, or security being an "Option") or any securities convertible into or exchangeable for Shares or any interest in any other entity that directly, indirectly or constructively owns any Shares (any such purchase or acquisition being an "Acquisition"), in each case, whether voluntary or involuntary, of record, beneficially, by operation of law or otherwise (provided, however, that a transaction that is a pledge (and not an acquisition of tax ownership for U.S. federal income tax purposes) shall not be deemed an Acquisition but a foreclosure pursuant thereto shall be deemed to be an Acquisition), and such Acquisition shall cause such Person to become either an owner (within the meaning of Section 382 of the Code) or a beneficial owner (within the meaning of Section 13 of the Exchange Act) of greater than 4.99 percent of the Shares (a "Five Percent Shareholder") or increase the percentage of Shares owned by a Five Percent Shareholder, then such Person shall be a "Restricted Holder" and such Shares shall be "Excess Shares," and such Acquisition of Excess Shares shall not be permitted and such transfer of Excess Shares to the Restricted Holder shall be void ab initio except as authorized pursuant to this Article II, Section 12; provided, however, that for purposes of determining the existence and identity of, and the amount of Shares owned by, any Five Percent Shareholders or Restricted Holders, the Trust is entitled to rely conclusively on (a) the existence and absence of filings of Schedules 13D and 13G under the Exchange Act (or any similar schedules) as of any date and (b) the Trust's actual knowledge of the ownership of the Shares.

(ii) *Requests for Exceptions*. The restrictions contained in this Article II, Section 12, are for the purposes of reducing the risk that any change in the ownership of Shares may jeopardize the preservation of the Trust's U.S. federal, state and local income tax attributes under Code Section 382 or equivalent provisions of state or local law (collectively, the "Tax Benefits"), assisting the Board of Trustees to better defend against takeover activities, such as to defend against arbitrageurs attempting to make a short term profit in Trust shares while trading at a discount to net asset value potentially at the expense of long term investors, and impeding and discouraging mergers, tender offers, and proxy contests. In connection therewith, and to provide for the effective policing of these provisions, a Restricted Holder who proposes to effect an Acquisition of Excess Shares, prior to the date of the proposed Acquisition, shall request in writing (a "Request") that the Board of Trustees review the proposed Acquisition of Excess Shares and authorize or not authorize the proposed Acquisition pursuant to this Subsection (c)(ii). A Request shall be mailed or delivered to the Secretary of the Trust at the Trust's principal place of business. Such Request shall be deemed to have been delivered only when actually received by the Secretary of the Trust. A Request shall include: (1) the name, address and telephone number of the Restricted Holder; (2) a description of the interest proposed to be Acquired by the Restricted Holder; (3) the date on which the proposed Acquisition is expected to take place; (4) the name of the intended transferor of the interest to be Acquired by the Restricted Holder; and (5) a Request that the Board of Trustees authorize, if appropriate, the Acquisition of Excess Shares pursuant to this Subsection (c)(ii) and inform the Restricted Holder of its determination regarding the proposed Acquisition. If a Restricted Holder duly submits a proper and complete Request to the Secretary of the Trust, at the next regularly scheduled meeting of the Board of Trustees following the tenth business day after receipt by the Secretary of the Trust of the Request, the Board of Trustees will act to determine whether to authorize the proposed Acquisition described in the Request, in accordance with this Subsection (c)(ii) and Article II, Section 12, Subsection (e). The Board of Trustees shall conclusively determine whether to authorize the proposed Acquisition, in its sole discretion and judgment, and shall cause the Restricted Holder making the Request to be informed of such determination as soon as practicable thereafter.

(d) *Effect of Unauthorized Acquisition*. Any Acquisition of Excess Shares attempted or purported to be made in violation of this Article II, Section 12, shall be null and void ab initio to the fullest extent permitted by law. In the event of an attempted or purported Acquisition of Excess Shares by a Restricted Holder in violation of this Article II, Section 12, the Trust shall be deemed to be the agent for the transferor of the Excess Shares. The Trust shall be such agent for the limited purpose of consummating a sale of the Excess Shares to a Person who is not a Restricted Holder (an "Eligible Transferee"), which may include, without limitation, the transferor. The record ownership of the Excess Shares shall remain in the name of the transferor until the Excess Shares have been sold by the Trust or its assignee, as agent, to an Eligible Transferee. Neither the Trust, as agent, nor any assignee of its agency hereunder, shall be deemed to be a Shareholder nor be entitled to any rights of a Shareholder, including, but not limited to, any right to vote the Excess Shares or to receive dividends or liquidating distributions in respect thereof, if any, but the Trust or its assignee shall only have the right to sell and transfer the Excess Shares on behalf of and as agent for the transferor to another person or entity; provided, however, that an Acquisition to such other person or entity does not violate the provisions of this Article II, Section 12. Until the Excess Shares are Acquired by an Eligible Transferee, the rights to vote and to receive dividends and liquidating distributions with respect to the Excess Shares shall remain with the transferor. The intended transferee of the Excess Shares and the Restricted Holder with respect to any Excess Shares shall not be entitled to any rights of Shareholders, including, but not limited to, the rights to vote or to receive dividends and liquidating distributions with respect to the Excess Shares. In the event of a permitted sale and transfer, whether by the Trust or its assignee, as agent, the proceeds of such sale shall be applied first, to reimburse the Trust or its assignee for any expenses incurred by the Trust acting in its role as the agent for the sale of the Excess Shares, second, to the extent of any remaining proceeds, to reimburse the intended transferee for any payments made to the transferor by such intended transferee for such shares, and the remainder, if any, to the original transferor.

(e) *Authorization of Acquisition of Shares by a Restricted Holder*. The Board of Trustees may authorize an Acquisition of Excess Shares by a Restricted Holder, if, in its sole discretion and judgment it determines that the Acquisition is in the best interests of the Trust and its Shareholders. In deciding whether to approve any proposed Acquisition of Excess Shares by a Restricted Holder, the Board of Trustees may seek the advice of counsel (including with respect to the Trust's preservation of the Tax Benefits) and may request all relevant information from the Restricted Holder with respect to all Shares directly or indirectly owned by such Restricted Holder. Any Person who makes a Request of the Board of Trustees pursuant to Article II, Section 12, to effect an Acquisition of Excess Shares shall reimburse the Trust, on demand, for all reasonable costs and expenses incurred by the Trust with respect to any proposed Acquisition, including, without limitation, the Trust's reasonable costs and expenses incurred in determining whether to authorize that proposed Acquisition.

(f) *Certain Indirect Prohibited Acquisitions*. In the event an Acquisition would be in violation of this Article II, Section 12, as a result of attribution under federal tax and securities laws to the intended transferee of the ownership of Shares by a Person (an "Other Person") who is not controlling, controlled by or under common control with the intended transferee, which ownership is nevertheless attributed under federal tax and securities laws to the intended transferee, the restrictions contained in this Article II, Section 12, shall not apply in a manner that would invalidate any Acquisition to such Other Person, and the intended transferee and any Persons controlling, controlled by or under common control with the intended transferee (collectively, the "Intended Transferee Group") shall automatically be deemed to have transferred to the Trust, sufficient Shares (which Shares shall: (i) consist only of Shares held legally or beneficially, whether directly or indirectly, by any member of the Intended Transferee Group, but not Shares held through any Other Person, other than Shares held through a Person acting as agent or fiduciary for any member of the Intended Transferee Group; (ii) be deemed transferred to the Trust, in the inverse order in which it was acquired by members of the Intended Transferee Group, and (iii) be treated as Excess Shares) to cause the intended transferee, following such transfer to the Trust, not to be in violation of the restrictions contained in this Article II, Section 12; provided, however, that to the extent the foregoing provisions of this subsection (f) would not be effective to prevent an Acquisition in violation of this Article II, Section 12, the restrictions contained in this Article II, Section 12, shall apply to such other Shares owned by the intended transferee (including Shares actually owned by Other Persons), in a manner designed to minimize the amount of Shares subject to the restrictions contained in this Article II, Section 12, or as otherwise determined by the Board of Trustees to be necessary to prevent an Acquisition in violation of the restrictions contained in this Article II, Section 12 (which Shares shall be treated as Excess Shares).

(g) *Prompt Enforcement; Further Actions*. After obtaining actual knowledge of an Acquisition of Excess Shares by a Restricted Holder, the Trust may demand the surrender, or cause to be surrendered, to it, the Excess Shares, or any proceeds received upon a sale of the Excess Shares, and any dividends or other distributions made with respect to the Excess Shares. If such surrender is not made within 30 business days from the date of such demand, the Trust may institute legal proceedings to compel such transfer; provided, however, that nothing in this Subsection (g) shall: (i) be deemed inconsistent with the Acquisition of the Excess Shares being deemed null and void pursuant to subsection (d) hereof; (ii) preclude the Trust in its discretion from immediately bringing legal proceedings without a prior demand; or (iii) cause any failure of the Trust to act within the time periods set forth in Article II, Section 12, subsection (c) to constitute a waiver or loss of any right of the Trust under this Article II, Section 12.

(h) *Damages*. Any Restricted Holder who knowingly violates the provisions of this Article II, Section 12, and any persons controlling, controlled by or under common control with such a Restricted Holder, shall be jointly and severally liable to the Trust for, and shall indemnify and hold the Trust harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in or elimination of the Trust's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation, including without limitation enforcement and other action pursuant to Article II, Section 12, subsection (g).

(i) *Conditions to Acquisition; Responsibilities of Transfer Agent.* The Trust may require, as a condition to the registration of the Acquisition of any Shares or the payment of any distribution on any of its Shares, that the intended transferee or payee furnish to the Trust all information reasonably requested by the Trust with respect to all the direct or indirect ownership interests in such Shares. The Trust may make such arrangements or issue such instructions to its transfer agent as may be determined by the Board of Trustees to be necessary or advisable to implement this Article II, Section 12, including, without limitation, instructing the transfer agent not to register any Acquisition of Shares on the Trust's record books if the transfer agent has knowledge that such Acquisition would be prohibited by this Article II, Section 12, and/or authorizing such transfer agent to require an affidavit from an intended transferee regarding such Person's actual and constructive ownership of Shares and other evidence that an Acquisition will not be prohibited by this Article II, Section 12, as a condition to registering any Acquisition.

(j) *Authority of Board of Trustees to Interpret*. Nothing contained in this Article II, Section 12, shall limit the authority of the Board of Trustees to take such other action to the extent permitted by law, including with retroactive application, as it deems necessary or advisable to protect the Trust and to preserve the Tax Benefits or for other purposes set forth in Article II, Section 12, subsection (c)(ii). Without limiting the generality of the foregoing, in the event of a change in law or other event or situation making one or more of the following actions necessary or desirable, the Board of Trustees may, by adopting a written resolution and without Shareholder approval, modify or interpret the definitions of any terms or conditions set forth in this Article II, Section 12 as appropriate to prevent an ownership change or when it deems it to be otherwise necessary or advisable; provided, however, that the Board of Trustees shall not cause there to be such modification or interpretation unless (1) it concludes in writing that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits, and its conclusion is based upon a written opinion of legal and/or tax counsel to the Trust or (2) such action is otherwise approved by a written instrument signed by a majority of the Continuing Trustees then in office.

The Trust and the members of the Board of Trustees shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the President, a Secretary, Treasurer, other officers of the Trust, the person or persons performing the functions of such officers, or of the Trust's legal counsel, independent auditors, transfer agent, or other employees or agents in making the determinations and findings contemplated by this Article II, Section 12, and the members of the Board of Trustees shall not be responsible for any good faith errors made in connection therewith.

(k) *NYSE Transactions*. Nothing in this Article II, Section 12 shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article II, Section 12 and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article II, Section 12.

(l) *Severability*. If any part of the provisions of this Article II, Section 12, are judicially determined to be invalid or otherwise unenforceable, such invalidity or unenforceability shall not affect the remainder of the provisions of this Article II, Section 12, which shall be thereafter interpreted as if the invalid or unenforceable part were not contained herein, and, to the maximum extent possible, in a manner consistent with preserving the ability of the Trust to utilize to the greatest extent possible the Tax Benefit.

(m) *Expiration.* Each provision of this Article II, Section 12, shall apply until such time as the Board of Trustees determines in its sole discretion that such provision is no longer necessary for the for the purposes set forth in Article II, Section 12, subsection (c)(ii) or otherwise necessary or advisable.

Section 13. *Limitations of Liability of Shareholders*

(a) Except as may be otherwise provided in this Declaration (including, without limitation, Article II, Section 12(h) regarding damages) and the Bylaws, Shareholders shall have the same limitation of personal liability as is extended to shareholders of a private corporation for profit incorporated in the State of Delaware and no Shareholder shall be subject in such capacity to any personal liability whatsoever to any Person in connection with Trust Property or the acts, obligations or affairs of the Trust or any Series.

(b) Except as may be otherwise provided in this Declaration (including, without limitation, Article II, Section 12(h) regarding damages) and the Bylaws, if any Shareholder or former Shareholder of any Series shall be held to be personally liable solely by reason of a claim or demand relating to such Person being or having been a Shareholder, and not because of such Person's acts or omissions, the Shareholder or former Shareholder (or such Person's heirs, executors, administrators, or other legal representatives or in the case of a corporation or other entity, its corporate or other general successor) shall be entitled to be held harmless from and indemnified against all loss and expense arising from such claim or demand, but only out of the assets held with respect to the particular Series of Shares of which such Person is or was a Shareholder and from or in relation to which such liability arose. The Trust, on behalf of the applicable Series, may, at its option, assume the defense of any such claim made against such Shareholder. Neither the Trust nor the applicable Series shall be responsible for satisfying any obligation arising from such a claim that has been settled by the Shareholder without the prior written notice to, and consent of, the Trust and Series, as applicable.

ARTICLE III.
Trustees

Section 1. *Number, Election and Tenure*

(a) Prior to a public offering of shares there may be a sole Trustee. Thereafter, the number of Trustees shall be the number fixed from time to time by a written instrument signed by a majority of the Continuing Trustees then in office, or by resolution approved at a duly constituted meeting by a majority of the Continuing Trustees then in office.

(b) The Board of Trustees shall be divided into three Classes: Class I, Class II and Class III. The number of the Trustees in each class shall be determined by resolution of the Board of Trustees. The Board of Trustees may determine by resolution those Trustees who shall be elected by Shareholders of a particular Series or Class of Shares (*e.g.*, by a Series or Class of preferred shares) and may set forth in the Bylaws of the Trust or elsewhere the procedures for the qualification, nomination, appointment, and election of such Trustees. The term of office of Class I Trustees shall expire on the date of the first annual meeting of Shareholders or special meeting in lieu thereof following the effective date of the registration statement relating to the Shares under the Securities Act. The term of office of Class II Trustees shall expire on the date of the second annual meeting of Shareholders or special meeting in lieu thereof following the effective date of the registration statement relating to the Shares under the Securities Act. The term of office of Class III Trustees shall expire on the date of the third annual meeting of Shareholders or special meeting in lieu thereof following the effective date of the registration statement relating to the Shares under the Securities Act. At each subsequent annual election, the Trustees chosen to succeed those whose terms are expiring shall be identified as being in the same class as the Trustees whom they succeed, and shall be elected for a term expiring at the time of the third succeeding annual meeting of Shareholders, or thereafter in each case when their respective successors are elected and qualified. The number of trusteeships shall be apportioned among the classes by the Board of Trustees so as to maintain the number of Trustees in each class as nearly equal as possible.

(c) In the event that less than the majority of the Trustees holding office have been elected by the Shareholders, the Trustees then in office shall call a Shareholders' meeting for the election of Trustees.

(d) Each Trustee shall serve during the lifetime of the Trust until he or she dies; resigns; has reached the mandatory retirement age, if any, as set by the Trustees; is declared incompetent by a court of appropriate jurisdiction; or is removed, or, if sooner, until the next meeting of Shareholders called for the purpose of electing Trustees and until the election and qualification of his or her successor.

Section 2. *Effect of Resignation, Removal or Death*

(a) A Trustee may resign at any time by written instrument signed by him or her and delivered to any officer of the Trust or to a meeting of the Trustees. Such resignation shall be effective upon receipt unless specified to be effective at some other time. Except to the extent expressly provided in a written agreement with the Trust, no Trustee resigning and no Trustee removed shall have any right to any compensation for any period following his or her resignation or removal, or any right to damages on account of such removal. Upon the resignation of a Trustee, each such resigning Trustee shall execute and deliver such documents as the remaining Trustees shall require for the purpose of conveying to the Trust or the remaining Trustees any Trust Property held in the name of such resigning Trustee.

(b) A Trustee may be removed only for cause by action of the Shareholders taken by the holders of shares with at least seventy-five (75) percent of the votes then entitled to be cast in an election of Trustees, or, in the case of Trustees elected by holders of senior securities, only by action of the holders of such senior securities with at least seventy-five (75) percent of the votes then entitled to be cast by the holders of such senior securities. As used in this Section 2(b) of Article III, "senior securities" has the meaning assigned to such term by Section 18 of the 1940 Act and "cause" means (1) willful misconduct or gross negligence which is materially injurious to the Trust, (2) fraud or embezzlement or (3) a conviction of, or a plea of "guilty" or "no contest" to, a felony. Upon the removal of a Trustee, each such removed Trustee shall execute and deliver such documents as the remaining Trustees shall require for the purpose of conveying to the Trust or the remaining Trustees any Trust Property held in the name of such removed Trustee, but the failure to do so shall in no way impair the rights of the successor Trustee.

(c) The death, declination to serve, resignation, retirement, removal or incapacity of one or more Trustees, or all of them, shall not operate to annul the Trust or any Series or to revoke any existing agency created pursuant to the terms of this Declaration.

Section 3. *Vacancies*

(a) Whenever a vacancy in the Board of Trustees shall occur, the remaining Continuing Trustees may fill such vacancy by appointing an individual having the qualifications described in this Article and the Bylaws, consistent with the limitations of the 1940 Act, by a written instrument signed by a majority of the Continuing Trustees then in office.

(b) If the Shareholders of any Series or Class of Shares are entitled separately to elect one or more Trustees, a majority of the remaining Continuing Trustees or the sole remaining Continuing Trustee elected by that Series or Class may fill any vacancy among the number of Trustees elected by that Series or Class.

(c) Any vacancy created by an increase in Trustees may be filled by the appointment of an individual having the qualifications described in this Article and the Bylaws, consistent with the limitations of the 1940 Act, made by a written instrument signed by a majority of the Continuing Trustees then in office.

(d) Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided herein, the Trustees in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration.

(e) No vacancy shall operate to annul this Declaration or to revoke any existing agency created pursuant to the terms of this Declaration.

Section 4. *Meetings*

(a) The Board of Trustees may set forth in the Bylaws or elsewhere the requirements for the conduct of meetings of the Board of Trustees and any committee of the Trustees, including requirements as to notice of meetings, quorum for meetings, voting, and actions taken by written consent.

Section 5. *Powers*

(a) The Trustees in all instances shall act as principals for and on behalf of the Trust and their acts shall bind the Trust. Subject to the provisions of this Declaration, the business of the Trust shall be managed by the Trustees, and the Trustees shall have all powers necessary or convenient to carry out that responsibility, including the power to engage in securities transactions of any kind on behalf of the Trust. The Trustees may perform such acts as, in their sole discretion, are proper for conducting the business of the Trust.

(b) The Trustees shall have exclusive and absolute control over the Trust Property and over the business of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property and business in their own right, but with such powers of delegation as may be permitted by this Declaration.

(c) Except as otherwise expressly provided in the Bylaws, the Continuing Trustees shall have the exclusive power to adopt, alter or repeal any provision of the Bylaws and to make new Bylaws.

(d) The enumeration of any specific power herein shall not be construed as limiting the aforesaid powers. Such powers of the Trustees may be exercised without order of or resort to any court. Without limiting the foregoing, and except as otherwise expressly provided in the Declaration and the Bylaws, the Trustees may:

(i) enlarge or reduce the number of Trustees, specifying the date when such action shall become effective, and fill vacancies caused by enlargement of their number or by the death, resignation, retirement or removal of a Trustee;

(ii) elect and remove, with or without cause, such officers and appoint and terminate such agents as they consider appropriate;

(iii) appoint from their own number and establish and terminate one or more committees, consisting of one or more Trustees, that may exercise any of the powers and authority of the Board of Trustees, except to the extent that the Trustees so determine;

(iv) employ one or more custodians of the assets of the Trust and authorize such custodians to employ sub-custodians and to deposit all or any part of such assets in a system or systems for the central handling of securities or with a Federal Reserve Bank;

(v) employ an Administrator for the Trust and authorize such Administrator to employ sub-administrators; employ an Investment Adviser to the Trust and authorize such Investment Adviser to employ sub-advisers; retain a transfer agent or a shareholder servicing agent, or both;

(vi) provide for the issuance and distribution of Shares by the Trust directly or through one or more Principal Underwriters or otherwise;

(vii) redeem, repurchase and transfer Shares pursuant to applicable law;

(viii) set record dates for the determination of Shareholders with respect to various matters;

(ix) declare and pay dividends and distributions to Shareholders of the Trust or of each Series from the assets of the Trust or such Series; and

(x) and in general delegate such authority as they consider desirable to any officer of the Trust, to any committee of the Trustees, to the Continuing Trustees, to any agent or employee of the Trust, or to any Investment Adviser, Investment Manager, Administrator, sub-adviser, sub-manager, sub-administrator, custodian, transfer or shareholder servicing agent, or Principal Underwriter.

(e) Any determination as to what is in the interests of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration, the presumption shall be in favor of a grant of power to the Trustees.

(f) Unless otherwise specified in this Declaration or in the Bylaws or required by law, any action by the Trustees shall be deemed effective if approved or taken by a majority of the Trustees present at a meeting of Trustees at which a quorum of Trustees is present, within or without the State of Delaware.

(g) Without limiting the foregoing, the Trustees shall also have the power and authority to cause the Trust (or to act on behalf of the Trust) to:

(i) invest and reinvest cash and other property, to hold cash or other property uninvested, and to subscribe for, invest in, reinvest in, purchase or otherwise acquire, own, hold, pledge, sell, assign, transfer, exchange, distribute, write options on, lend or otherwise deal in or dispose of or enter into contracts for the future acquisition or delivery of securities and other instruments and property of every nature and kind, including, without limitation, shares or interests in open-end or closed-end investment companies or other pooled investment vehicles, common and preferred stocks, warrants and rights to purchase securities, all types of bonds, debentures, stocks, negotiable or non-negotiable instruments, loans, obligations, participations, other evidences of indebtedness, certificates of deposit or indebtedness, commercial papers, repurchase agreements, bankers' acceptances, derivative instruments, and other securities or properties of any kind, issued, created, guaranteed, or sponsored by any and all Persons, including without limitation, states, territories, and possessions of the United States and the District of Columbia and any political subdivision, agency, or instrumentality thereof, and foreign government or any political subdivision of the United States Government or any foreign government, or any international instrumentality, or by any bank or savings institution, or by any corporation or organization organized under the laws of the United States or of any state, territory, or possession thereof, or by any corporation or organization organized under any foreign law, or engage in "when issued" or delayed delivery transactions and in all types of financial instruments and hedging and risk management transactions; change the investments of the assets of the Trust; and to exercise any and all rights, powers, and privileges of ownership or interest in respect of any and all such investments of every kind and description, including, without limitation, the right to consent and otherwise act with respect thereto, with power to designate one or more Persons to exercise any of said rights, powers, and privileges in respect of any of said instruments;

(ii) sell, exchange, lend, pledge, mortgage, hypothecate, lease, or write options (including, options on futures contracts) with respect to or otherwise deal in any property rights relating to any or all of the assets of the Trust or any Series;

(iii) vote or give assent, or exercise any rights of ownership, with respect to stock or other securities or property and to execute and deliver proxies or powers of attorney to such Person or Persons as the Trustees shall deem proper, granting to such Person or Persons such power and discretion with relation to securities or property as the Trustees shall deem proper;

(iv) exercise powers and right of subscription or otherwise which in any manner arise out of ownership or securities;

(v) hold any security or property in any form, whether in bearer, unregistered or other negotiable form, or in its own name or in the name of a custodian or sub-custodian or a nominee or nominees or otherwise;

(vi) consent to or participate in any plan for the reorganization, consolidation or merger of any corporation or issuer of any security which is held in the Trust; to consent to any contract, lease, mortgage, purchase or sale of property by such corporation or issuer; and to pay calls or subscriptions with respect to any security held in the Trust;

(vii) join with other security holders in acting through a committee, depositary, voting trustee or otherwise, and in that connection to deposit any security with, or transfer any security to, any such committee, depositary or trustee, and to delegate to them such power and authority with relation to any security (whether or not so deposited or transferred) as the Trustees shall deem proper, and to agree to pay, and to pay, such portion of the expenses and compensation of such committee, depositary or trustee as the Trustees shall deem proper;

(viii) compromise, arbitrate or otherwise adjust claims in favor of or against the Trust or any matter in controversy, including, but not limited to, claims for taxes;

(ix) enter into joint ventures, general or limited partnerships and any other combinations or associations;

(x) borrow funds or other property or otherwise obtain credit or utilize leverage in the name of the Trust exclusively for Trust purposes and in connection therewith issue notes or other evidence of indebtedness and to mortgage and pledge the Trust Property or any part thereof to secure any or all of such indebtedness;

(xi) endorse or guarantee the payment of any notes or other obligations of any Person, to make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof, and to mortgage and pledge the Trust Property or any part thereof to secure any of or all of such obligations;

(xii) purchase and pay for entirely out of Trust Property such insurance as the Trustees may deem necessary or appropriate for the conduct of the business, including, without limitation, insurance policies insuring the assets of the Trust or payment of distributions and principal on its portfolio investments, and insurance policies insuring the Shareholders, Trustees, officers, employees, agents, Investment Advisers, Principal Underwriters, or independent contractors of the Trust, individually against all claims and liabilities of every nature arising by reason of holding, being or having held any such office or position, or by reason of any action alleged to have been taken or omitted by any such Person as Trustee, officer, employee, agent, Investment Adviser, Principal Underwriter, or independent contractor, including any action taken or omitted that may be determined to constitute negligence, whether or not the Trust would have the power to indemnify such Person against liability;

(xiii) adopt, establish and carry out pension, profit-sharing, share bonus, share purchase, savings, thrift and other retirement, incentive and benefit plans and trusts, including the purchasing of life insurance and annuity contracts as a means of providing such retirement and other benefits, for any or all of the Trustees, officers, employees and agents of the Trust;

(xiv) operate as and carry out the business of an investment company, and exercise all the powers necessary or appropriate to the conduct of such operations;

(xv) enter into contracts of any kind and description;

(xvi) employ as custodian of any assets of the Trust one or more banks, trust companies or companies that are members of a national securities exchange or such other entities as the Commission may permit as custodians of the Trust, subject to any conditions set forth in this Declaration or in the Bylaws;

(xvii) employ auditors, counsel or other agents of the Trust, subject to any conditions set forth in this Declaration or in the Bylaws;

(xviii) interpret the investment policies, practices, or limitations of any Series or Class;

(xix) establish separate and distinct Series with separately defined investment objectives and policies and distinct investment purposes, and with separate Shares representing beneficial interests in such Series, and to establish separate Classes, all in accordance with the provisions of Article II;

(xx) allocate, to the fullest extent permitted by Section 3804 of the Delaware Act, assets, liabilities and expenses of the Trust to a particular Series and liabilities and expenses to a particular Class or to apportion the same between or among two or more Series or Classes, provided that any liabilities or expenses incurred by a particular Series or Class shall be payable solely out of the assets belonging to that Series or Class as provided for in Article II;

(xxi) engage in any other lawful act or activity in which a statutory trust organized under the Delaware Act may engage subject to the requirements of the 1940 Act; and

(xxii) The Trust or any Series shall not be limited to investing in obligations maturing before the possible termination of the Trust or any such Series. The Trust shall not in any way be bound or limited by any present or future law or custom in regard to investment by fiduciaries. The Trust shall not be required to obtain any court order to deal with any assets of the Trust or take any other action hereunder. The Trust may pursue its investment program and any other powers as set forth in this Section 5 of Article III either directly or indirectly through one or more subsidiary vehicles at the discretion of the Trustees or by operating in a master feeder structure.

(h) Except as prohibited by applicable law, the Trustees may, on behalf of the Trust, buy any securities from or sell any securities to, or lend any assets of the Trust to, any Trustee or officer of the Trust or any firm of which any such Trustee or officer is a member acting as principal, or have any such dealings with any Investment Adviser, Administrator, Principal Underwriter, distributor or transfer agent for the Trust or with any Interested Person of such person. The Trust may employ any such person, or entity in which such person is an Interested Person, as broker, legal counsel, registrar, Investment Adviser, Administrator, Principal Underwriter, distributor, transfer agent, dividend disbursing agent, shareholder servicing agent, custodian or in any other capacity upon customary terms.

(i) The Trustees shall have power to collect all property due to the Trust; to pay all claims, including taxes, against the Trust Property or the Trust, the Trustees or any officer, employee or agent of the Trust; to prosecute, defend, compromise or abandon any claims relating to the Trust Property or the Trust, or the Trustees or any officer, employee or agent of the Trust; to foreclose any security interest securing any obligations, by virtue of which any property is owed to the Trust; and to enter into releases, agreement and other instruments.

(j) The Trustees shall have the power to determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Trust shall be open to inspection by Shareholders. No Shareholder shall have any right to inspect any account, book, or document of the Trust, including, but not limited to, the Share ledger, except as required by the Bylaws or by applicable law to be made available to Shareholders of record for a proper purpose in such capacity.

(k) Subject to Article II, Section 9, the Trustees shall have the power to pay, directly or indirectly through contractual arrangements, out of the assets or income of the Trust any expenses and disbursements, including, but not limited to, interest charges, taxes, brokerage fees and commissions; expenses of pricing Trust portfolio securities; expenses of sale, addition and reduction of Shares; insurance premiums; applicable fees, interest charges and expenses of third parties, including the Trust's investment advisers, managers, administrators, distributors, custodians, transfer agents, shareholder servicing agents and fund accountants; fees of pricing, interest, dividend, credit and other reporting services; costs of membership in trade associations; telecommunications expenses; funds transmission expenses; auditing, legal and compliance expenses; costs of forming the Trust and its Series and maintaining its and their existence; costs of preparing and printing the prospectuses, statements of additional information, and Shareholder reports of the Trust and each Series and delivering them to Shareholders; expenses of meetings of Shareholders and proxy solicitations therefor; costs of maintaining books and accounts; costs of materials distribution, web site, stationery and supplies; fees and expenses of the Trustees; compensation of the Trust's officers and employees and costs of other personnel performing services for the Trust or any Series; costs of Trustee meetings; Commission registration fees and related expenses; registration fees and related expenses under state or foreign securities or other laws; and for such non-recurring items as may arise, including litigation to which the Trust or a Series (or a Trustee or officer of the Trust acting as such) is a party, and for all losses and liabilities by them incurred in administering the Trust. The Trustees shall have a lien on the assets belonging to the appropriate Series, or in the case of an expense allocable to more than one Series, on the assets of each such Series, prior to any rights or interests of the Shareholders thereto, for the reimbursement to them of such expenses, disbursements, losses and liabilities. This Article shall not preclude the Trust from directly paying any of the aforementioned fees and expenses.

Section 6. *Ownership of Assets of the Trust*

The assets of the Trust and each Series shall be held separate and apart from any assets now or hereafter held in any capacity other than as Trustee hereunder by the Trustees or any successor Trustees. Title to all of the assets of the Trust shall at all times be considered as vested in the Trust, except that the Trustees shall have power to cause legal title to any Trust Property to be held by or in the name of one or more of the Trustees, or in the name of the Trust, or in the name of any other Person as nominee, on such terms as the Trustees may determine. The right, title and interest of the Trustees in the Trust Property shall vest automatically in each Person who may hereafter become a Trustee. Upon the resignation, removal or death of a Trustee, he or she shall automatically cease to have any right, title or interest in any of the Trust Property, and the right, title and interest of such Trustee in the Trust Property shall vest automatically in the remaining Trustees. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered. No Shareholder shall be deemed to have a severable ownership in any individual asset of the Trust or any right of partition or possession thereof, but each Shareholder shall have a proportionate undivided beneficial ownership in the Trust or Series.

Section 7. *Execution of Advisory, Management and Distribution Arrangements*

(a) Subject to such requirements and restrictions as may be set forth under federal and/or state law and in the Bylaws, including, without limitation, the requirements of Section 15 of the 1940 Act, the Trustees may, at any time and from time to time, contract for exclusive or non-exclusive advisory, management and/or administrative services (including, in each case, one or more sub-advisory, sub-management or sub-administration services) for the Trust or for any Series (or Class thereof) with any corporation, trust, association, or other organization, including any Affiliated Person; and any such contract may contain such other terms as the Trustees may determine, including, without limitation, authority for the Investment Adviser or Administrator to supervise and direct the investment of all assets held, and to determine from time to time without prior consultation with the Trustees what securities and other instruments or property shall be purchased or otherwise acquired, owned, held, invested or reinvested in, sold, exchanged, transferred, mortgaged, pledged, assigned, negotiated or otherwise dealt with or disposed of, and what portion, if any, of the Trust Property shall be held uninvested and to make changes in the Trust's or a particular Series' investments; authority for the Investment Adviser or Administrator to delegate certain or all of its duties under such contracts to qualified investment advisers and administrators, or such other activities as may specifically be delegated to such party.

(b) The Trustees may also, at any time and from time to time, contract with any corporation, trust, association, or other organization, appointing it exclusive or non-exclusive distributor or Principal Underwriter for the Shares of one or more of the Series (or Classes) or other securities to be issued by the Trust. Every such contract (i) shall comply with such requirements and restrictions as may be set forth under federal and/or state law and in the Bylaws, including, without limitation, the requirements of Section 15 of the 1940 Act, (ii) may contain such other terms as the Trustees may determine, and (iii) may provide for the repurchase or sale of securities of the Trust by such other party as principal or as agent of the Trust and may provide that such other party may enter into selected dealer agreements with registered securities dealers and brokers and servicing and similar agreements with persons who are not registered securities dealers to further the purposes of the distribution or repurchase of the securities of the Trust.

(c) The Trustees are also empowered, at any time and from time to time, to contract with any Persons to provide such other services to the Trust as the Board of Trustees determines to be in the best interests of the Trust and the applicable Series, including appointing it or them to act as the custodian, transfer agent dividend disbursing agent, fund accountant, and/or shareholder servicing agent for the Trust or one or more of its Series. Every such contract shall comply with such requirements and restrictions as may be set forth under federal and/or state law and in the Bylaws or stipulated by resolution of the Trustees.

(d) The Trustees may adopt a plan or plans of distribution with respect to Shares of any Series or Class and enter into any related agreements, whereby the Series or Class finances directly or indirectly any activity that is primarily intended to result in sales of its Shares, subject to the requirements of applicable laws and regulations.

(e) The fact that:

(i) any of the Shareholders, Trustees, or officers of the Trust is a shareholder, director, officer, partner, trustee, employee, Investment Adviser, Administrator, sub-adviser, sub-administrator, Principal Underwriter, distributor, or affiliate or agent of or for any corporation, trust, association, or other organization, or for any parent or affiliate of any organization with which an advisory, management, or administration contract, or Principal Underwriter's or distributor's contract, or transfer agent, shareholder servicing agent or other type of service contract may have been or may hereafter be made, or that any such organization, or any parent or affiliate thereof, is a Shareholder or has an interest in the Trust; or that

(ii) any corporation, trust, association or other organization with which an advisory, management, or administration contract or Principal Underwriter's or distributor's contract, or transfer agent or shareholder servicing agent contract may have been or may hereafter be made also has an advisory, management, or administration contract, or Principal Underwriter's or distributor's or other service contract with one or more other corporations, trusts, associations, or other organizations, or has other business or interests,

shall not affect the validity of any such contract or disqualify any Shareholder, Trustee or officer of the Trust from voting upon or executing the same, or create any liability or accountability to the Trust or its Shareholders, provided approval of each such contract is made pursuant to the requirements of the 1940 Act.

Section 8. *Ownership of Shares*

Any Trustee, officer or agent of the Trust may acquire, own, and dispose of Shares to the same extent as if he were not a Trustee, officer or agent. The Trustees may issue and sell and cause to be issued and sold Shares to, and redeem such Shares from, any such Person or any firm or company in which such Person is interested, subject only to the general limitations contained herein or in the Bylaws relating to the sale and redemption of such Shares.

Section 9. *Limitation of Liability*

(a) Except as required by federal law, including applicable provisions of the 1940 Act, no Trustee, officer, employee or agent of the Trust shall owe any fiduciary duties to the Trust, any Class or Series thereof, or to any Shareholder or any other Person. The Trustees, officers, employees and agents of the Trust shall only have the duty to perform their respective obligations expressly set forth herein in a manner that does not constitute bad faith, willful misfeasance, gross negligence or reckless disregard of their respective duties as a Trustee, officer, employee or agent expressly set forth in this Declaration of Trust. Without limiting the foregoing, the Trustees have no fiduciary duty to take action, or to consider taking any action, to narrow any discount by which the Trust's Shares may trade to the net asset value of such Shares, nor shall there be a "fiduciary exception" to the attorney-client privilege as described in United States v. Jicarilla, 564 U.S. 162 (2011), United States v. Mett, 178 F.3d 1058 (9th Cir. 1999), or similar law with respect to any communications between any Trustee and legal counsel, regardless of whether, among other things, the Trust pays the legal fees of such counsel, such counsel's legal advice was given for managing the Trust and not for personal advice to the Trustees, and such communications were not made in anticipation of litigation.

(b) To the extent that, at law or in equity, a Trustee, officer, employee or agent has duties (including fiduciary duties) and liabilities relating thereto to the Trust or any Class or Series thereof, to the Shareholders or to any other Person, a Trustee, officer, employee or agent acting under this Declaration of Trust shall not be liable to the Trust, to the Shareholders or to any other Person for his or her reliance on the provisions of this Declaration of Trust. The provisions of this Declaration of Trust, to the extent that they restrict the duties and limit the liabilities of the Trustees, officers, employees or agents otherwise existing at law or in equity, replace such other duties and liabilities of such Trustees, officers, employees or agents.

(c) Except as otherwise expressly set forth herein, the Trustees, officers, employees and agents of the Trust shall not have any personal liability to any Person other than the Trust, any Class or Series thereof, or any Shareholders for any act, omission or obligation of the Trust or any Trustee, and then only for acts constituting bad faith, willful misfeasance, gross negligence or reckless disregard of duties expressly set forth in this Declaration of Trust. No Trustee, officer, employee or agent of the Trust shall be liable to the Trust or its Shareholders for any act or omission or any conduct whatsoever (including any breach of fiduciary duty and the failure to compel in any way any former or acting Trustee to redress any breach of fiduciary duty or trust or for any errors of judgment or mistakes of fact or law); provided that nothing contained herein shall protect any Trustee, officer, employee or agent against any liability to the Trust or its Shareholders to which he or she would otherwise be subject by reason of bad faith, willful misfeasance, gross negligence or reckless disregard of his or her duties as an officer, employee or agent as expressly set forth herein.

(d) A Trustee shall only be liable for his or her own bad faith, willful misfeasance, gross negligence, or reckless disregard of his or her duties expressly set forth herein, and for nothing else, and shall not be liable for errors of judgment or mistakes of fact or law. Subject to the foregoing: (i) the Trustees shall not be responsible or liable in any event for any neglect or wrongdoing of any other Person, including any officer, agent, employee, independent contractor or consultant, nor shall any Trustee be responsible for the act or omission of any other Trustee; (ii) the Trustees may rely upon advice of legal counsel or other experts with respect to the meaning and operation of this Declaration of Trust and their duties as Trustees hereunder, and shall be under no liability for any act or omission in accordance with such advice or for failing to follow such advice; and (iii) the Trustees shall be fully protected in relying upon the records of the Trust and upon information, opinions, reports, or statements presented by another Trustee or any officer, employee, or other agent of the Trust, or by any other Person, as to matters reasonably believed to be within such Person's professional or expert competence, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the Trust, or the value and amount of assets or reserves, or contracts, agreements, or other undertakings that would be sufficient to pay claims and obligations of the Trust or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to Shareholders or creditors of the Trust might properly be paid. The appointment, designation, or identification of a Trustee as chair of the Trustees, a member or chair of a committee of the Trustees, an expert on any topic or in any area (including an audit committee financial expert), or the lead independent Trustee, or any other special appointment, designation, or identification of a Trustee, shall not impose on that Person any standard of care or liability that is greater than that imposed on that Person as a Trustee in the absence of the appointment, designation, or identification, and no Trustee who has special skills or expertise, or is appointed, designated, or identified as aforesaid, shall be held to a higher standard of care by virtue thereof. In addition, no appointment, designation, or identification of a Trustee as aforesaid shall affect in any way that Trustee's rights or entitlement to indemnification or advancement of expenses. The Trustees shall not be required to give any bond or other security, nor any surety if a bond is obtained.

(e) All Persons extending credit to, contracting with or having any claim against the Trust shall look only to Trust Property or to the assets of any applicable Class or Series that such Person extended credit to, contracted with or has a claim against, and neither the Trustees nor the Shareholders, nor any of the Trust's officers, employees, or agents, whether past, present, or future, shall be personally liable therefor.

(f) Every written obligation, note, bond, contract, instrument, certificate, or undertaking and every other act or thing whatsoever executed or done by or on behalf of the Trust or any Class or Series thereof, or the Trustees or officers by any of them in connection with the Trust or any Class or Series thereof shall conclusively be deemed to have been executed or done only in or with respect to his, her or their capacity as Trustee or Trustees, or officer or officers, as the case may be, and such Trustee or Trustees, or officer or officers shall not be personally liable thereon. At the Trustees' discretion, any written obligation, note, bond, contract, instrument, certificate, or undertaking made or issued by the Trustees or by any officer or officers may give notice that this Declaration of Trust contains a limitation on liability and such written obligation, note, bond, contract, instrument, certificate, or undertaking may, if the Trustees so determine, recite that the same was executed or made on behalf of the Trust or the applicable Class or Series thereof by a Trustee or Trustees in such capacity and not individually, or by an officer or officers in such capacity and not individually, and that the obligations of such instrument are not binding upon any of them or the Shareholders individually but are binding only on the assets and property of the Trust, or the assets held with respect to the applicable Class or Series thereof only, and not against the assets of the Trust generally or the assets held with respect to any Class or Series thereof, and may contain such further recital as such Person or Persons may deem appropriate. The omission of any such notice or recital shall in no way operate to bind any Trustees, officers, or Shareholders individually.

Section 10. *Indemnification*

(a) The Trust shall indemnify and advance expenses to its currently acting and former Continuing Trustees to the fullest extent that indemnification of trustees is permitted by the Delaware Act. The Trust shall indemnify and advance expenses to its currently acting and former officers to the same extent as its Continuing Trustees and to such further extent as is consistent with law. The Board of Trustees may by Bylaw, resolution or agreement make further provision for indemnification of Trustees, officers, employees, and agents to the fullest extent permitted by the Delaware Act. No provision of this Article III, Section 10 shall be effective to protect or purport to protect any Trustee or officer of the Trust against any liability to the Trust or its Shareholders to which he would otherwise be subject by reason of bad faith, willful misfeasance, gross negligence, or reckless disregard of the duties expressly set forth herein. No amendment to the Declaration shall affect the right of any person under this Article III, Section 10 based on any event, omission, or proceeding prior to such amendment.

ARTICLE IV.
Shareholders

Section 1. *Meetings*

Meetings of the Shareholders shall be called and notice thereof and record dates therefore shall be given and set as provided in the Bylaws.

Section 2. *Voting*

(a) The Shareholders shall have power to vote only with respect to the election or removal of Trustees as provided in Article III hereof, and with respect to the approval of certain transactions as provided in Article V and Article VI, Section 3 hereof, and such additional matters relating to the Trust or the applicable Series as may be required by applicable law, this Declaration, the Bylaws, or any registration of the Trust with the Commission (or any successor agency), or as the Trustees may consider necessary or desirable.

(b) Each whole Share shall be entitled to one vote as to any matter on which it is entitled to vote and each fractional Share shall be entitled to a proportionate fractional vote.

(c) Unless provided elsewhere in this Declaration, on any matters submitted to a vote of the Shareholders, all Shares of the Trust then entitled to vote shall be voted in aggregate, except when required by the 1940 Act, Shares shall be voted by individual Series;

(d) There shall be no cumulative voting in the election of Trustees.

(e) Shares may be voted in person or by proxy.

(f) Until Shares of a Series or Class are issued, the Trustees may exercise all rights of Shareholders of that Series or Class and may take any action required by law, this Declaration, or the Bylaws to be taken by the Shareholders with respect to that Series or Class. Shares held in the treasury shall not confer any voting rights on the Trustees and shall not be entitled to any dividends or other distributions declared with respect to the Shares.

Section 3. *Quorum and Required Vote*

The provisions regarding the constitution of a quorum and the required vote for actions taken at meetings of the Shareholders shall be set as provided in the Bylaws.

Section 4. *Proxies*

(a) A proxy may be given in writing. The Bylaws may provide that proxies may also, or may instead, be given by an electronic or telecommunications device or in any other manner.

Section 5. *Record Dates*

For the purpose of determining the Shareholders of the Trust or any Series or Class who are entitled to receive payment of any dividend or of any other distribution, the Trustees may from time to time fix a date, which shall be before the date for the payment of such dividend or such other payment, as the record date for determining the Shareholders of the Trust, such Series or Class having the right to receive such dividend or distribution. Without fixing a record date, the Trustees may for distribution purposes close the register or transfer books for the Trust or for one or more Series or Classes at any time prior to the payment of a distribution. Nothing in this Article IV, Section 5 shall be construed as precluding the Trustees from setting different record dates for the Trust, different Series or Classes.

Section 6. *Additional Provisions*

The Bylaws may include further provisions for Shareholders, votes, and meetings and related matters.

ARTICLE V.
Requirements for the Approval of Certain Transactions

Section 1. *Required Vote*

Notwithstanding anything else contained herein or in the Bylaws, a favorable vote of the holders of at least seventy-five (75) percent of the outstanding Shares of each affected Series or Class voting separately as a Series or Class, shall be required to approve, adopt or authorize (i) a merger or consolidation or share exchange of the Trust, such Series or Class with any other entity, other than an entity ninety (90) percent or more of which is owned by the Trust, (ii) a sale of all or substantially all of the assets of the Trust (other than in the regular course of its investment activities), or (iii) a liquidation or dissolution of the Trust, unless such action has previously been approved, adopted or authorized by the affirmative vote of at least seventy-five (75) percent of the total number of Trustees, in which case the affirmative vote of the holders of a majority of the outstanding shares of each affected Series or Class, voting separately as a Series or Class, shall be required. Notwithstanding the foregoing, the approval of any affected Series or Class of the Trust shall not be required for any mortgage, pledge, or creation of any other security interest in any or all of the assets of the Trust or any Series, whether or not in the ordinary course of its business, or for the exercise of the rights and remedies provided with respect thereto.

ARTICLE VI.
Net Asset Value, Distributions and Redemptions

Section 1. *Determination of Net Asset Value*

The net asset value of each outstanding Share of the Trust or any Series shall be determined at such time or times on such days as the Trustees may determine, in accordance with the 1940 Act. The method of determination of net asset value shall be determined by the Trustees and shall be as set forth in the registration statement or as may otherwise be determined by the Trustees. The power and duty to make the net asset value calculations may be delegated by the Trustees and shall be as generally set forth in the registration statement or as may otherwise be determined by the Trustees. The net asset value per Share shall be determined separately for each Series or Class at such times as may be prescribed by the Trustees or, in the absence of action by the Trustees, as of the close of trading on the New York Stock Exchange on each day for all or part of which such Exchange is open for unrestricted trading.

Section 2. *Distributions*

Shareholders are entitled to receive dividends and distributions in such amounts and at such times as may be determined by the Trustees, as the Trustees may deem necessary or desirable. Distributions pursuant to this Article VI, Section 2 may be among the Shareholders of record of the applicable Series or Class of Shares at the time of declaring a distribution or among the Shareholders of record at such later date as the Trustees shall determine and specify. The Trustees may always retain from the net profits such amount as they may deem necessary to pay the debts or expenses of the Trust or the applicable Series or to meet obligations of the Trust or the applicable Series, or as they otherwise may deem desirable to use in the conduct of its affairs or to retain for future requirements or extensions of the business. Inasmuch as the computation of net income and gains for Federal income tax purposes may vary from the computation thereof on the books, the above provisions shall be interpreted to give the Trustees the power in their discretion to distribute for any fiscal year as ordinary dividends and as capital gains distributions, respectively, additional amounts sufficient to enable the Trust to avoid or reduce liability for taxes.

Section 3. *Redemptions*

The Shares of the Trust or any Series are not redeemable by Shareholders. Notwithstanding anything else contained herein or in the Bylaws, a favorable vote of (a) at least seventy-five (75) percent of the total number of Trustees, including a majority of the Trustees who are not Interested Persons of the Trust, (b) at least seventy-five (75) percent of the outstanding Shares of each Class or Series of the Trust (which includes common shares and preferred shares together) and (c) at least seventy-five (75) percent of all votes of preferred shares, if any, of the Trust, voting as a separate class, shall be required to approve, adopt or authorize an amendment to the Declaration that makes the Shares of the Trust a “redeemable security” (as that term is defined in section 2(a)(32) of the 1940 Act).

Section 4. *Disclosure of Ownership*

The holders of Shares or other securities of the Trust shall, upon demand, disclose to the Trustees, in writing, such information with respect to direct and indirect ownership of Shares or other securities of the Trust as the Trustees deem necessary to comply with the provisions of the Code, the 1940 Act or other applicable laws or regulations, or to comply with the requirements of any other taxing or regulatory authority.

ARTICLE VII.
Duration, Termination, Reorganization and Amendments

Section 1. *Duration*

Subject to possible termination in accordance with the provisions of Section 2 of this Article VII, the Trust created hereby shall continue without limitation of time.

Section 2. *Termination of the Trust or Any Series or Class*

(a) The Trust or any Series of Shares or Class thereof may be terminated at any time in accordance with Article V.

(b) Upon the requisite Shareholder vote or action by the Trustees to terminate the Trust or any one or more Series or any Class thereof, after paying or otherwise providing for all charges, taxes, expenses, and liabilities, whether due or accrued or anticipated, of the Trust or of the particular Series or any Class thereof as may be determined by the Trustees, the Trust shall in accordance with such procedures as the Trustees may consider appropriate reduce the remaining assets of the Trust or of the affected Series or Class to distributable form in cash or other securities, or any combination thereof, and distribute the proceeds to the Shareholders of the Series or Classes involved, ratably according to the number of Shares of such Series or Class held by the Shareholders of such Series or Class on the date of distribution. Thereupon, the Trust or any affected Series or Class shall terminate and the Trustees and the Trust shall be discharged of any and all further liabilities and duties relating thereto or arising therefrom, and the right, title, and interest of all parties with respect to the Trust or such Series or Class shall be canceled and discharged.

(c) Upon termination of the Trust, following completion of winding up of its business, the Trustees shall cause a certificate of cancellation of the Certificate of Trust to be filed in accordance with the Delaware Act, which Certificate of Cancellation may be signed by any one Trustee.

Section 3. *Reorganization*

(a) The Trustees may, without Shareholder approval, unless such approval is required by applicable law or by the terms of Article V of this Declaration:

(i) cause the Trust to merge or consolidate with or into one or more trusts (or Series thereof to the extent permitted by law), partnerships, associations, corporations, or other business entities (including trusts, partnerships, associations, corporations, or other business entities created by the Trustees to accomplish such merger or consolidation);

(ii) cause any one or more Series (or Classes) of the Trust to merge or consolidate with or into any one or more other Series (or Classes) of the Trust, one or more trusts (or Series or Classes thereof to the extent permitted by law), partnerships, associations, corporations;

(iii) cause the Shares to be exchanged under or pursuant to any state or federal statute to the extent permitted by law; or

(iv) cause the Trust to reorganize as a corporation, limited liability company, or limited liability partnership under the laws of Delaware or any other state or jurisdiction.

(b) Any agreement of merger or consolidation or exchange or certificate of merger may be signed by a majority of the Trustees and facsimile signatures conveyed by electronic or telecommunication means shall be valid.

(c) Pursuant to and in accordance with the provisions of Section 3815(f) of the Delaware Act, and notwithstanding anything to the contrary contained in this Declaration or the Bylaws, an agreement of merger or consolidation approved by the Trustees in accordance with this Article VII, Section 3 may effect any amendment to the governing instrument of the Trust (including the Bylaws) or effect the adoption of a new governing instrument of the Trust.

(d) The Trustees may create one or more statutory trusts to which all or any part of the assets, liabilities, profits, or losses of the Trust or any Series or Class thereof may be transferred and, consistent with the requirements of Article V of this Declaration, may provide for the conversion of Shares in the Trust or any Series or Class thereof into beneficial interests in any such newly created trust or trusts or any Series of Classes thereof.

(e) The approval of the Trustees shall be sufficient, to the extent consistent with Article V of this Declaration, to cause the Trust, or any Series thereof, to sell and convey all or substantially all of the assets of the Trust or any affected Series to another Series of the Trust or to another entity to the extent permitted under the 1940 Act, for adequate consideration, which may include the assumption of all outstanding obligations, taxes, and other liabilities, accrued or contingent, of the Trust or any affected Series, and which may include Shares or interest in such Series of the Trust, entity, or Series. Without limiting the generality of the foregoing, this provision may be utilized to permit the Trust or any Series to pursue its investment program through one or more subsidiary vehicles or to operate in a master-feeder structure.

Section 4. *Amendments*

(a) Except as specifically provided in this Article VII, Section 4, the Trustees may, without Shareholder vote, restate, amend, or otherwise supplement this Declaration. Shareholders shall have the right to vote on:

(i) any amendment that is determined by the Trustees to affect the Shareholders' right to vote granted in Article III, Sections 1 and 2 (regarding the election and removal of Trustees), Article V (regarding merger, sale of assets, or liquidation of the Trust) and Article VI, Section 3 (regarding the conversion of Shares to "redeemable securities") hereof;

(ii) any amendment to this Article VII, Section 4;

(iii) any amendment that may require the Shareholders' vote under applicable law or by the Trust's registration statement, as filed with the Commission; and

(iv) any amendment submitted to the Shareholders for their vote by the Trustees.

(b) The Trustees may not amend this Declaration to alter or amend the percentage of voting Shares required to approve any transaction or matter which requires a specific Shareholder vote under this Declaration unless an equivalent vote of Shareholders has authorized such alteration or amendment. Notwithstanding anything else herein, no amendment hereof shall limit the rights to insurance or its coverage, advances, indemnification or other benefit with respect to any acts or omissions of Persons covered thereby prior to such amendment nor shall any such amendment limit the rights to indemnification, as provided in the Bylaws with respect to any actions or omissions of Persons covered thereby prior to such amendment. The Trustees may, without Shareholder vote, restate, amend, or otherwise supplement the Certificate of Trust as they deem necessary or desirable.

(c) A favorable vote of (a) at least seventy-five (75) percent of the total number of Trustees, including a majority of the Trustees who are not Interested Persons of the Trust, (b) at least seventy-five (75) percent of the outstanding Shares of each Series or Class of the Trust (which includes common shares and preferred shares together) and (c) at least seventy-five (75) percent of all votes of preferred shares, if any, of the Trust, voting as a separate class, shall be required to approve, adopt or authorize an amendment to this Article VII, Section 4.

ARTICLE VIII.
Miscellaneous

Section 1. *Liability of Third Persons Dealing with Trustees*

No Person dealing with the Trustees shall be bound to make any inquiry concerning the validity of any transaction made or to be made by the Trustees or to see to the application of any payments made or property transferred to the Trust or any Series or upon such Trustees' order.

Section 2. *Filing of Copies, References, Headings*

The original or a copy of this Declaration and of each restatement and/or amendment hereto shall be kept at the office of the Trust where it may be inspected by any Shareholder. Anyone dealing with the Trust may rely on a certificate by an officer of the Trust as to whether or not any such restatements and/or amendments have been made and as to any matters in connection with the Trust hereunder; and, with the same effect as if it were the original, may rely on a copy certified by an officer of the Trust to be a copy of this Declaration or of any such restatements and/or amendments. In this Declaration and in any such restatements and/or amendments, references to this Declaration, and all expressions such as "herein," "hereof," and "hereunder," shall be deemed to refer to this Declaration as amended or affected by any such restatements and/or amendments. Headings are placed herein for convenience of reference only and shall not be taken as a part hereof or control or affect the meaning, construction or effect of this Declaration. Whenever the singular number is used herein, the same shall include the plural; and the neuter, masculine and feminine genders shall include each other, as applicable. This Declaration may be executed in any number of counterparts each of which shall be deemed an original.

Section 3. *Applicable Law*

(a) This Declaration and the Trust created hereunder are to be governed by and construed and enforced in accordance with, the laws of the State of Delaware. The Trust shall be of the type commonly called a statutory trust, and without limiting the provisions hereof, the Trust specifically reserves the right to exercise any of the powers or privileges afforded to statutory trusts or actions that may be engaged in by statutory trusts under the Delaware Act, and the absence of a specific reference herein to any such power, privilege, or action shall not imply that the Trust may not exercise such power or privilege or take such actions.

(b) Notwithstanding anything herein to the contrary, there shall not be applicable to the Trust, the Trustees, or this Declaration either the provisions of Section 3540 of Title 12 of the Delaware Code or any provisions of the laws (statutory or common) of the State of Delaware (other than the Delaware Act) pertaining to trusts that relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust; (iii) the necessity for obtaining a court or other governmental approval concerning the acquisition, holding, or disposition of real or personal property; (iv) fees or other sums applicable to trustees, officers, agents, or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount, or concentration of trust investments or requirements relating to the titling, storage, or other manner of holding of trust assets; or (vii) the establishment of, including but not limited to, fiduciary or other standards or responsibilities of trustees except as expressly provided in this Declaration.

Section 4. *Provisions in Conflict with Law or Regulations*

(a) The provisions of this Declaration are severable, and if the Trustees shall determine, with the advice of counsel, that any such provision is in conflict with the 1940 Act, the regulated investment company provisions of the Code and the regulations thereunder, the Delaware Act, or with other applicable laws and regulations, the conflicting provision shall be deemed never to have constituted a part of this Declaration; provided, however, that such determination shall not affect any of the remaining provisions of this Declaration or render invalid or improper any action taken or omitted prior to such determination.

(b) If any provision of this Declaration shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction or any other provision of this Declaration in any jurisdiction.

Section 5. *Writings*

To the fullest extent permitted by applicable laws and regulations:

(a) all requirements in this Declaration or in the Bylaws that any action be taken by means of any writing, including, without limitation, any written instrument, any written consent or any written agreement, shall be deemed to be satisfied by means of any electronic record in such form that is acceptable to the Trustees; and

(b) all requirements in this Declaration or in the Bylaws that any writing be signed shall be deemed to be satisfied by any electronic signature in such form that is acceptable to the Trustees.

Exhibit C

DIVIDEND AND INCOME FUND

BYLAWS

As of December 13, 2018

These Bylaws are made and adopted pursuant to Article IV of the Agreement and Declaration of Trust of Dividend and Income Fund dated as of the date hereof, as from time to time amended (hereinafter called the "Declaration"). All words and terms capitalized in these Bylaws and not otherwise defined herein shall have the meaning or meanings set forth for such words or terms in the Declaration.

ARTICLE I

REGISTERED OFFICE

Section 1. Registered Office. The registered office of the Trust in the State of Delaware shall be located in Wilmington, Delaware, or such other place as determined by the President of the Trust. The Trust may, in addition, establish and maintain such other offices and places of business as the Board of Trustees may, from time to time, determine or the business of the Trust may require.

ARTICLE II

SHAREHOLDERS

Section 1. Place of Meeting. All meetings of the Shareholders shall be held at the principal executive office of the Trust or at such other place as may from time to time be designated by the Board of Trustees and stated in the notice of such meeting.

Section 2. Annual Meetings. The Trust shall hold an annual meeting of its Shareholders to elect Trustees and transact any other business within its powers, provided so long as the Trust is registered under the Investment Company Act of 1940, as amended (the "1940 Act"), the Trust is not required to hold an annual meeting in any year in which the election of Trustees is not required to be acted upon under the 1940 Act. The annual meeting, if any, shall be held at such date, time, and place or by remote communication, as the Board of Trustees, or any duly constituted committee of the Board, shall determine. Except as provided otherwise in the Declaration, these Bylaws, or the Delaware Act, no business may be considered at an annual meeting unless specified in the notice or raised by the chairman of the meeting appointed or otherwise made pursuant to Section 10 of this Article II. The failure to hold an annual meeting does not invalidate the Trust's existence or affect any otherwise valid act of the Trust.

Section 3. Special Meetings.

(a) General. The Chairman of the Board of Trustees, President, or Board of Trustees may call a special meeting of the Shareholders. Any such special meeting shall be held at such date, time, and place or by remote communication as may be designated by the Chairman of the Board of Trustees, President, or Board of Trustees, whoever has called the meeting. Subject to subsection (b) of this Article II, Section 3, a special meeting of Shareholders shall also be called by the Secretary of the Trust upon the written request of Shareholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

(b) Shareholder Requested Meetings. (1) Any Shareholder of record (a "Shareholder of record" is hereby defined for all purposes of these Bylaws as a Shareholder whose name and address appears on the Trust's share ledger pursuant to Article VI hereof) seeking to have Shareholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Trustees to fix a record date to determine the Shareholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more Shareholders of record as of the date of signature (or their agents duly authorized in writing), shall bear the date of signature of each such Shareholder (or such agent) and shall set forth all information relating to each such Shareholder that must be disclosed in solicitations of proxies for election of Trustees in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act. Upon receiving the Record Date Request Notice, the Board of Trustees may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than 90 days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Trustees. If the Board of Trustees, within 20 days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date and make a public announcement of such Request Record Date, the Request Record Date shall be the close of business on the 90th day after the first date on which the Record Date Request Notice is received by the Secretary.

(2) In order for any Shareholder to request a special meeting ("Shareholder Requested Meeting"), one or more written requests for a special meeting signed by Shareholders of record (or their agents duly authorized in writing) as of the Request Record Date entitled to cast not less than a majority (the "Special Meeting Percentage") of all of the votes entitled to be cast at such meeting (the "Special Meeting Request") shall be delivered to the Secretary. In addition, the Special Meeting Request shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to the matters set forth in the Record Date Request Notice received by the Secretary), shall bear the date of signature of each such Shareholder (or such agent) signing the Special Meeting Request, shall set forth the name and address, as they appear in the Trust's books, of each Shareholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series, and number of all Shares which are owned by each such Shareholder, and the nominee holder for, and number of, shares owned by such Shareholder beneficially but not of record, shall be sent to the Secretary by registered mail, return receipt requested, and shall be received by the Secretary within 60 days after the Request Record Date. Any requesting Shareholder may revoke his, her, or its request for a special meeting at any time by written revocation delivered to the Secretary.

(3) The Secretary shall inform the requesting Shareholders of the reasonably estimated cost of preparing and mailing the notice of meeting (including the Trust's proxy materials). Notwithstanding anything to the contrary herein, the Secretary shall not be required to notify Shareholders entitled to notice of the Shareholder Requested Meeting and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Article II, Section 3(b), the Secretary receives prior payment of such reasonably estimated cost.

(4) In the case of any Shareholder Requested Meeting, such meeting shall be held at such date, time, and place, if any, and the means of remote communication, if any, by which Shareholders and proxy holders may be considered present in person and may vote at the such meeting, as may be designated by the Board of Trustees; provided, however, that the date of any Shareholder Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Trustees fails to designate, within 20 days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date, time, or place, if any, or the means of remote communication, if any, by which Shareholders and proxy holders may be considered present in person and may vote at the such meeting, for a Shareholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Trustees fails to designate a place for a Shareholder Requested Meeting within 20 days after the Delivery Date, then such meeting shall be held at the principal executive office of the Trust. In fixing a date for any special meeting, the Board of Trustees may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting, and any plan of the Board of Trustees to call an annual meeting or a special meeting. In the case of any Shareholder Requested Meeting, if the Board of Trustees fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date.

(5) If written revocations of requests for the Shareholder Requested Meeting have been delivered to the Secretary and the result is that Shareholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a Shareholder Requested Meeting to the Secretary, the Secretary shall: (i) if the notice of meeting has not already been given to all Shareholders, refrain from giving the notice of the meeting to all Shareholders and send to all requesting Shareholders who have not revoked such requests written notice of such revocation of a request for the meeting, generally without identifying from whom the revocation was received, or (ii) if the notice of meeting has been given to all Shareholders, revoke the notice of the meeting at any time before the commencement of the meeting. Any request for a Shareholder Requested Meeting received after the occurrence of (i) or (ii) above shall be considered a new Record Date Request Notice pursuant to Article II, Section 3 hereof.

(6) The Chairman of the Board of Trustees, the President, or the Board of Trustees may appoint independent inspectors of elections to act as the agent of the Trust for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported request shall be deemed to have been delivered to the Secretary until the earlier of (i) ten Business Days after receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Trust as to whether the valid requests received by the Secretary represent at least a majority of the issued and outstanding Shares that would be entitled to vote at such meeting. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Trust shall not be entitled to contest the validity of any request, whether during or after such ten Business Day period, or to take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, “Business Day” shall mean any day the New York Stock Exchange is open for trading.

Section 4. Notice of Meetings. Not less than 10 nor more than 90 days before each Shareholders' meeting, the Secretary shall give notice in writing or by electronic transmission of the meeting to each Shareholder entitled to vote at, or entitled to notice of, such meeting. The notice shall state: (1) the time of the meeting, the place of the meeting, if any, and the means of remote communication, if any, by which Shareholders and proxy holders may be deemed to be present in person and may vote at the meeting; and (2) the purpose of the meeting, if: (i) the meeting is a special meeting; or (ii) notice of the purpose is required by any other provision of the Delaware Act. For purposes of this Article II, Section 4, notice is given to a Shareholder when it is: (i) personally delivered to the Shareholder; (ii) left at the Shareholder's residence or usual place of business; (iii) mailed to the Shareholder at the Shareholder's address as it appears on the records of the Trust; or (iv) transmitted to the Shareholder by an electronic transmission to any address or number of the Shareholder at which the Shareholder receives electronic transmissions. If mailed, notice shall be deemed to be given when deposited in the United States mail addressed to the Shareholder as aforesaid; if transmitted to the Shareholder by an electronic transmission, notice shall be deemed to be given when sent to any address or number of the Shareholder at which the Shareholder receives electronic transmissions. Notice of any Shareholders’ meeting need not be given to any Shareholder who before or after the meeting delivers a written waiver or a waiver by electronic transmission which is filed with the records of Shareholders meetings, or to any Shareholder who is present at such meeting in person or by proxy. Notice of adjournment of a Shareholders’ meeting to another time or place need not be given if such time and place are announced at the meeting. Irregularities in the notice of any meeting to, or the non-receipt of any such notice by, any of the Shareholders shall not invalidate any action otherwise properly taken by or at such meeting.

Section 5. Quorum; Adjournment of Meetings. At a meeting of Shareholders the presence, in person or by proxy, of not less than one-third of the votes entitled to be cast at the meeting constitutes a quorum; but this section shall not affect any requirement under the Declaration, these Bylaws, or any applicable statute for the vote necessary for the adoption of any measure. Whether or not a quorum is present, at any meeting of the Shareholders the chairman of the meeting shall have the power to adjourn the meeting from time to time to a date not more than 150 days after the original record date without further notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The Shareholders present either in person or by proxy, at a meeting which has been duly called and convened, may continue to transact business until adjournment, notwithstanding the withdrawal of enough Shareholders to leave less than a quorum.

Section 6. Voting. Unless otherwise provided by the Declaration, at a meeting of Shareholders each whole Share shall be entitled to one vote on each matter on which it is entitled to vote and each fractional Share shall be entitled to a proportionate fractional vote. To be approved, adopted, or authorized at a meeting of Shareholders, a matter must receive in the event it has been approved by a majority of the Continuing Trustees the affirmative vote of a majority of all the votes cast at the meeting at which a quorum is present or, in the event it has not been so approved by the Continuing Trustees, the affirmative vote of at least 75% of the outstanding Shares of the Trust entitled to be voted at the meeting at which a quorum is present, provided in each event, however, more or fewer votes cast may be required to approve any matter if so provided by the Declaration, these Bylaws, or any applicable statute. The vote upon any question shall be by ballot whenever requested by any person entitled to vote, but, unless such a request is made, voting may be conducted in any way approved by the meeting.

Section 7. Inspectors. The Continuing Trustees, in advance of any meeting, may, but need not, appoint one or more individual inspectors or one or more entities that designate individuals as inspectors to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed or if appointed not deemed appropriate by the chairman of the meeting, the chairman of the meeting may at any time appoint one or more new or replacement inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Continuing Trustees or by the chairman of the meeting. Each inspector so appointed shall first subscribe an oath or affirmation to execute faithfully the duties of inspector at such election with strict impartiality and according to the best of his or her ability, and shall after the election make a certificate of the result of the vote taken. No candidate at the meeting for the office of Trustee shall be appointed such inspector.

Subject to the direction and supervision of the chairman of the meeting, the inspectors, if any, shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots, or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all Shareholders. Each such report shall be in writing and certified by him or her or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the certified report of a majority shall be the report of the inspectors. The determination of such inspector or inspectors as to the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the form, validity and effect of proxies or ballots, all challenges and questions arising in connection with the right to vote, the count or tabulation of all votes, ballots or consents, and all other matters upon which their certificate would be based shall be deemed final and conclusive, and such inspectors' determinations shall not be subject to challenge or review prior to or following the issuance of their certificate, unless such challenge or review is approved by the vote of a majority of the Continuing Trustees. If no challenge or review is so approved, all documents of whatever kind and nature relating to any matters upon which the certificate could be based may be discarded by the officers of the Trust in their sole discretion after 30 days of issuance of the inspectors' certificate.

Section 8. Shareholders Entitled to Vote. If the Board of Trustees, or any duly constituted committee of the Board, sets a record date for the determination of Shareholders entitled to notice of or to vote at any Shareholders' meeting in accordance with these Bylaws, each Shareholder of the Trust shall be entitled to vote, in person or by proxy, each Share standing in his name on the books of the Trust on such record date. If no record date has been fixed and these Bylaws do not otherwise provide for a record date in the circumstances, the record date for the determination of Shareholders entitled to notice of or to vote at a meeting of Shareholders shall be the later of the close of business on the day on which notice of the meeting is first mailed or otherwise given or the thirtieth day before the meeting, or, if notice is waived by all Shareholders, at the close of business on the tenth day next preceding the day on which the meeting is held.

Section 9. Validity of Proxies, Ballots. In an uncontested matter or uncontested election of a Trustee or Trustees, a Shareholder may cast the votes entitled to be cast by the Shares owned of record by the Shareholder in person or by proxy executed by the Shareholder or the Shareholder's duly authorized agent in any manner not prohibited by law. In the event of a proposal by anyone other than the Continuing Trustees is submitted to a vote of the Shareholders of the Trust, or in the event of any proxy contest or proxy solicitation or proposal in opposition to any proposal by the officers or Trustees of the Trust, Shares may be voted only by written proxy or in person at a meeting. Unless a proxy provides otherwise, it shall not be valid more than eleven months after its date. At every meeting of the Shareholders, all proxies shall be received and taken in charge of and all ballots shall be received and canvassed by the Secretary of the Trust or the person acting as secretary of the meeting before being voted, who shall decide all questions touching the qualification of voters, the validity of the proxies, and the acceptance or rejection of votes, unless an inspector of election has been appointed for the meeting in which event such inspector of election shall decide all such questions as provided in Section 7 of this Article II.

Section 10. Organization and Conduct of Shareholders' Meetings. Every meeting of Shareholders shall be conducted by an individual appointed by the Continuing Trustees to be chairman of the meeting or, in the absence of such appointment, by the Chairman of the Board of Trustees or, in the case of a vacancy in the office or absence or unwillingness of the Chairman of the Board of Trustees, by one of the following officers present at the meeting: the Vice Chairman of the Board of Trustees, if there be one, the President, the officers of the Trust in their order of rank or seniority, or, in the absence of such officers, a chairman chosen by the Shareholders by the vote of a majority of the votes cast by Shareholders present in person or by proxy. The Secretary, or, in the Secretary's absence, an Assistant Secretary, or in the absence of both the Secretary and Assistant Secretaries, a person appointed by the Board of Trustees or, in the absence of such appointment, a person appointed by the chairman of the meeting shall act as secretary. In the event that the Secretary presides at a meeting of the Shareholders, an Assistant Secretary, or in the absence of Assistant Secretaries, an individual appointed by the Board of Trustees or the chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of Shareholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations, and procedures and take such action as, in the discretion of such chairman, are appropriate, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to Shareholders of record of the Trust, their duly authorized proxies, and other such individuals as the chairman of the meeting may determine; (c) requiring proof of identification and ownership as a Shareholder of record or authorization as proxy; (d) limiting participation at the meeting on any matter to Shareholders of record of the Trust entitled to vote on such matter, their duly authorized proxies, and other such individuals as the chairman of the meeting may determine; (e) limiting the time allotted to questions or comments by participants; (f) maintaining order and security at the meeting; (g) removing any Shareholder or any other individual who refuses to comply with meeting procedures, rules, or guidelines as set forth by the chairman of the meeting; and (h) recessing or adjourning the meeting to a later date and time and place announced at the meeting. Unless otherwise determined by the chairman of the meeting, meetings of Shareholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 11. Action Without a Meeting. Any action required or permitted to be taken by Shareholders at a meeting of Shareholders may be taken without a meeting if (a) all Shareholders entitled to vote on the matter consent to the action in writing, (b) all Shareholders entitled to notice of the meeting but not entitled to vote at it sign a written waiver of any right to dissent and (c) the consents and waivers are filed with the records of the meetings of Shareholders.

Section 12. Advance Notice of Shareholder Nominations for Trustee and Other Shareholder Proposals.

(a) Annual Meetings of Shareholders. (1) Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the Shareholders may be made at an annual meeting of Shareholders (i) pursuant to the Trust's notice of meeting, (ii) by or at the direction of the Board of Trustees, or any duly constituted committee of the Board, or (iii) by any Shareholder of the Trust who was a Shareholder of record both at the time of giving of notice provided for in this Article II, Section 12(a) and at the time of the annual meeting, who is entitled to vote at the meeting and who has complied with this Article II, Section 12(a).

(2) For nominations or other business to be properly brought before an annual meeting by a Shareholder pursuant to clause (iii) of subsection (a)(1) of this Article II, Section 12, the Shareholder must have given timely notice thereof in writing to the Secretary of the Trust and such other business must otherwise be a proper matter for action by the Shareholders. To be timely, a Shareholder's notice shall set forth all information required under this Article II, Section 12 and shall be delivered to the Secretary at the principal executive office of the Trust not less than 90 days nor more than 120 days prior to the first anniversary of the date of mailing of the notice for preceding year's annual meeting; provided, however, that in the event that either the date of the mailing of the notice for the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the mailing of the notice of the preceding year's annual meeting or there was no annual meeting in the preceding year, notice by the Shareholder to be timely must be so delivered not earlier than the 120th day prior to the date of the mailing of the notice of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of the mailing of the notice for such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of a postponement or adjournment of an annual meeting commence a new time period for the giving of a Shareholder's notice as described above. No Shareholder may give a notice to the secretary described in this Article II, Section 12(a)(2) unless such Shareholder holds a certificate or certificates, as the case may be, for all Trust shares owned by such Shareholder, and a copy of each such certificate shall accompany such Shareholder's notice to the secretary in order for such notice to be effective.

Such Shareholder's notice shall set forth: (i) as to each individual whom the Shareholder proposes to nominate for election or reelection as a Trustee, (A) the name, age, business address, and residence address of such individual, (B) the class, series, and number of any Shares of the Trust that are beneficially owned by such individual, (C) the date such shares were acquired and the investment intent of such acquisition, (D) the determination of such Shareholder as to whether any such individual is, or is not, an interested person (as defined in Section 2(a)(19) of the 1940 Act) ("Interested Person") of the Trust, and information regarding such individual that is sufficient, in the discretion of the Board of Trustees or any committee thereof or any authorized officer of the Trust, to verify such determination, (E) sufficient information to enable the Nominating Committee of the Board of Trustees to make the determination as to the proposed nominee's qualifications required under Article III, Section 2(b) of the Bylaws and (F) all other information relating to such individual that is required to be disclosed in solicitations of proxies for election of Trustees in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder (including such individual's written consent to being named in the proxy statement as a nominee and to serving as a Trustee if elected); (ii) as to any other business that the Shareholder proposes to bring before the meeting, a description of the business desired to be brought before the meeting, the reasons for proposing such business at the meeting, and any material interest in such business of such Shareholder and any Shareholder Associated Person (as defined in subsection (c)(4) of this Article II, Section 12, below), individually or in the aggregate, including any anticipated benefit to the Shareholder and any Shareholder Associated Person therefrom; (iii) as to the Shareholder giving the notice and any Shareholder Associated Person, the class, series and number of all Shares of the Trust which are owned by such Shareholder and by such Shareholder Associated Person, if any, and the nominee holder for, and number of, shares owned beneficially but not of record by such Shareholder and by any such Shareholder Associated Person; and (iv) as to the Shareholder giving the notice and any Shareholder Associated Person covered by clauses (ii) or (iii) of this paragraph (2) of this Section 12(a), the name and address of such Shareholder, as they appear on the Trust's share ledger and current name and address, if different, and of such Shareholder Associated Person.

(3) Notwithstanding anything in this subsection (a) of this Article II, Section 12 to the contrary, in the event the Board of Trustees increases or decreases the number of Trustees in accordance with Article III, Section 2(a) of these Bylaws, and there is no public announcement of such action at least 100 days prior to the first anniversary of the date of the preceding year's annual meeting, a Shareholder's notice required by this Article II, Section 12(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Trust not later than the close of business on the tenth day following the day on which such public announcement is first made by the Trust.

(b) <u>Special Meetings of Shareholders</u>. Only such business shall be conducted at a special meeting of Shareholders as shall have been brought before the meeting pursuant to the Trust's notice of meeting. Nominations of individuals for election to the Board of Trustees may be made at a special meeting of Shareholders at which Trustees are to be elected (i) pursuant to the Trust's notice of meeting, (ii) by or at the direction of the Board of Trustees or (iii) provided that the Board of Trustees has determined that Trustees shall be elected at such special meeting, by any Shareholder of the Trust who is a Shareholder of record both at the time of giving of notice provided for in this Article II, Section 12 and at the time of the special meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Article II, Section 12. In the event the Trust calls a special meeting of Shareholders for the purpose of electing one or more individuals to the Board of Trustees, any such Shareholder may nominate an individual or individuals (as the case may be) for election as a Trustee as specified in the Trust's notice of meeting, if the Shareholder's notice required by subsection (a)(2) of this Article II, Section 12 shall be delivered to the Secretary at the principal executive office of the Trust not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Trustees to be elected at such meeting. In no event shall the public announcement of a postponement or adjournment of a special meeting commence a new time period for the giving of a Shareholder's notice as described above. No Shareholder may give a notice to the Secretary described in this Article II, Section 12 (b) unless such Shareholder holds a certificate or certificates, as the case may be, for all Trust shares owned by such Shareholder, and a copy of each such certificate shall accompany such Shareholder's notice to the Secretary in order for such notice to be effective.

(c) General. (1) Upon written request by the Secretary or the Board of Trustees or any committee thereof, any Shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of Shareholders shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory in the discretion of the Board of Trustees or any committee thereof or any authorized officer of the Trust, to demonstrate the accuracy of any information submitted by the Shareholder pursuant to this Article II, Section 12. If a Shareholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Article II, Section 12.

(2) Only such individuals who are nominated in accordance with this Article II, Section 12 shall be eligible for nomination for election as Trustees, and only such business shall be conducted at a meeting of Shareholders as shall have been brought before the meeting in accordance with this Article II, Section 12. The chairman of the meeting shall have the sole and final power to determine at any time prior to or at the meeting whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Article II, Section 12. No action by the Trust or any other person shall be deemed an amendment or waiver of the requirements of this Article II, Section 12 unless approved by a resolution adopted by the Continuing Trustees.

(3) For purposes of this Article II, Section 12, "public announcement" shall mean disclosure (i) reported by the Dow Jones News Service, Associated Press or comparable news service, (ii) in a document publicly filed by the Trust with the Securities and Exchange Commission, or (iii) in a document posted on the Trust's website or disseminated by the Trust through a press release distribution service.

(4) For purposes of this Article II, Section 12, "Shareholder Associated Person" of any Shareholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such Shareholder, (ii) any beneficial owner of Shares of the Trust owned of record or beneficially by such Shareholder and (iii) any person controlling, controlled by, or under common control with such Shareholder Associated Person.

(5) Notwithstanding the foregoing provisions of this Article II, Section 12, a Shareholder shall also comply with all applicable requirements of the Declaration and Bylaws (including, without limitation, Article III, Section 2 regarding qualifications), state law, and the Exchange Act and the 1940 Act and any rules and regulations thereunder with respect to the matters set forth in this Article II, Section 12. Nothing in this Article II, Section 12 shall be deemed to affect any right of a Shareholder to request inclusion of a proposal in, nor the right of the Trust to omit a proposal from, the Trust's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act.

ARTICLE III

BOARD OF TRUSTEES

Section 1. Powers. Except as otherwise provided by law, by the Declaration or by these Bylaws, the business and affairs of the Trust shall be managed under the direction of, and all the powers of the Trust shall be exercised by or under authority of, its Board of Trustees.

Section 2. Number of Trustees: Qualifications.

(a) Number of Trustees. The total number of Trustees of the Trust shall be fixed in the manner set forth in the Declaration.

(b) Qualifications. (1) To qualify as a nominee for a Trusteeship or election as a Trustee, an individual, at the time of nomination or election as the case may be, (i)(A) shall be a resident United States citizen and have substantial expertise, experience or relationships relevant to the business of the Trust, (B) shall have a master's degree in economics, finance, business administration or accounting, a graduate professional degree in law from an accredited university or college in the United States or the equivalent degree from an equivalent institution of higher learning in another country, or a certification as a public accountant in the United States, or be deemed an "audit committee financial expert" as such term is defined in the Sarbanes-Oxley Act of 2002 (or other applicable law); and (C) shall not serve as a Trustee or officer of another closed end investment company unless such company is sponsored or managed by the Trust's investment manager or investment adviser or by an affiliate of either; and (D) shall not serve or have served within the past 3 years as a trustee of any closed-end investment company which, while such individual was serving as a trustee or within one year after the end of such service, ceased to be a closed-end investment company registered under the 1940 Act, unless such individual was initially nominated for election as a trustee by the board of trustees of such closed-end investment company, or (ii) shall be a current Trustee of the Trust.

(2) In addition, to qualify as a nominee for a Trusteeship or election as a Trustee at the time of nomination or election as the case may be, (i) an incumbent nominee shall not have violated any provision of the Conflicts of Interest and Corporate Opportunities Policy (the "Policy"), adopted by the Board on May 8, 2012, as subsequently amended or modified, and (ii) an individual who is not an incumbent Trustee shall not have a relationship, hold any position or office or otherwise engage in, or have engaged in, any activity that would result in a violation of the Policy if the individual were elected as a Trustee.

(3) In addition, to qualify as a nominee for a Trusteeship or election as a Trustee at the time of nomination or election as the case may be, a person shall not, if elected as a Trustee, cause the Trust to be in violation of, or not in compliance with, applicable law, regulation or regulatory interpretation, or the Declaration, or any general policy adopted by the Board of Trustees regarding either retirement age or the percentage of Interested Persons and non-Interested Persons to comprise the Trust's Board of Trustees.

(4) The Nominating Committee of the Board of Trustees, in its sole discretion, shall determine whether an individual satisfies the foregoing qualifications. Any individual not so nominated by the Nominating Committee of the Board of Trustees shall be deemed not to satisfy the foregoing qualifications, unless the Nominating Committee adopts a resolution setting forth the affirmative determination that such individual satisfied the foregoing qualifications. Any individual who does not satisfy the qualifications set forth herein, unless waived by the Nominating Committee, shall not be eligible for nomination or election as a Trustee and the selection and nomination, or recommendation for nomination by the Board of Trustees, of candidates for election by the Nominating Committee shall be deemed to be its determination such qualifications are satisfied or waived for such candidate.

Section 3. Election. Unless all nominees for Trustee are approved by a majority of the Continuing Trustees, the affirmative vote of the holders of at least 75% of the outstanding Shares of the Trust entitled to be voted shall be required to elect a Trustee. If all nominees for Trustee are approved by a majority of the Continuing Trustees, a plurality of all the votes cast at a meeting at which a quorum is present shall be sufficient to elect a Trustee.

Section 4. Vacancies and Newly Created Trusteeships. Any Trustee elected to fill a vacancy shall hold office for the remainder of the full term of the Trusteeship in which the vacancy occurred and until a successor is elected and qualifies.

Section 5. Place of Meeting. The Trustees may hold their meetings, have one or more offices, and keep the books of the Trust, at any office or offices of the Trust or at any other place as they may from time to time by resolution determine, or in the case of meetings, as they may from time to time by resolution determine or as shall be specified or fixed in the respective notices or waivers of notice thereof.

Section 6. Regular Meetings. The Board of Trustees from time to time may provide by resolution for the holding of regular meetings and fix their time and place as the Board of Trustees may determine. Notice of such meetings need not be in writing, provided that notice of any change in the time or place of such meetings shall be communicated promptly to each Trustee not present at the meeting at which such change was made in the manner provided in Section 8 of this Article III for notice of special meetings. Members of the Board of Trustees or any committee designated thereby may participate in any meeting of such Board or committee, regular or special, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting, to the extent not inconsistent with the 1940 Act.

Section 7. Special Meetings. Special meetings of the Board of Trustees may be held at any time or place and for any purpose when called by the Chairman of the Board, the President, or a majority of Continuing Trustees then in office.

Section 8. Notice. Notice of any special meeting of the Board of Trustees shall be delivered personally or by telephone, electronic means (including email, meeting invitation or otherwise), facsimile transmission, United States mail, or courier to each Trustee at his or her business or residence address. Notice by personal delivery, telephone, electronic means, or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the Trustee or his or her agent is personally given such notice in a telephone call to which the Trustee or his or her agent is a party. Electronic means notice shall be deemed to be given upon transmission of the communication to the electronic address given to the Trust by the Trustee. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Trust by the Trustee and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Trustees need be stated in the notice, unless specifically required by statute, the Declaration or these Bylaws.

Section 9. Waiver of Notice. No notice of any meeting of the Board of Trustees or a committee of the Board need be given to any Trustee who is present at the meeting or who waives notice of such meeting in writing (which waiver shall be filed with the records of such meeting), either before or after the meeting.

Section 10. Approvals.

(a) Quorum and Voting. At all meetings of the Board of Trustees, the presence of a majority of the Trustees then in office shall constitute a quorum for the transaction of business by the Board. In the absence of a quorum, a majority of the Trustees present may adjourn the meeting, from time to time, until a quorum shall be present. The action of a majority of Trustees present at a meeting at which a quorum is present shall be the action of the Board of Trustees, unless (1) the concurrence of a greater proportion is required for such action by law, by the Declaration, or by these Bylaws or (2) the concurrence of the Continuing Trustees is required for such action, in which case the action of a majority of Continuing Trustees present at a meeting at which a majority of the Continuing Trustees is present shall be the action of the Board of Trustees. If enough Trustees have withdrawn from a meeting to leave less than a quorum but the meeting is not adjourned, the action of a majority of Trustees, which is not less than the number necessary to approve the matter if a quorum were constituted, shall be the action of the Board of Trustees, unless the concurrence of a greater proportion is required for such action by applicable law, by the Declaration, or these Bylaws.

(b) Interested Persons. Except as prohibited by applicable law, (i) the Trustees may, on behalf of the Trust, buy any securities from or sell any securities to, or lend any assets of the Trust to, any Trustee or officer of the Trust or any firm of which any such Trustee or officer is a member acting as principal, or have any such dealings with any investment adviser, administrator, principal underwriter, distributor or transfer agent for the Trust or with any Interested Person of such person, and (ii) the Trust may employ any such person, or entity in which such person is an Interested Person, as broker, legal counsel, registrar, investment adviser, administrator, principal underwriter, distributor, transfer agent, dividend disbursing agent, shareholder servicing agent, custodian or in any other capacity upon customary terms.

Section 11. Action Without a Meeting. Except as otherwise limited by the 1940 Act, any action which may be taken at any meeting of the Board of Trustees or of any committee thereof may be taken without a meeting if the number of the Trustees, or members of a committee, as the case may be, required for approval of such action at a meeting of the Trustees or of such committee consent to such action in writing or by electronic means, and such consent is filed with the minutes of proceedings of the Board or committee. Such consent shall be treated for all purposes as a vote taken at a meeting of Trustees.

Section 12. Compensation of Trustees. Except as otherwise provided in this Article III, Section 12, Trustees shall be entitled to receive such compensation from the Trust for their services as may from time to time be determined by resolution of the Board of Trustees. A Trustee who is an Affiliated Person of a holder of more than 5% of the outstanding shares of the Trust shall not be entitled to fees or expenses arising out of service as a Trustee of the Trust.

ARTICLE IV

COMMITTEES

Section 1. Number, Tenure and Qualifications. The Continuing Trustees may appoint from among the Trustees an Executive Committee, an Audit Committee, a Nominating Committee, and other committees, composed of one or more Trustees, to serve at the pleasure of the Continuing Trustees. There shall also be a Committee of the Board of Trustees consisting solely of all Continuing Trustees then in office, which Committee shall have the power to take all actions delegated to the Continuing Trustees by the Declaration or these Bylaws.

Section 2. Powers. The Board of Trustees may delegate to committees appointed under Section 1 of this Article IV any of the powers of the Board of Trustees, except as prohibited by law.

Section 3. Meeting. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Trustees. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Continuing Trustees may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the Committee) may fix the time and place of its meeting unless the Board shall other provide.

Section 4. Telephone Meeting. Members of a committee of the Board of Trustees may participate in a meeting by means of a conference telephone, internet, or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. Written Consent by Committee. Any action required or permitted to be taken at any meeting of a committee of the Board of Trustees may be taken without a meeting, if a consent to such action is executed in writing or by electronic means by each member of the committee and such written consent is filed with the minutes of proceedings of such committee.

Section 6. Vacancies. Subject to the provisions hereof, the Continuing Trustees shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member, or to dissolve any such committee.

Section 7. Executive Committee. Unless otherwise provided by resolution of the Board of Trustees, when the Board of Trustees is not in session the Executive Committee shall exercise the powers of the Board of Trustees between meetings of the Board to the extent permitted by law to be delegated and not delegated by the Board to any other committee.

ARTICLE V

OFFICERS

Section 1. General. The officers of the Trust shall be a President, a Secretary and a Treasurer, and may include one or more Vice Chairman, Vice Presidents, Assistant Secretaries or Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 10 of this Article V.

Section 2. Election, Tenure and Qualifications. The officers of the Trust, except those appointed as provided in Section 10 of this Article V, shall be nominated by the Chairman and elected by the Board of Trustees at its first meeting or such meetings as shall be held prior to its first annual meeting, and thereafter from time to time as appropriate. Except as otherwise provided in this Article V, each officer elected by the Board of Trustees shall hold office until his successor shall have been elected and qualified. Any person may hold one or more offices of the Trust.

Section 3. Removal and Resignation. Whenever in the judgment of the Board of Trustees the best interest of the Trust will be served thereby, any officer may be removed from office by the vote of a majority of the Continuing Trustees, or the Executive Committee, given at any time. Any officer may resign his office at any time by delivering a written resignation to the Board of Trustees, the President, the Secretary, or any Assistant Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Such resignation shall be without prejudice to the contract rights, if any, of the Trust.

Section 4. President. The President shall be the chief executive officer of the Trust and, in the absence or unwillingness of the Chairman of the Board or Vice Chairman or if no Chairman of the Board or Vice Chairman has been elected, shall preside at all Shareholders' meetings. Subject to the supervision of the Board of Trustees, the President shall have general charge of the business, affairs and property of the Trust and general supervision over its officers, employees and agents. Except as the Board of Trustees may otherwise order, the President or may sign in the name and on behalf of the Trust all deeds, bonds, contracts, or agreements. The President shall exercise such other powers and perform such other duties as from time to time may be assigned to him by the Board of Trustees.

Section 5. Chairman. The Chairman shall be the Chairman of the Board of Trustees and shall preside at all Trustees' meetings and Shareholders' meetings. The Chairman shall be a Continuing Trustee. Except as the Board of Trustees may otherwise order, he may sign in the name and on behalf of the Trust all deeds, bonds, contracts, or agreements. He shall exercise such other powers and perform such other duties, or delegate them as permitted by law or the Board of Trustees, as from time to time may be assigned to him by the Board of Trustees.

Section 6. Vice Chairman. The Board of Trustees may from time to time elect from among the Continuing Trustees a Vice Chairman who shall have such powers and perform such duties as from time to time may be assigned to him by the Board of Trustees, Chairman of the Board, or the President. At the request of, or in the absence or unwillingness or in the event of the disability of the Chairman of the Board, the Vice Chairman may perform all the duties of the Chairman of the Board or the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon such representative officers.

Section 7. Vice President. The Board of Trustees may from time to time elect one or more Vice Presidents who shall have such powers and perform such duties as from time to time may be assigned to them by the Board of Trustees or the President, as the case may be. At the request or in the absence or disability of the President, as the case may be, the Vice President (or, if there are two or more Vice Presidents, then the senior of the Vice Presidents present and able to act) may perform all the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 8. Treasurer and Assistant Treasurers. The Treasurer shall be the principal financial and accounting officer of the Trust and shall have general charge of the finances and books of account of the Trust. Except as otherwise provided by the Board of Trustees, he shall have general supervision of the funds and property of the Trust and of the performance by the Custodian of its duties with respect thereto. He shall render to the Board of Trustees, whenever directed by the Board, an account of the financial condition of the Trust and of all his transactions as Treasurer; and as soon as possible after the close of each fiscal year he shall make and submit to the Board of Trustees a like report for such fiscal year. He shall perform all acts incidental to the Office of Treasurer, subject to the control of the Board of Trustees.

Any Assistant Treasurer may perform such duties of the Treasurer as the Treasurer or the Board of Trustees may assign, and, in the absence of the Treasurer, he may perform all the duties of the Treasurer.

Section 9. Secretary and Assistant Secretaries. The Secretary shall attend to the giving and serving of all notices of the Trust and shall record all proceedings of the meetings of the Shareholders and Trustees in books to be kept for that purpose. He shall keep in safe custody the seal of the Trust, and shall have charge of the records of the Trust, including the stock books and such other books and papers as the Board of Trustees may direct and such books, reports, certificates and other documents required by law to be kept, all of which shall at all reasonable times be open to inspection by any Trustee. He shall perform such other duties as appertain to his office or as may be required by the Board of Trustees.

Any Assistant Secretary may perform such duties of the Secretary as the Secretary or the Board of Trustees may assign, and, in the absence of the Secretary, he may perform all the duties of the Secretary.

Section 10. Subordinate Officers. The Board of Trustees from time to time may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority and perform such duties as the Board of Trustees may determine. The Board of Trustees from time to time may delegate to one or more officers or agents the power to appoint any such subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties.

Section 11. Remuneration. The salaries or other compensation of the officers of the Trust shall be fixed from time to time by resolution of the Board of Trustees, except that the Board of Trustees may by resolution delegate to any person or group of persons the power to fix the salaries or other compensation of any subordinate officers or agents appointed in accordance with the provisions of Section 10 of this Article V.

Section 12. Surety Bonds. The Board of Trustees may require any officer or agent of the Trust to execute a bond (including, without limitation, any bond required by the 1940 Act and the rules and regulations of the Securities and Exchange Commission) to the Trust in such sum and with such surety or sureties as the Board of Trustees may determine, conditioned upon the faithful performance of his duties to the Trust, including responsibility for negligence and for the accounting of any of the Trust's property, funds or securities that may come into his hands.

ARTICLE VI

SHARES

Section 1. Shares of Beneficial Interest. The interest of each Shareholder of the Trust shall be represented by shares of beneficial interest in such form as the Board of Trustees may from time to time prescribe. The Board of Trustees may authorize the issuance of certificated and uncertificated shares by the Trust, and may prescribe procedures for the issuance and registration or transfer thereof, and with respect to such other matters relating to certificated and uncertificated shares as the Board of Trustees may deem appropriate. To the extent permitted by law, such authorization may affect previously issued and outstanding shares represented by certificates whether or not such certificates shall have been surrendered to the Trust.

In the event that the Board of Trustees authorizes the issuance of uncertificated shares of beneficial interest, the Board of Trustees may, in its discretion and at any time, discontinue or re-continue the issuance of share certificates and may, by written notice to the registered owners of each certificated share, require the surrender of share certificates to the Trust for cancellation. Such surrender and cancellation shall not affect the ownership of shares of the Trust.

Section 2. Transfer of Shares. Shares of the Trust shall be transferable on the books of the Trust by the holder thereof in person or by his duly authorized attorney or legal representative (i) if a certificate or certificates have been issued, upon surrender and cancellation of a certificate or certificates for the same number of shares of the same class, duly endorsed or accompanied by proper instruments of assignment and transfer, with such proof of the authenticity of the signature as the Trust or its agents may reasonably require, or (ii) as otherwise prescribed by the Board of Trustees. The Shares of the Trust may be freely transferred, and the Board of Trustees may, from time to time, adopt rules and regulations with reference to the method of transfer of the Shares of the Trust. The Trust shall be entitled to treat the holder of record of any Share as the absolute owner thereof for all purposes, and accordingly shall not be bound to recognize any legal, equitable, or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by law or the statutes of the State of Delaware.

Section 3. Share Ledgers. The share ledgers of the Trust, containing the names and addresses of the Shareholders and the number of shares held by them respectively, shall be kept at the principal office of the Trust or, if the Trust employs a transfer agent, at the offices of the transfer agent of the Trust. The share ledgers of the Trust shall be considered confidential and shall not be made available, except as required by applicable law to be made available to Shareholders of record for a proper purpose in such capacity.

Section 4. Transfer Agents and Registrars. The Board of Trustees or the President may from time to time appoint or remove transfer agents and/or registrars of transfers of Shares of the Trust, and it may appoint the same person as both transfer agent and registrar.

Section 5. Fixing of Record Date. The Board of Trustees or any committee thereof may fix in advance a date as a record date for the determination of the Shareholders entitled to notice of, or to vote at, any Shareholders' meeting or any adjournment thereof, or to express consent to action in writing without a meeting, or to receive payment of any dividend or other distribution, or to be allotted any other rights, or for the purpose of any other lawful action, provided that (1) such record date shall not exceed 150 days preceding the date on which the particular action requiring such determination will be taken; (2) the transfer books shall remain open regardless of the fixing of a record date; and (3) in the case of a meeting of Shareholders, the record date shall be at least 10 days before the date of the meeting.

Section 6. Lost, Stolen or Destroyed Certificates. In the event that the Board of Trustees discontinues the issuance of share certificates, thereafter shares represented by lost, stolen, or destroyed certificates shall be deemed registered and transferrable on the books of Trust. Before registering shares represented by lost, stolen, or destroyed certificates on the books of Trust, the Board of Trustees or any officer authorized by the Board may, in its discretion, require the owner of the lost, stolen, or destroyed certificate (or his legal representative) to give the Trust a bond or other indemnity, in such form and in such amount as the Board or any such officer may direct and with such surety or sureties as may be satisfactory to the Board or any such officer, sufficient to indemnify the Trust against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate.

ARTICLE VII

FISCAL YEAR AND ACCOUNTANT

Section 1. Fiscal Year. The fiscal year of the Trust shall be as ordered by the Board of Trustees.

Section 2. Accountant. The Trust shall employ an independent public accountant or a firm of independent public accountants as its Accountants to examine the accounts and financial statements of the Trust. The employment of the Accountant shall be conditioned upon the right of the Trust to terminate the employment forthwith without any penalty by vote of a majority of the outstanding voting securities at any Shareholders' meeting called for that purpose.

ARTICLE VIII

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

To the maximum extent permitted by the Delaware Act and, to the extent applicable, the 1940 Act, the Trust shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a current or former Continuing Trustee, officer, or employee of the Trust and who is made a party to the proceeding by reason of his or her service in that capacity or (b) any individual who, while a Continuing Trustee, officer, or employee of the Trust and at the request of the Trust, serves or has served in a similar capacity for another entity and who is made a party to the proceeding by reason of his or her service in that capacity. The Trust may, with the approval of its Board of Trustees, provide such indemnification and advance for expenses to a Continuing Trustee who served a predecessor of the Trust in any of the capacities described in (a) or (b) above and to any officer, or employee of a predecessor of the Trust.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Bylaws or Declaration inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal, or adoption.

No provision of this Article VIII shall be effective to protect or purport to protect any Continuing Trustee, officer, or employee of the Trust against liability to the Trust or its Shareholders to which he or she would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence, or reckless disregard of the duties involved in the conduct of his or her office.

ARTICLE IX

ADOPTION, ALTERATION, OR REPEAL OF BYLAWS; SEVERABILITY

Except as otherwise expressly provided in these Bylaws, the Continuing Trustees shall have the exclusive power to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws. If any provision of these Bylaws, or the application thereof to any person or entity or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (ii) the remainder of these Bylaws and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

ARTICLE X

EXCLUSIVE FORUM

Unless the Trust consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, in the event that the Court of Chancery does not have jurisdiction, the Superior Court of the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Trust, (ii) any action asserting a claim of breach of any duty owed by any Trustee or officer or other employee of the Trust to the Trust or to the Shareholders of the Trust, including, for purposes of this Article, record and beneficial owners, (iii) any action asserting a claim against the Trust or any Trustee or officer or other employee of the Trust arising pursuant to any provision of the Delaware Statutory Trust Act or the Declaration or these Bylaws, (iv) any action to interpret, apply, enforce or determine the validity of the Declaration or these Bylaws, or (v) any action asserting a claim against the Trust or any Trustee or officer or other employee of the Trust that is governed by the internal affairs doctrine.

If any action within the scope of this Article is filed in a court other than the Court of Chancery of the State of Delaware, the Superior Court of the State of Delaware, or the federal district court for the District of Delaware (a "Foreign Action") in the name of any Shareholder, such Shareholder shall be deemed to have consented to (i) the personal jurisdiction of the Court of Chancery of the State of Delaware, the Superior Court of the State of Delaware, and the federal district court for the District of Delaware in connection with any action brought in any such court to enforce this Article X, and (ii) having service of process made upon such Shareholder in any such action by service upon such Shareholder's counsel in the Foreign Action as agent for such Shareholder.

Exhibit D

After printing this label:
1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.
Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery,misdelivery,or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental,consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss.Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

GODFREY & KAHN S.C.

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Direct: 608-284-2226
pkrill@gklaw.com

January 30, 2020

VIA FEDERAL EXPRESS
Alison Pampinella
267 84th Street
Brooklyn, NY 11209-4315

RE: Dividend and Income Fund ("DNI") – Shareholder Proposal

Ms. Pampinella,

On behalf of DNI, this letter acknowledges receipt of your letter dated January 16, 2020 requesting that DNI include a shareholder proposal in its proxy statement for its 2020 Annual Meeting of Shareholders (the "2020 Annual Meeting"), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Your letter was received on January 22, 2020.

We have reviewed the proposal and supporting statement submitted by you on in the above-referenced letter (the "Proposal") and, based on that review and for the reasons stated below, DNI intends to omit the Proposal from its proxy statement and form of proxy for the 2020 Annual Meeting (the "Proxy Materials"). A copy of the Proposal, together with the accompanying cover letter, is attached to this letter as Exhibit A, and a copy of Rule 14a-8 is attached to this letter as Exhibit B.

BASIS FOR EXCLUSION

DNI believes that it may properly omit the Proposal from the Proxy Materials for the 2020 Annual Meeting for the following reasons:

1. *Proponent has failed to demonstrate eligibility to submit a proposal in accordance with Rule 14a-8(b).* The correspondence from Muriel Siebert & Co., Inc. submitted with the Proposal is insufficient to adequately verify your eligibility to submit a shareholder proposal under Rule 14a-8.
2. *The Proposal contains false and misleading assertions that directly and indirectly impugn the character of DNI.* The Proposal may be excluded pursuant to Rule 14a-8(i)(3) and Rule 14a-9 under the Exchange Act because it is false and misleading with respect to material facts and directly and indirectly impugns the character of DNI and makes charges concerning improper, illegal or immoral conduct without factual foundation.
3. *The Proposal contains false and misleading statements and omissions in violation of Rule 14a-9.* The Proposal may be excluded pursuant to Rule 14a-8(i)(3) and Rule 14a-9 under the Exchange Act because it omits material facts relating to your identity as a member of, and your relationship to, the Bulldog Investors, LLC, Phillip Goldstein, and Andrew Dakos group.

ANALYSIS

1. DNI may exclude the Proposal because you have failed to demonstrate eligibility to submit a proposal in accordance with Rule 14a-8.

Pursuant to Rule 14a-8(b)(2) under the Exchange Act, in order to be eligible to submit a proposal under Rule 14a-8, a shareholder "must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to vote on the proposal at the meeting for at least one year by the date [such shareholder] submit[s] the proposal. [Such shareholder] must continue to hold those securities through the date of the meeting." Shareholders who are not registered holders of the subject company's shares (and who have not filed an ownership report with the Securities and Exchange Commission (the "SEC")) must prove eligibility under Rule 14a-8(b)(2) by submitting "... to the company a written statement from the 'record' holder of [such shareholder's] securities (usually from a broker or a bank) verifying that, at the time you submitted your proposal, [such shareholder] continuously held the securities for at least one year." Further, in accordance with the staff of the SEC position as set forth in *Staff Legal Bulletin No. 14F (CF)* (October 18, 2011) ("SLB 14F"), "... for Rule 14a-8(b)(2)(i) purposes, *only DTC participants should be viewed as 'record' holders of securities that are deposited at DTC.*" [Emphasis added]

According to DNI's records, you are not a registered holder of DNI. Further, the correspondence from Muriel Siebert & Co. Inc. that you submitted with the Proposal indicating your ownership in DNI based on "historical statements," presumably to verify your eligibility under Rule 14a-8(b)(2), is deficient in two respects: (1) the letter does not specifically verify that you owned the securities continuously for a period of one year *as of the time of submitting the Proposal*, as required under SLB 14F(B); and (2) based on our review of the most recent version of DTC's eligible participant list,[1] Muriel Siebert & Co. Inc. is not a DTC participant, in which case the firm is not the "record" holder of the securities and is not eligible under the guidance described above to provide the required verification of your share ownership.

2. The Proposal contains false and misleading statements that directly and indirectly impugn the character of DNI and constitute charges concerning improper, illegal or immoral conduct without factual foundation.

Rule 14a-8(i)(3) permits a company to omit a shareholder proposal and related supporting statement from its proxy materials if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9..." As discussed below, DNI believes that the Proposal should be excluded pursuant to Rule 14a-8(i)(3) because the Proposal contains false and misleading statements that directly and indirectly impugn the character of DNI and constitute charges concerning improper, illegal or immoral conduct without factual foundation, in violation of Rule 14a-9, including Note (b) thereto.

From the first sentence to the very end, the Proposal is riddled with statements that DNI believes are clearly intended to mislead readers into believing that DNI has and is continuing to engage in

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[1] *See* DTC Participant Report, Month Ending – December 31, 2019, at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx

behavior that is improper, illegal or immoral. Among such false and misleading statements are the following (emphasis added):

- *"The Fund's rigged election bylaw should be replaced with the following one ...";*
- *"To illustrate how that requirement rigs elections in favor of incumbent Trustees ...";*
- *"Sham elections may occur in dictatorships like Cuba or Venezuela, but they are prohibited in the United States of America ...";*
- *"Therefore, the rigged election bylaw should be replaced with the following one ...".*

Perhaps the most important assets of any firm, and particularly of investment companies such as DNI, are its reputation and the confidence of its investors, potential investors and the investment community at large. Therefore, any false and misleading statements intended to directly or indirectly impugn the character of a firm in a direct communication to investors are inherently material in that there is a substantial likelihood that a reasonable shareholder would consider them important in deciding how to vote. Your statements that DNI's election process or governing documents are "rigged," or that DNI improperly "rigs" elections in favor of its preferred candidates, or comparing DNI or its processes to those of "dictatorships like Cuba or Venezuela" – all made without any semblance of legal or factual (as opposed to your own subjective, inflammatory) foundation – clearly constitute charges that DNI's processes, governing documents and behavior are improper, illegal and immoral. In fact, none of DNI's processes or governing documents are in any sense illegal, and DNI emphatically denies your implication of any such improper, illegal or immoral conduct.

Based on the foregoing, it is DNI's belief that the statements in the Proposal described above represent a clear violation of Rule 14a-9 and, as a result, the Proposal should be excluded from DNI's Proxy Materials pursuant to Rule 14a-(8)(i)(3).

3. DNI may exclude the Proposal pursuant to Rule 14a-8(i)(3) and Rule 14a-9 because the Proposal is misleading as to the identity of the proponent.

The Proposal purports to be made by you, Alison Pampinella, as an individual proponent. However, the facts would indicate that this assertion is misleading, at best.

On January 21, 2020, a Schedule 13D (the "Schedule 13D") relating to DNI was filed on behalf of Bulldog Investors, LLC, Phillip Goldstein, and Andrew Dakos (the "Bulldog Group"). "Item 4. Purpose of the Transaction" of the Schedule 13D contained the following statement: "See exhibit B - Letter to the Secretary from a Fund shareholder." Exhibit B to the Schedule 13D is a copy of the Proposal, including the accompanying cover letter. Further, the envelope received by DNI containing the Proposal had the following return address: Andrew Dakos, Bulldog Investors, Park 80 West – 250 Pehle Ave, Suite 708, Saddle Brook, NJ 07663, indicating a relationship between you and the Bulldog Group beyond that which would be customary as between a fund and an arm's-length investor. Moreover, on information and belief, it is DNI's understanding that you are a family member of Mr. Goldstein, a member of the Bulldog Group.

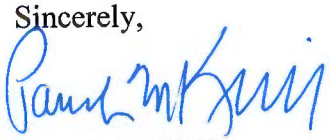
Pursuant to Rule 13d-5(b) under the Exchange Act, a "group" is defined as "two or more persons [that] agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer." It is not necessary under the rule that such an agreement to act together be in writing; such an agreement can be inferred by the SEC or a court from the concerted actions or common objective of the group members. The factual context described above strongly indicates that you and the Bulldog Group have agreed to act together such that you should be considered one and the same "group." However, "Item 5. Interest In Securities Of The Issuer" of the Schedule 13D made no reference to you as a part of such group. Nor are you included as a signatory to the joint filing agreement attached as Exhibit A to the Schedule 13D. We further note that you have not filed a separate Schedule 13D disclosing your DNI share ownership and other interests in DNI or its relationship with Bulldog Investors, LLC, Phillip Goldstein, Andrew Dakos or the Bulldog Group, of whose shares you may be deemed to be a beneficial owner due to your group status, or any of the other information required under Schedule 13D (such as, for example, certain information relating to your criminal history or past violations of securities laws and regulations, if any).

Setting aside potential issues associated with the Bulldog Group's and your Schedule 13D disclosure and filing issues, under the circumstances described above, DNI believes that your relationship to and membership of a group with the Bulldog Group is material to the Proposal as it could, in fact, be deemed to be a proposal on behalf of the Bulldog Group as a whole, rather than you as an individual. DNI believes that there is a substantial likelihood that a reasonable shareholder would consider this information to be important in deciding how to vote based the Bulldog Group's description of its own trading techniques as "activist" (as described on its website)[2]. Accordingly, DNI considers the omission to be material and in violation of Rule 14a-9. As a result, DNI believes that the Proposal should be should be excluded from DNI's Proxy Materials pursuant to Rule 14a-(8)(i)(3).

CONCLUSION

The rules of the SEC require that your response to this letter be postmarked or transmitted electronically no later than 14 days from the date you receive this letter. Please address any response to me at the street and/or e-mail address set forth above, with a copy to: Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund, 11 Hanover Square, 12th Floor, New York, NY 10005; or via e-mail at rkamerman@dividendandincomefund.com.

Sincerely,



Pamela M. Krill

cc: Thomas B. Winmill, President, DNI
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, DNI

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[2] *See, e.g.*, https://bulldoginvestors.com/services/

Exhibit A

Alison Pampinella, 267 84th St, Brooklyn NY 11209-4315

January 16, 2020

Dividend and Income Fund
11 Hanover Square, 12th Floor
New York, New York 10005

Attn: Russell Kamerman, Secretary

Dear Mr. Kamerman:

I am the beneficial owner of shares of Dividend and Income Fund with a value in excess of $2,000.00. I have held these shares for over 12 months and plan to continue to hold them through the next meeting of shareholders.

I hereby submit the following proposal and supporting statement pursuant to rule 14a-8 of the Securities Exchange Act of 1934 for inclusion in management's proxy materials for the next meeting of stockholders for which this proposal is timely submitted.

****

RESOLVED: The Fund's rigged election bylaw should be replaced with the following one: "The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees."

SUPPORTING STATEMENT

The Fund's Trustees have adopted a voting requirement that provides that, unless they run unopposed, "the affirmative vote of the holders of at least 75% of the outstanding Shares of the Trust entitled to be voted shall be required to elect a Trustee." On the other hand, if the incumbent Trustees run unopposed, they only need one vote to be elected. To illustrate how that requirement rigs elections in favor of the incumbent Trustees, consider that at the Fund's last annual meeting, fewer than 40% of the outstanding shares (excluding shares voted by brokers on routine matters) were actually voted. Thus, in any election for Trustees in which shareholders have a choice of nominees, it is almost certain than no Trustees will be elected. The result would then be a so-called "failed election" which would leave the incumbent Trustees in their positions as "holdover" (or unelected) Trustees – even if they receive fewer votes than their opponents.

That is patently unfair and makes a mockery of the word "election" which is supposed to be a means to allow voters to choose the persons they want to represent them. Sham elections may occur in dictatorships like Cuba or Venezuela but they are prohibited in the United States of

America. In this country, the incumbent office holders may not adopt election requirements that virtually guarantee they can never lose an election. Therefore, the rigged election bylaw should be replaced with the following one: "The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees."

Very truly yours,

Alison Pampinella

Alison Pampinella

SIEBERT MURIEL SIEBERT & CO., INC.
MEMBER NYSE, FINRA & SIPC

January 16,2020

Re: Alison Pampinella: Dividend and Income Fund (symbol DNI)

To whom it may concern:

Based on historical statements, Muriel Siebert & Co. can confirm that Alison Pampinella has held shares of DNI (Dividend and Income Fund) valued at greater than $2000.00 continuously for a period of at least 12 months.

Please contact us at 1-800-993-2002 if any supporting documentation is necessary.

Scott Halverson

Senior Vice President

4950 Northdale Blvd | Suite 105 | Tampa, FL 33624
(800) 872-0444 | Fax. (212) 486-2784

Exhibit B

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company

Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (I)(1):
Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (I)(2):
We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (I)(9):
A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (I)(10):
A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

21774986.7

February 13, 2020

Dear Customer,

The following is the proof-of-delivery for tracking number: 777646076139

Delivery Information:

Status:	Delivered	**Delivered To:**	Residence
Signed for by:	Signature not required	**Delivery Location:**	
Service type:	FedEx Priority Overnight		BROOKLYN, NY,
Special Handling:	Deliver Weekday; Residential Delivery	**Delivery date:**	Jan 31, 2020 10:06

Shipping Information:

Tracking number:	777646076139	**Ship Date:**	Jan 30, 2020
		Weight:	0.5 LB/0.23 KG

Recipient:	**Shipper:**
BROOKLYN, NY, US,	Madison, WI, US,

Reference 012693-0011/2226

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Thank you for choosing FedEx

Huynh, Michelle (BOS)

From: TrackingUpdates@fedex.com
Sent: Saturday, February 22, 2020 10:18 AM
To: Huynh, Michelle (BOS)
Subject: [Ext] FedEx Shipment 390566003025 Delivered

Your package has been delivered

Tracking # 390566003025

Ship date:
Fri, 2/21/2020

Michelle Huynh
Skadden,Arps,Slate,Meagher&FlomLLP
Boston, MA 02116
US

Delivered

Delivery date:
Sat, 2/22/2020 10:15 am

Alison Pampinella
267 84TH ST
BROOKLYN, NY 11209
US

Personalized Message

PSShip eMail Notification

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	390566003025
Status:	Delivered: 02/22/2020 10:15 AM Signed for By: Signature not required
Reference:	22346000002Michelle Huynh
Signed for by:	Signature not required
Delivery location:	BROOKLYN, NY
Delivered to:	Residence
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	1.00 lb.
Special handling/Services:	Saturday Delivery
	No Signature Required
	Residential Delivery

Standard transit:	2/22/2020 by 12:00 pm

This tracking update has been requested by:

Company name:	Skadden,Arps,Slate,Meagher&FlomLLP
Name:	Michelle Huynh
Email:	Michelle.Huynh@skadden.com

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:17 AM CST on 02/22/2020.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

This tracking update has been sent to you by FedEx on behalf of the Requestor Michelle.Huynh@skadden.com. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

Thank you for your business.

Exhibit C

DIVIDEND AND INCOME FUND
11 Hanover Square
12th Floor
New York, NY 10005

March 3, 2020

Alison Pampinella
267 84th Street
Brooklyn, NY 11209-4315

RE: Your Shareholder Proposal for the 2020 Annual Meeting of Shareholders of Dividend and Income Fund

Dear Ms. Pampinella:

Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), which represents Dividend and Income Fund (the "Fund"), received an email on March 3, 2020 relating to above referenced matter from Philip Goldstein who claims be your father. Neither the Fund nor Skadden has received documentation in support of this claim. Accordingly, neither the Fund nor Skadden will communicate with Mr. Goldstein in connection with the above referenced matter until sufficient documentation has been delivered to the Fund appointing Mr. Goldstein as your authorized representative.

Very truly yours,

Russell Kamerman

Secretary

Exhibit D

From: Phil Goldstein [mailto:PGoldstein@bulldoginvestors.com]
Sent: Saturday, March 07, 2020 1:18 PM
To: Russell Kamerman <rkamerman@winmillco.com>
Cc: DeCapo, Thomas A <Thomas.DeCapo@skadden.com>; 'Alison Pampinella' <agp84@outlook.com>; Gregory Keller <gkeller@shahmoonkeller.com>; Carol Shahmoon <cshahmoon@shahmoonkeller.com>; Andrew Dakos <ADakos@bulldoginvestors.com>; Stephanie Darling <SDarling@bulldoginvestors.com>; Rajeev Das <RDas@bulldoginvestors.com>; IMshareholderproposals@SEC.GOV
Subject: Your letter

Dear Mr. Kamerman,

My daughter, Alison Pampinella, sent me a text message with the attached photo of a letter from you in which you express doubt about a "claim" that I am her father. Your letter was in a Fedex envelope that was left on her doorstep despite my (attached) March 3rd email to Mr. Decapo, who **claims** to be a lawyer at Skadden Arps, a law firm that **claims** to represent DNI, advising him that it would be better to get a signature when sending her important letters. See the attached email to Mr. DeCapo.

Should my daughter and I request "sufficient documentation" delivered to us authorizing Skadden and Mr. Decapo to represent DNI before we communicate further with you. What documentation would be sufficient and who would make that determination? Should we demand a signed engagement letter? That could be forged. How about a notarized statement signed by you and Mr. DeCapo? I don't even know for sure if you are who you say you are and if you are authorized to represent the board. Perhaps you can send me a signed board resolution approving each communication you send to me or Alison. As Yul Brenner said in The King and I, "Tis a puzzlement."

As far as our documentation, would you like Alison and I to provide DNA results to prove she is my daughter? On the other hand, she might be adopted. Nor do you know for sure that she is who she says she is.

Seriously, is it possible that Mr. DeCapo is not really representing DNI? If that was true, how would you have known about the March 3rd email I sent to him (and cc'd to Alison)? Similarly, do you really think I am engaging in some trickery by claiming to represent Alison, given that Bulldog filed her Rule 14a-8 proposal on EDGAR and I referenced the "FedEx package of documents regarding her Rule 14a-8 shareholder proposal for DNI" in my email to Mr. DeCapo? How else would we know about those things?

I am also attaching a copy of the stock certificate you demanded despite (1) the fact that DNI did not have a procedure to issue certificates at the time we submitted our advance notice, and (2) I previously provided a book entry receipt from AST, DNI's transfer agent, for my registered shares. I note that the certificate is signed by you and that the number is 001, which suggests that I am the first and only shareholder with a certificate. (I wonder if I could sell it on eBay for a hefty premium.)

It seems you are engaging in gamesmanship, presumably in the hope that Alison or I will fail to meet some pointless demand and that you can then use against us. I cannot think of any good reason for demanding (1) authorization from my daughter that I represent her when you have no doubt I do, (2) failing to call Alison's stock broker to confirm (as I have explained to you) that it is a DTC participant that was having its name changed while continuing to claim it is not a DTC participant, or (2) obtaining a stock certificate when there is no doubt I am a registered stockholder. If you have some other reason for making me jump through these hoops, please tell me what that is.

Phillip Goldstein
Bulldog Investors
(914) 747-5262
Cell (914) 260-8248

DIVIDEND AND INCOME FUND
11 Hanover Square
12th Floor
New York, NY 10005

March 3, 2020

Alison Pampinella
267 84th Street
Brooklyn, NY 11209-4315

RE: Your Shareholder Proposal for the 2020 Annual Meeting of Shareholders of Dividend and Income Fund

Dear Ms. Pampinella:

Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), which represents Dividend and Income Fund (the "Fund"), received an email on March 3, 2020 relating to above referenced matter from Philip Goldstein who claims be your father. Neither the Fund nor Skadden has received documentation in support of this claim. Accordingly, neither the Fund nor Skadden will communicate with Mr. Goldstein in connection with the above referenced matter until sufficient documentation has been delivered to the Fund appointing Mr. Goldstein as your authorized representative.

Very truly yours,

Russell Kamerman
Secretary

Huynh, Michelle (BOS)

From: Phil Goldstein <PGoldstein@bulldoginvestors.com>
Sent: Tuesday, March 3, 2020 12:11 PM
To: DeCapo, Thomas A (BOS)
Cc: 'Alison Pampinella'; Gregory Keller; Carol Shahmoon; Andrew Dakos; Stephanie Darling
Subject: DNI Letter to SEC

Dear Mr. DeCapo.

FYI, my daughter, Alison Pampinella, just called me to tell me she found the FedEx package of documents regarding her Rule 14a-8 shareholder proposal for DNI that (presumably) your assistant sent to her on her front steps. No one even rang her bell. She will scan the letter you sent to the SEC staff tomorrow and email it to me and I will decide if we need to prepare a response. If you would like to send me a copy of the letter to the staff of the SEC by email today, please do so. (I don't think I need any of the supporting documents.)

In the future, you might consider requiring a signature for delivery.

Thanks.

Phillip Goldstein
Bulldog Investors
(914) 747-5262
Cell (914) 260-8248

17885 0000001

NUMBER
001

DIVIDEND AND INCOME FUND

SHARES
********100***

ORGANIZED AS A STATUTORY TRUST UNDER THE LAWS OF THE STATE OF DELAWARE

CUSIP 25538A 20 4

$0.01 PAR VALUE PER SHARE

SEE REVERSE FOR CERTAIN DEFINITIONS

This Certifies That

PHILIP GOLDSTEIN
60 HERITAGE DR
PLEASANTVILLE NY 10570

********100******
*********100*****
**********100****
***********100***
************100**
*************100*

0000010084

is the owner of **ONE HUNDRED**

Fully Paid and Non-Assessable Shares of Beneficial Interest, $0.01 Par Value of

DIVIDEND AND INCOME FUND

transferable on the books of this Trust in person or by attorney upon surrender of this Certificate duly endorsed or assigned. This Certificate and the shares represented hereby are subject to the laws of the State of Delaware, and to the Agreement and Declaration of Trust and the Bylaws of the Trust, as now or hereafter amended. This Certificate is not valid until countersigned by the Transfer Agent.

IN WITNESS WHEREOF, the Trust has caused this Certificate to be signed by the facsimile signatures of its duly authorized officers and to be sealed with the facsimile seal of the Trust.

Dated: MARCH 02, 2020
1788500046O
CGRA

PRESIDENT

DIVIDEND AND INCOME FUND TRUST SEAL DELAWARE

SECRETARY

Countersigned:
AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC
6201 15th Avenue
Brooklyn, NY 11219

By _____
Transfer Agent and Registrar Authorized Officer

Exhibit E

Bulldog Investors, LLC, 250 Pehle Avenue, Suite 708, Saddle Brook, NJ 07663
(201) 881-7111 // Fax: (201) 556-0097 // pgoldstein@bulldoginvestors.com

March 9, 2020

Chairman Jay Clayton
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison Herren Lee
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Skadden Scheme to Exempt Issuers From Compliance With Rule 14a-8

Dear Chairman Clayton and Commissioners Peirce, Roisman, and Lee:

I am writing to alert you to a novel scheme ("the Skadden Scheme") being advanced by Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") to permit an issuer to evade any obligation it would otherwise have to comply with Rule 14a-8. The Skadden Scheme has passed muster at the Staff level and your intervention is necessary to prevent this viral scheme from spreading further.

I am a managing member of Bulldog Investors, LLC, a registered investment advisor and the father of Alison Pampinella, a beneficial shareholder of Dividend & Income Fund ("DNI" or "the Fund"). Pursuant to Rule 14a-8, Alison submitted the following proposal to DNI for inclusion in its proxy materials for its 2020 annual meeting of stockholders:

> *RESOLVED: The Fund's rigged election bylaw should be replaced with the following one: "The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees."*
>
> *SUPPORTING STATEMENT*
>
> *The Fund's Trustees have adopted a voting requirement that provides that, unless they run unopposed, "the affirmative vote of the holders of at least 75% of the outstanding Shares of the Trust entitled to be voted shall be required to elect a Trustee." On the other hand, if the incumbent Trustees run unopposed, they only need one vote to be elected. To illustrate how that requirement rigs elections in favor of the incumbent Trustees, consider that at the Fund's last annual meeting, fewer than 40% of the outstanding shares (excluding shares voted by brokers on routine matters) were actually voted. Thus, in any election for Trustees in which shareholders have a choice of nominees, it is almost certain than no Trustees will be elected. The result would then be a so-called "failed election" which would leave the incumbent Trustees in their positions as "holdover" (or unelected) Trustees – even if they receive fewer votes than their opponents.*

That is patently unfair and makes a mockery of the word "election" which is supposed to be a means to allow voters to choose the persons they want to represent them. Sham elections may occur in dictatorships like Cuba or Venezuela but they are prohibited in the United States of America. In this country, the incumbent office holders may not adopt election requirements that virtually guarantee they can never lose an election. Therefore, the rigged election bylaw should be replaced with the following one: "The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees."

On behalf of DNI, Skadden has submitted the enclosed letter to the Staff of the Division of Investment Management requesting "no action" assurance if DNI omits Alison's proposal from its proxy materials. Among other things,[1] Skadden argues that (1) Rule 14a-8(b)(1) requires that in order to be eligible to have a proposal included in a company's proxy materials, a securityholder must hold "securities entitled to be voted on the proposal," and since (2) DNI's organizational documents prohibit shareholders from voting on any proposal other than those submitted by its Board of Trustees, then DNI need not include Alison's proposal in its proxy materials because she does not hold securities entitled to be voted on any proposal submitted by shareholders.

In support of its position, Skadden cites several "no action" letters issued by the Staff of the Division of Corporation Finance ("the Staff"). It appears that the first time this argument was presented was in connection with *RAIT Financial Trust* (March 10, 2017) https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/edwardfriedman031017-14a8.pdf). In that instance, the Staff of the Division of Corporation Finance, in a brief unexplained response to a "no action" request by the issuer's counsel, stated: "There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(b)" despite the shareholder's vigorous rebuttal argument and a legal opinion supporting his position.

A few months later, Skadden, apparently seeing an opportunity to aid companies that wished to opt out of Rule 14a-8, submitted two letters on behalf of issuers requesting no action relief in connection with Rule 14a-8 proposals: *Government Properties Income Trust* (February 20, 2018) (https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/unitehere022018-14a8.pdf) and *Senior Housing Properties Trust* (February 20, 2018) (https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/unitehereseniorhousing022018-14a8.pdf). In both instances, Skadden's letters piggybacked on *RAIT Financial Trust* and the Staff concurred with Skadden.

As you know, for almost eighty years Rule 14a-8 has served as a widely used means of communication between securityholders and the companies in which they invest. The rule has been tweaked from time to time but its fundamental objective, i.e., that, subject to certain specified conditions, an issuer of publicly traded securities has an obligation to include in its proxy materials

[1] The other bases Skadden asserts for excluding Alison's proposal are irrelevant to the matter discussed herein.

a proposal submitted by a shareholder, has become an accepted, albeit controversial, part of the federal securities regulatory scheme. Indeed, Exchange Act Release No. 87458, proposing certain modifications to Rule 14a-8, has unsurprisingly generated many comments. Yet, while the Commission and market participants are pre-occupied with the finer points of Rule 14a-8, Skadden is promoting a scheme to permit issuers to effectively opt out of the rule entirely. Here is why that should be of profound concern to the Commission.

Virtually any issuer can, without shareholder approval, adopt a bylaw (or other measure) to prohibit shareholders from voting on any proposal other than those that statutorily require a shareholder vote. Because the Staff has thrice not objected to the Skadden Scheme, Skadden cited all three in its request for "no action" relief in connection with Alison's Rule 14a-8 proposal to DNI. Unless you intervene now, investors will continue to lose the benefits of Rule 14a-8.

To reiterate, Skadden argues that if (1) an issuer's organizing documents prohibit securityholders from voting on proposals other than those submitted by the board, and (2) there is no statute barring such a voting prohibition, then the issuer can omit any securityholder proposal submitted pursuant to Rule 14a-8 from its proxy materials because the rule requires the proposal submitted to be one upon which securityholders are entitled to vote.[2] Thus, the Skadden Scheme would allow issuers, by fiat, to evade entirely any obligation to include in its proxy materials virtually any shareholder proposal submitted pursuant to Rule 14a-8. We shall explain why Skadden is incorrect.

Rule 14a-8(b)(1) states:

> Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

In that context, the phrase "entitled to be voted on the proposal" defines a <u>shareholder</u> that is eligible to submit a proposal for inclusion in an issuer's proxy materials, i.e., only a <u>shareholder</u> who could cast a vote on the subject proposal is eligible.[3] Conversely, the phrase is not intended to limit the <u>types of proposals</u> that may be voted on by shareholders. Rather, the types of proposal that are excludable by an issuer are enumerated in Rule 14a-8(i). In particular, Rule 14a-(8)(i)(1) ("Improper under state law: If the proposal is not a proper subject for action by shareholders under

[2] Notably, Skadden does not discuss whether the management of such an issuer has a fiduciary duty not to adopt a plenary prohibition on voting on proposals submitted by shareholders. In actuality, management's determination to adopt a bylaw that bars a vote on any precatory proposal is arguably presumptively a breach of fiduciary duty and therefore invalid.

[3] For example, a common stockholder could not submit a proposal under Rule 14a-8 if only preferred stockholders are entitled to vote on the proposal, e.g., the removal of a director who was elected solely by the preferred stockholders.

the laws of the jurisdiction of the company's organization") would be superfluous if Rule 14a-8(b)(1) was intended to serve as a catchall license to an issuer to effectively bar any proposal not otherwise excludable under the former rule. Consequently, it is critical that the Commission promptly reconsider RAIT and its progeny lest other issuers take similar actions to attempt to effectively opt out of their obligation to comply with Rule 14a-8.

If the Commission believes it is powerless to prevent issuers from utilizing the Skadden Scheme to effectively opt out of Rule 14a-8, there are other measures it can consider. At a minimum, it should (1) require any issuer that employs the Skadden Scheme to prominently and fully disclose in its soliciting materials and elsewhere that shareholders may not rely on Rule 14a-8 to submit proposals, and (2) take the position that failure to provide adequate disclosure may constitute a fraudulent omission.[4]

Another alternative for the Commission is to encourage the stock exchanges it oversees to require listed issuers not to prohibit a vote on any shareholder proposal that is not prohibited by statute.

Sincerely yours,

Phillip Goldstein
Managing Member

cc via email: Alison Pampinella
Thomas B. Winmill, President, Dividend and Income Fund
Russel Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund
Thomas A. DeCapo, Skadden, Arps, Slate, Meagher & Flom LLP
The Division of Investment Management

[4] DNI's proxy disclosure has been woefully inadequate in this respect. For example, DNI's 2019 proxy statement obtusely states: "If you wish to have your proposal considered for inclusion in the Fund's 2020 Proxy Statement, we must receive it on or before January 22, 2020, pursuant to Rule 14a-8(e)(2) of the Exchange Act. The submission by a shareholder of a proposal for inclusion in the proxy statement or presentation at the Meeting does not guarantee that it will be included or presented. Shareholder proposals are subject to certain requirements under the federal securities laws and Delaware law and must be submitted in accordance with the Fund's Governing Documents, the Nominating Committee Charter and Appendix A thereto, the Policy, and other applicable laws and/or documents." It should have said something like this: "The Fund prohibits shareholders from voting on any proposal submitted by a shareholder unless such a vote is required by statute. If you submit a proposal pursuant to Rule 14a-8 for which no statute requires a vote by shareholders, it will not be included in the Fund's 2020 Proxy Statement."

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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BOSTON, MASSACHUSETTS 02116-3740
TEL: (617) 573-4800
FAX: (617) 573-4822
www.skadden.com

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SHANGHAI
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
617-573-4814
DIRECT FAX
617-305-4814
EMAIL ADDRESS
THOMAS.DECAPO@SKADDEN.COM

February 21, 2020

VIA ELECTRONIC MAIL (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Office of the Chief Counsel
Division of Investment Management
100 F Street, N.E.
Washington, D.C. 20549

RE: Dividend and Income Fund
Securities and Exchange Act of 1934
Omission of Shareholder Proposal Pursuant to Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the Dividend and Income Fund (the "Fund"), pursuant to Rule 14a-8(j) promulgated under the Securities and Exchange Act of 1934 (the "Exchange Act") to request that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Fund's view that, for the reasons stated below, the shareholder proposal and supporting statement (collectively, the "Proposal") of Alison Pampinella (the "Proponent") may be properly omitted from the proxy materials (the "Proxy Materials") to be distributed by the Fund in connection with its 2020 annual meeting of shareholders ("2020 Annual Meeting"). The Proposal and other materials submitted by the Proponent to the Fund on January 22, 2020 are attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its attachments are being emailed to imshareholderproposals@sec.gov. In accordance with Rule 14a-8(j)(1), a copy of this letter and its attachments are being sent simultaneously to the Proponent. We take this opportunity to inform the Proponent that if the Proponent elects to

submit correspondence to the Commission or the Staff with respect to the Proposal or this letter, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Fund pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D. We request that such copy be emailed to me at thomas.decapo@skadden.com.

The Fund advises that it currently intends to begin distribution of its definitive Proxy Materials on or after May 11, 2020. Accordingly, pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before the Fund currently intends to file its definitive Proxy Materials with the Commission.

BACKGROUND

The Fund is a statutory trust formed under the Delaware Statutory Trust Act (the "DSTA"). The Fund's governing documents are its Amended and Restated Declaration of Trust, dated December 13, 2018, as amended (the "Fund's Declaration of Trust"), a copy of which is attached hereto as Exhibit B, and its Bylaws, dated December 13, 2018, as amended (the "Fund's Bylaws"), a copy of which is attached hereto as Exhibit C.

The Proposal states: "RESOLVED: the Fund's rigged election bylaw should be replaced with the following one: 'The nominees that receive the most votes cast at a meeting at which a quorum is present shall be elected as Trustees.'"

The Fund received the Proposal on January 22, 2020, which was accompanied by a cover letter from the Proponent and a letter from Muriel Siebert & Co., Inc. (collectively, the "Submission"). In accordance with Rule 14a-8(f)(1), on January 30, 2020, the Fund sent a letter to the Proponent, pointing out certain procedural and eligibility deficiencies with the Submission (the "Deficiency Letter"). As suggested in Section G.3 of Staff Legal Bulletin No. 14 (July 13, 2001), the Deficiency Letter included a copy of Rule 14a-8. The Deficiency Letter notified the Proponent that the Proposal failed to comply with Rule 14a-8(b) because the correspondence from Muriel Siebert & Co., Inc. was insufficient to verify the Proponent's eligibility to submit a proposal under Rule 14a-8. The Fund also pointed out that the Proposal may be excluded under Rule 14a-8(i)(3). The Fund requested that the Proponent respond no later than 14 calendar days after the date the Proponent received the Deficiency Letter. A copy of the Deficiency Letter is attached hereto as Exhibit D.

As of the date of this letter, the Proponent has not responded to the Deficiency Letter and has not provided proof of the Proponent's ownership of the Fund's shares as required by Rule 14a-8(b).

BASES FOR EXCLUSION

The Fund believes that the Proposal may properly be excluded from the Proxy Materials for the following reasons:

- The Fund may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal and failed to timely respond to the Deficiency Letter.
- The Fund may exclude the Proposal pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal.
- The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders at the 2020 Annual Meeting under state law.
- The Fund may exclude the Proposal because it contains false and misleading statements in violation of Rule 14a-8(i)(3) and Rule 14a-9.
    - The Proposal is misleading as to the identity of the Proponent.
    - The Proposal contains false and misleading statements that directly and indirectly impugn the character of the Fund and constitute charges concerning improper, illegal or immoral conduct without factual foundation.

ANALYSIS

1. The Fund may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal and failed to timely respond to the Deficiency Letter.

Rule 14a-8(b)(1) provides that "[i]n order to be eligible to submit a proposal, [a shareholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal. [Such shareholder] must continue to hold those securities through the date of the meeting." Shareholders who are not registered holders of the subject company's shares (and who have not filed an ownership report with the Commission) must prove eligibility under Rule 14a-8(b)(2) by submitting "to the company a written statement from the 'record' holder of [such shareholder's] securities (usually from a broker or a bank) verifying that, at the time [the shareholder] submitted [such shareholder's] proposal, [such

shareholder] continuously held the securities for at least one year." Further, in accordance with the Staff's position as set forth in *Staff Legal Bulletin No. 14F (CF)* (October 18, 2011) ("SLB 14F"), "for Rule 14a-8(b)(2)(i) purposes, *only DTC participants should be viewed as 'record' holders of securities that are deposited at DTC.*" [Emphasis added.]

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8; *provided* that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.

According to the Fund's records, the Proponent is not a registered holder of the Fund's outstanding shares. Further, the correspondence from Muriel Siebert & Co., Inc. that the Proponent submitted with the Proposal indicated that the Proponent's ownership in the Fund was based on "historical statements" and did not specifically verify that the Proponent owned the Fund's shares continuously for a period of one year *as of the time of submitting the Proposal*, as required under SLB 14F. Based on the Fund's review of the most recent version of DTC's eligible participant list,[1] Muriel Siebert & Co., Inc. is not a DTC participant, in which case the firm is not the "record" holder of the securities and is not eligible to provide the required verification of the Proponent's share ownership. The Fund timely notified the Proponent of the procedural deficiency under Rule 14a-8(b) by transmitting the Deficiency Letter.

The Staff has consistently granted no-action relief to registrants where proponents have failed, following a timely and proper request by a registrant, to provide any evidence of eligibility to submit a shareholder proposal in response to a deficiency notice from the company. *See, e.g.*, *DigitalGlobe, Inc.* (Feb. 27, 2015) and *E.I. du Pont de Nemours and Company* (Dec. 31, 2014).

Accordingly, the Fund has concluded that the Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-8(b)(2), and respectfully requests the Staff's concurrence with this conclusion.

2. The Fund may exclude the Proposal pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal.

As discussed above, to be eligible to submit a shareholder proposal for inclusion in a company's proxy materials under Rule 14a-8(b), a shareholder must have held at least

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1 *See* DTC Participant Report, Month Ending – December 31, 2019, http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx

$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date such shareholder submits her proposal.

The Fund's Declaration of Trust clearly and unambiguously states that shareholders of the Fund are permitted to vote only on specific matters that are enumerated in the Fund's Declaration of Trust. Under Delaware law, beneficial owners of a statutory trust such as the Fund are only entitled to vote on those matters as specified in the statutory trust's governing instruments. Article IV, Section 2(a) provides as follows:

> The Shareholders ***shall have power to vote only with respect to*** the election or removal of Trustees as provided in Article III hereof, and with respect to the approval of certain transactions as provided in Article V and Article VI, Section 3 hereof, and such additional matters relating to the Trust or the applicable Series as may be required by applicable law, this Declaration, the Bylaws, or any registration of the Trust with the Commission (or any successor agency), or as the Trustees may consider necessary or desirable.[2] [Emphasis added.]

Neither a right to vote to amend the Fund's Bylaws nor a right to vote on a proposal that the Fund's Bylaws should be amended is within the enumerated voting rights. In addition, Article III, Section 5(c) of the Fund's Declaration of Trust expressly and unambiguously states that only the trustees and not shareholders have the power to adopt, alter or repeal a Bylaw provision and to adopt new Bylaws: "Except as otherwise expressly provided in the Bylaws, the [trustees] ***shall have the exclusive power to adopt, alter or repeal any provision of the Bylaws and to make new Bylaws***."[3] [Emphasis added.] The Fund's Bylaws do not otherwise provide that shareholders have any such power.

The Proposal asks that shareholders of the Fund adopt a resolution to change the voting standard in trustee elections. The subject matter of the Proposal, as well as the Proposal itself, are not among those enumerated matters that shareholders of the Fund are permitted to vote on pursuant to Article IV, Section 2(a) of the Fund's Declaration of Trust. Moreover, Article III, Section 5(c) of the Fund's Declaration of Trust specifically provides that only trustees

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2 This enumerated list is repeated in Article VII, Section 4 of the Fund's Declaration of Trust, which also provides that shareholders have a right to vote on any amendment to Article VII, Section 4 (relating to amendments to the Fund's Declaration of Trust). Article III relates to the election and removal of Trustees; Article V relates to a merger, sale of assets or liquidation of the Fund; and Article VI, Section 3 relates to the conversion of the Fund's shares to "redeemable securities."

3 Article IX of the Fund's Bylaws reinforces the rights of the Trustees to take action on any Bylaw amendment: "Except as otherwise expressly provided in these Bylaws, the [trustees] shall have the exclusive power to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws." The Fund's Bylaws do not otherwise provide that shareholders have any such power.

have the power to alter a Bylaw provision. Further, the Board of Trustees (the "Board," and each member, a "Trustee") does not consider it necessary or desirable that shareholders have the power to vote on the Proposal. Accordingly, the Fund believes that the shares are not entitled to be voted on the Proposal as required under Rule 14a-8(b).

The Staff has concurred with the view that a statutory trust may exclude a shareholder proposal pursuant to Rule 14a-8(b) in circumstances where its declaration of trust does not permit the shareholder proponent to vote on the subject of the proposal. In *Senior Housing Properties Trust* (February 20, 2018), the Staff accepted the position of Senior Housing Properties Trust, a Maryland REIT ("*SNH*"), that its shareholders were entitled to vote only on certain enumerated matters in its declaration of trust, which did not include the proposal in question, and that, therefore, the shareholder proponent did not hold securities entitled to be voted on the proposal as required by Rule 14a-8(b). Notably, the *Senior Housing Properties Trust* no action letter, like the present case, involved a proposal that a trustee election standard in the company's bylaws should be changed.[4] The pertinent language of SNH's declaration of trust, Article VIII, Section 8.2, provides as follows:

> Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, ***the shareholders shall be entitled to vote only on the following matters***: (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X; (c) termination of the Trust as provided in Section 12.2; (d) merger or consolidation of the Trust to the extent required by Title 8, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees. [Emphasis added.]

See Government Properties Income Trust (Feb. 20, 2018) (concurring with the exclusion of a proposal to eliminate the classification of the board of trustees of the company); *RAIT Financial*

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[4] The proposal submitted to SNH reads as follows: "RESOLVED, that the shareholders of Senior Housing Properties Trust ("SNH," or the "Company") recommend that the Board of Trustees ("the Board") take all steps necessary to require Trustee nominees to be elected by an affirmative vote of the majority of votes cast for uncontested Trustee elections, that is, when the number of Trustee nominees is the same as the number of board seats (with a plurality vote standard retained for contested Trustee elections, that is, when the number of Trustee nominees exceeds the number of board seats)."

Trust (March 10, 2017) (concurring with the exclusion of a proposal to externalize the management of the company by entering into an advisory agreement with an external adviser).

For the reasons discussed above, the Fund has concluded that the Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-8(b)(2), and respectfully requests the Staff's concurrence with this conclusion.

The Fund did not provide the Proponent with the 14-day notice described in Rule 14a-8(f)(l) on this eligibility requirement because such notice is not required if a proposal's deficiency cannot be remedied. The lack of entitlement of the shares held by the Proponent to vote on the Proposal under Delaware law cannot be remedied. Accordingly, the Fund was not required to send a 14-day notice to cure the eligibility deficiency in order for the Proposal to be excluded under Rule 14a-8(b).

An opinion of special Delaware counsel to the Fund with respect to certain matters of Delaware state law pertinent to the exclusion of the Proposal under Rule 14a-8(b)(1) will be supplementally filed with the Staff shortly following the submission of this letter.

3. The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under state law.

A company is permitted to omit a proposal from its proxy materials under Rule 14a-8(i)(1) if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of organization of the company. The Fund believes that it may exclude the Proposal from the Proxy Materials under Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders of the Fund under the laws of the State of Delaware.

The DSTA provides maximum flexibility to those forming a statutory trust to select and construct their own governance structure and provides broad power and discretion to trustees to determine the best way to manage the business and affairs of the statutory trust.[5] Consistent with these principles of Delaware law, Article II, Section 2(b) of the Fund's Declaration of Trust expressly states that "[e]very [s]hareholder, by virtue of having become a [s]hareholder, shall be held to have expressly assented and agreed to be bound by the terms of

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[5] *See* 12 Del. C. § 3825(b) ("It is the policy of this subchapter to give the maximum effect to the principle of freedom of contract and to the enforceability of governing instruments"); *PHL Variable Ins. Co. v. Price Dawe Ins. Tr.*, 28 A.3d 1059, 1077 (Del. 2011) ("The policy of the Delaware Statutory Trust Act is to give maximum effect to freedom of contract and the enforceability of governing instruments, and its provisions are to be construed broadly even if in derogation of the common law.").

this Declaration and the Bylaws."[6] In addition, the Fund's Declaration of Trust confers no general powers or rights on to shareholders and confers broad power on the Fund's Board. Article III, Section 5 of the Fund's Declaration of Trust states:

> Subject to the provisions of this Declaration, the business of the Trust shall be managed by the Trustees, and the Trustees shall have all powers necessary or convenient to carry out that responsibility . . . The Trustees may perform such acts as, in their sole discretion, are proper for conducting the business of the Trust.
>
> The Trustees shall have exclusive and absolute control over the Trust Property and over the business of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property and business in their own right, but with such powers of delegation as may be permitted by this Declaration.

Moreover, the Fund's Declaration of Trust provides that "[a]ny determination as to what is in the interests of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration, ***the presumption shall be in favor of a grant of power to the Trustees***." [Emphasis added.] Article III, Section I of the Fund's Bylaws reinforces the broad authority of the Trustees, stating that "[e]xcept as otherwise provided by law, by the Declaration or by these Bylaws, the business and affairs of the Trust shall be managed under the direction of, and all the powers of the Trust shall be exercised by or under authority of, its Board of Trustees."

As noted above, the Fund's Declaration of Trust expressly sets forth the voting rights of shareholders of the Fund, and under Delaware law, beneficial owners of a statutory trust such as the Fund are only entitled to vote on those matters as specified in the statutory trust's governing instruments. Article IV, Section 2(a) of the Fund's Declaration of Trust specifically enumerates the matters that the Fund's shareholders may vote on, and the subject matter of the Proposal and the Proposal itself are not within those enumerated matters. Article III, Section 5(c) of the Fund's Declaration of Trust, moreover, specifically states that only trustees have the power to alter a Bylaw provision. Article IX of the Fund's Bylaws reinforces that the trustees have the exclusive power to adopt, alter or repeal any provision of the Fund's Bylaws and to make new bylaws.

The Fund's Declaration of Trust is clear that the Board has authority over the business and affairs of the Fund, including the decision of whether shareholders should vote on the Proposal. Nothing in the Fund's Bylaws or under the DSTA creates a right for shareholders

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[6] Each of the Fund's Declaration of Trust and Bylaws are documents filed publicly with the Commission and available for inspection before a person decides to buy shares in the Fund.

to vote on the Proposal. Therefore, the Fund believes it may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under the laws of the State of Delaware.

4. The Fund may exclude the Proposal because it contains false and misleading statements in violation of Rule 14a-8(i)(3) and Rule 14a-9.

a. *The Proposal is misleading as to the identity of the Proponent.*

The Proposal purports to be made by Alison Pampinella as an individual proponent. However, the facts indicate that this assertion is false and misleading, in violation of Rule 14a-9, including Note (c) thereto. Note (c) to Rule 14a-9 specifies that a statement may be misleading if it fails "to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter."

On January 21, 2020, a Schedule 13D (the "Schedule 13D") relating to the Fund was filed on behalf of Bulldog Investors, LLC, Phillip Goldstein and Andrew Dakos (collectively, the "Bulldog Group"). "Item 4. Purpose of the Transaction" of the Schedule 13D contained the following statement: "See exhibit B - Letter to the Secretary from a Fund shareholder." Exhibit B to the Schedule 13D is a copy of the Proposal, including the accompanying cover letter. Further, the envelope received by the Fund containing the Proposal had the following return address: Andrew Dakos, Bulldog Investors, Park 80 West – 250 Pehle Ave, Suite 708, Saddle Brook, NJ 07663, indicating a material relationship between the Proponent and the Bulldog Group. Moreover, on information and belief, it is the Fund's understanding that the Proponent is a family member of Mr. Goldstein, a member of the Bulldog Group.

Pursuant to Rule 13d-5(b) under the Exchange Act, a "group" is defined as "two or more persons [that] agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer." It is not necessary under the rule that such an agreement to act together be in writing; such an agreement can be inferred by the Commission or a court from the concerted actions or common objective of the group members. Under the circumstances described above, the Fund believes that the Proponent's Proposal is, in fact, a proposal on behalf of the Bulldog Group as a whole, rather than a proposal on behalf of the Proponent as an individual.

The Fund believes that the facts reveal that the Proponent is a part of the Bulldog Group, and that they have acted together such that the Proponent and the Bulldog Group are one and the same "group." Yet, the Proponent has not disclosed in her Proposal her membership in

the Bulldog Group.[7] This failure is all the more egregious in view of the Bulldog Group's Schedule 13D/A filing on February 3, 2020, pursuant to which the Bulldog Group disclosed its intention to nominate a candidate for election as a Trustee of the Fund and present a proposal for the 2020 Annual Meeting.

The Fund believes that there is a substantial likelihood that a reasonable shareholder would consider the information described above to be important in deciding how to vote. Therefore, the Fund views the omission of this information from the Proposal to be materially misleading, in violation of Rule 14a-9, including Note (c) thereto. The Fund also believes that the omission of this information was designed to obfuscate and, potentially, manipulate the market, particularly in view of the Bulldog Group's self-identification as an "activist" market participant (as described on its website).[8]

b. ***The Proposal contains false and misleading statements that directly and indirectly impugn the character of the Fund and constitute charges concerning improper, illegal or immoral conduct without factual foundation.***

Rule 14a-8(i)(3) permits a company to omit a shareholder proposal and related supporting statement from its proxy materials if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Note (b) to Rule 14a-9 specifies that a statement may be misleading if it "directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation." The Staff has concurred that a company may properly exclude entire shareholder proposals and supporting statements where they contain false and misleading statements or omit material facts necessary to make such statements not false and misleading. *See Entergy Corp.* (Feb. 14, 2007) (permitting the exclusion of the entire proposal which contained false and misleading statements relating to management and the

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[7] The Schedule 13D to which the Proponent's Proposal was attached also did not disclose anything about the Proponent's relationship with the named filers of the Schedule 13D or the circumstances under which her Proposal ended up in the hands of the Bulldog Group. For example, "Item 5. Interest In Securities Of The Issuer" of the Schedule 13D made no reference to the Proponent as a part of the Bulldog Group, nor is the Proponent included as a signatory to the joint filing agreement attached as Exhibit A to the Schedule 13D. We further note that the Proponent has not filed a separate Schedule 13D disclosing (1) her share ownership in the Fund or her relationship with Bulldog Investors, LLC, Phillip Goldstein, Andrew Dakos or the Bulldog Group, of whose shares the Proponent may be deemed to be a beneficial owner due to her status as part of the same "group," or (2) any of the other information required under Schedule 13D. In addition, neither the Schedule 13D nor the Proposal explains how or why the Proposal was mailed to the Fund by Mr. Dakos, a member of the Bulldog Group, or what familial and other relationships, arrangements or agreements the Proponent may have with Mr. Goldstein, another member of the Bulldog Group.

[8] *See, e.g.*, https://bulldoginvestors.com/services/. e

board); *The Swiss Helvetia Fund, Inc.* (April 3, 2001) (permitting exclusion of entire proposal due to unsupported statements insinuating that directors may have violated, or may choose to violate, their fiduciary duties); and *General Magic, Inc.* (May 1, 2000) (permitting exclusion of proposal relating to change of name of company which contained false and misleading statements). Additionally, Section B.4 of Staff Legal Bulletin No. 14B (CF) (Sept. 15, 2004) provides that the Staff "may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules."

From the first sentence to the very end, the Proposal is riddled with statements and assertions that are clearly intended to mislead readers into believing that the Fund has and is continuing to engage in behavior that is improper, illegal or immoral. Among such false and misleading statements are the following:

- *"The Fund's rigged election bylaw should be replaced with the following one . . ."*
- *"To illustrate how that requirement rigs elections in favor of incumbent Trustees . . ."*
- *"Sham elections may occur in dictatorships like Cuba or Venezuela, but they are prohibited in the United States of America . . ."*
- *"Therefore, the rigged election bylaw should be replaced with the following one . . ."*

[Emphasis added.] Perhaps the most important assets of any firm, and particularly of investment companies such as the Fund, are its reputation and the confidence of its investors, potential investors and the investment community at large. Therefore, any false and misleading statements intended to directly or indirectly impugn the character of a firm in a direct communication to investors are inherently material in that there is a substantial likelihood that a reasonable shareholder would consider them important in deciding how to vote. The Fund's Declaration of Trust and the Fund's Bylaws, including the Fund's election bylaw provision, were adopted in compliance with the DSTA. The Proponent's statements that the Fund's election process or governing documents are "rigged," or that the Fund improperly "rigs" elections in favor of its preferred candidates, or comparing the Fund or its processes to those of "dictatorships like Cuba or Venezuela" – all made without any semblance of legal or factual foundation (as opposed to the Proponent's own subjective, inflammatory beliefs) – clearly constitute charges that the Fund's processes, governing documents and behavior are improper, illegal and immoral. The Fund emphatically denies the Proponent's implication of any such improper, illegal or immoral

conduct, which is even more egregious in light of being part of a group with Bulldog who intends to wage a hostile proxy contest against the Fund for the purpose of electing its own trustee.

Based on the foregoing, the Fund believes that the entire Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-(8)(i)(3) as materially false and misleading in violation of Rule 14a-9 and respectfully requests the Staff's concurrence with this conclusion.

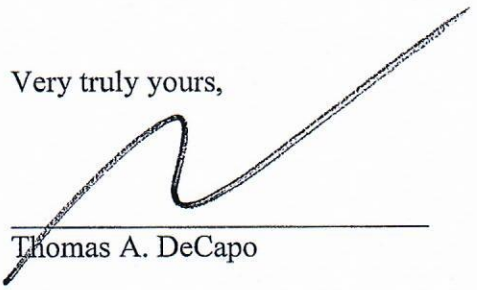
Accordingly, the Fund believes the Proposal violates Rule 14a-9, including Note (c) thereto. As a result, the Fund has concluded that the Proposal should be excluded from the Proxy Materials pursuant to Rule 14a-(8)(i)(3), and respectfully requests the Staff's concurrence with this conclusion.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Fund excludes the Proposal from its Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Fund's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response.

If the Staff has any questions or comments regarding the foregoing, please contact the undersigned at 617-573-4814.

Very truly yours,



Thomas A. DeCapo

cc: Alison Pampinella
Thomas B. Winmill, President, Dividend and Income Fund
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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TORONTO

March 2, 2020

Alison Pampinella
267 84th Street
Brooklyn, NY 11209-4315

RE: Your Shareholder Proposal for the 2020 Annual Meeting of Shareholders of Dividend and Income Fund

Dear Ms. Pampinella:

We are in receipt of a letter dated March 2, 2020 from Phillip Goldstein to Dividend and Income Fund (the "Fund"), claiming to be your father and asserting that you did not receive a copy of our no action request (and related exhibits thereto), dated February 21, 2020 (the "Request"), submitted on behalf of the Fund to the staff of the Securities and Exchange Commission, regarding your shareholder proposal submitted under Rule 14a-8 of the Securities Exchange Act of 1934. Enclosed please find another copy of the Request, which includes a copy of the confirmation of overnight delivery by Federal Express of the letter dated January 30, 2020 addressed to you from Godfrey & Kahn S.C. on behalf of the Fund, and a copy of the confirmation of overnight delivery by Federal Express of the Request on February 22, 2020.

Very truly yours,

Thomas A. DeCapo

Enclosures

cc: Securities and Exchange Commission, Division of Investment Management
Thomas B. Winmill, President, Dividend and Income Fund
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund

Exhibit F

Bulldog Investors, LLC, 250 Pehle Avenue, Suite 708, Saddle Brook, NJ 07663
(201) 881-7111 // Fax: (201) 556-0097 // pgoldstein@bulldoginvestors.com

March 12, 2020

Office of the Chief Counsel
Division of Investment Management
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Shareholder Proposal of Alison Pampinella for Dividend and Income Fund ("DNI")

Dear Staff Members:

I previously sent you a copy of my letter dated March 2, 2020 to Godfrey Kahn in response to its letter to my daughter, Alison Pampinella, stating that DNI intended to omit Alison's Rule 14a-8 proposal from its proxy materials. I also previously sent you a copy of a letter dated March 9, 2020 to the Chairman Clayton and each Commissioner alerting them to the "Skadden Scheme" to permit an issuer to evade any obligation it would otherwise have to comply with Rule 14a-8 and urging them to intervene "to prevent this viral scheme from spreading further."

My March 2nd letter rebutted a letter from Skadden to you dated February 21, 2020 (that Alison received after March 2nd) in which it put forth the same arguments as Godfrey Kahn did in its letter to Alison and asking you to concur with its position that DNI could omit Alison's Rule 14a-8 proposal from its proxy materials. Since Skadden's February 21st letter did not add anything material to Godfrey Kahn's letter, we saw no need to respond to it. However, Skadden has submitted a follow-up letter to you dated March 4, 2020 (and sent a copy to Alison that she and I discussed) and I shall briefly respond to it.

First, the Skadden March 4th letter rehashes its allegation that Alison's proposal had a procedural deficiency, specifically that she did not provide evidence from a DTC participant that she owned at least $2,000 worth of DNI stock for more than a year. As I previously explained in my March 2nd letter to Godfrey Kahn:

> As a preliminary matter, Alison is my daughter and I have long managed her stock brokerage account at StockCross Financial Services, a self-clearing broker and DTC participant. StockCross recently merged with Muriel Siebert & Co., Inc. and the merged entity took the latter name. See https://www.siebertnet.com/company/siebert-stockcross-acquisition. You stated in a footnote that Siebert was not a DTC participant on December 31, 2019 but if you contact Scott Halverson of Siebert (f/k/a StockCross), which I presume is now listed as a DTC participant, at 1-800-993-2002, he can provide any additional details

you feel you need. In sum, this is just a matter of a name change of a DTC participant that apparently occurred after December 31, 2019.

Thus, there was no deficiency. Notably, Skadden does not mention the aforementioned simple name change. Moreover, I note that, as indicated in the attached original letter of verification from Siebert (f/k/a StockCross) dated January 16, 2020, Mr. Halverson invited DNI to contact him if it wanted any supporting documentation. Mr. Halverson has informed me that no one ever contacted him. Consequently, you should reject Skadden's claim of a procedural deficiency.

Second, as I explained in my March 2nd letter to Godfrey Kahn, the undisclosed "group" allegation is nonsense and irrelevant and Skadden provides no citation to support it as a basis for omitting Alison's proposal from DNI's proxy materials.

Lastly, as I explained in my March 9th letter to the Commission, we think the previously issued no letters granting no action assurance to other companies using the Skadden Scheme to evade their obligations under Rule 14a-8 were incorrect and we urge you to not compound that error, especially because we have now raised the issue to the Commission.

Please contact me if you have any questions.

Sincerely yours,

Phillip Goldstein
Managing Member

cc via email: Alison Pampinella
Thomas B. Winmill, President, Dividend and Income Fund
Russel Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund
Thomas A. DeCapo, Skadden, Arps, Slate, Meagher & Flom LLP

SIEBERT MURIEL SIEBERT & CO., INC.
MEMBER NYSE, FINRA & SIPC

January 16,2020

Re: Alison Pampinella: Dividend and Income Fund (symbol DNI)

To whom it may concern:

Based on historical statements, Muriel Siebert & Co. can confirm that Alison Pampinella has held shares of DNI (Dividend and Income Fund) valued at greater than $2000.00 continuously for a period of at least 12 months.

Please contact us at 1-800-993-2002 if any supporting documentation is necessary.

Scott Halverson

Senior Vice President

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