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April 10, 2020

**VIA ELECTRONIC MAIL** (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Investment Management
100 F Street, NE
Washington, DC 20549

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

Ladies and Gentlemen:

We refer to our letter dated March 24, 2020, pursuant to which we informed the staff ("Staff") of the Securities and Exchange Commission ("Commission") that, in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended ("Exchange Act"), Dividend and Income Fund (the "Fund") intends to exclude the shareholder proposal and supporting statement (collectively, the "Pampinella Proposal") submitted by Alison Pampinella from the proxy materials (the "Proxy Materials") to be distributed by the Fund in connection with its 2020 annual meeting of shareholders. We previously had submitted a letter to the Staff of the Division of Investment Management on February 21, 2020, pursuant to which we requested that the Staff concur with our view that the Fund may exclude the Pampinella Proposal from the Proxy Materials (the "Initial Pampinella Letter"). We also submitted a legal opinion on February 24, 2020, in support of the Initial Pampinella Letter, and a subsequent letter to the Staff on March 4, 2020.

We also refer to a letter dated February 3, 2020, submitted by Godfrey Kahn on behalf of the Fund, pursuant to which the Fund requested that the Staff will not recommend enforcement action if the Fund omits from its Proxy Materials the proposal and supporting statement (collectively, the "Matisse Proposal" and, together with the Pampinella Proposal, the "Proposals") submitted by Matisse Discounted Closed-End Fund Strategy. We also submitted a supplemental letter to the Staff on February 21, 2020 (the "Supplemental Matisse Letter") and a legal opinion on February 24, 2020, in support of the Supplemental Matisse Letter. In both the Initial Pampinella Letter (superseded by our notice of intent to exclude the Pampinella Proposal) and the Supplemental Matisse Letter (collectively, the "Letters"), we presented as one of several grounds for exclusion of the Proposals that the proponent did not own shares entitled to vote on the matter as required by Rule 14a-8(b)(1) (the "14a-8(b)(1) Exclusion").

On behalf of the Fund, we are writing to respond, for the record and for the Staff's consideration, to a letter submitted by Phillip Goldstein, managing member of Bulldog Investors, LLC, to the Commission on March 9, 2020, which identified the Fund and contained numerous gross misstatements relating to the 14a-8(b)(1) Exclusion.

Before getting to Mr. Goldstein's arguments with respect to Rule 14a-8 and state law, we must first correct Mr. Goldstein's gross, materially false and misleading misstatements of fact concerning shareholders' voting rights under the Fund's organizational documents. Mr. Goldstein claims that the Fund's organizational documents "prohibit shareholders from voting on any proposal other than those submitted by its Board of Trustees." As evidenced by Mr. Goldstein's own statements later in his letter, this statement is knowingly and intentionally false. As explained in detail in the Letters, the Fund's Declaration of Trust clearly and unambiguously states that shareholders of the Fund are entitled to vote on specific matters that are enumerated in the Fund's Declaration of Trust, including the right to vote with respect to: (i) the election and removal of trustees of the Fund; (ii) a merger, sale of assets or liquidation of the Fund; (iii) the conversion of the Fund's shares to "redeemable securities" (as defined in Section 2(a)(32) of the Investment Company Act of 1940 (the "Investment Company Act")); (iv) certain amendments to the Declaration of Trust; (v) any matter relating to the Fund as may be required by law, the Fund's organizational documents or any registration of the Fund with the Commission; *and* (vi) any matter that the Fund's Board of Trustees may consider necessary or desirable. Under the Investment Company Act, and thus under the Fund's organizational documents, shareholders are granted voting rights on matters Congress considered essential, including termination of any investment advisory agreement and changes to fundamental policies. Mr. Goldstein, however, simply misstates these facts of record, ignoring the important voting rights granted to shareholders under the Fund's organizational documents and falsely claiming that shareholders are prohibited from voting on any proposal other than those submitted by the Board. The Fund's organizational documents, in fact, grant shareholders important voting rights and, in addition, allow the Fund's Board of Trustees to elect to submit additional proposals for shareholder vote. Mr. Goldstein's statements as to the factual provisions of the Fund's organizational documents and shareholder voting rights thereunder are demonstrably and materially false and misleading.

As to the issues raised with respect to Rule 14a-8, the Staff has repeatedly stated that the federal proxy regulatory scheme, adopted under Section 14(a) of the Exchange Act, regulates the proxy process through which shareholders of public companies exercise the voting rights *granted to them under state law*.[1] Moreover, the Staff has explained that the purpose of Rule 14a-8 is to effectuate the voting rights *granted to shareholders under state law*.[2] Rule 14a-8 is therefore the means for guaranteeing shareholders have a right to vote, but it is not the source of their voting rights. Stated in plain English, Mr. Goldstein is attempting to elevate an administrative rule governing the process for submitting shareholder proposals to a substantive federal law of the land on business organization voting rights, preempting the laws of the 50 United States of America with respect to corporations and other business organizations. With all due respect, such a change may only occur through an act of Congress, and even then would raise serious constitutional issues. Unless expressly preempted, shareholder voting rights are governed by state law, as has always been the case in the United States.

The Fund, as a Delaware statutory trust, is governed by the Delaware Statutory Trust Act ("DSTA"), which provides that the governing instruments of a statutory trust represent contractual obligations of a shareholder and the trust and govern the relationship between the two, including the matters that may be voted upon.[3] Delaware statutory trusts are given flexibility to craft the terms of their contractual relationship with shareholders in a way that Delaware corporations are not. Further, Section 3825(b) of the DSTA provides that "[i]t is the policy of this subchapter to give *maximum effect* to the principle of freedom of contract and to the enforceability of governing instruments." [Emphasis added.] Consistent with these principles, 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 this Declaration and the Bylaws." This includes Mr. Goldstein. Mr. Goldstein's remedy, if any, lies in state court and in his initial diligence of his investment decisions. It should not lie in a request that the Staff set aside established state law and rewrite the Fund's organizational documents to Mr. Goldstein's liking.

In addition to his erroneous claims about shareholder voting rights under the Fund's organizational documents and the purpose of Rule 14a-8, Mr. Goldstein has separately

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1 *See* "Briefing Paper: Roundtable on the Federal Proxy Rules and State Corporation Law," May 7, 2007, https://www.sec.gov/spotlight/proxyprocess/proxy-briefing050707.htm.

2 In a speech given by Keith Higgins, then Director of the Division of Corporate Finance, on February 10, 2015 to a Practising Law Institute Program on Corporate Governance, Mr. Higgins noted: "[O]ur federal proxy regulatory scheme . . . is designed not to supplant the rights granted under state law, but rather to help give them effect in a system in which shareholders rarely attend a meeting to vote in person. Section 14(a) and our rules provide shareholders with the information and means to make informed voting decisions . . . And the Commission adopted the shareholder proposal rule, Rule 14a-8, with this principle very much in mind . . . And while it is a federal rule, it is important to recognize that the right that it effectuates is the fundamental one under state law to appear at a meeting, make a proposal for a 'proper purpose,' and have the proposal voted on by fellow shareholders." [Emphasis added.]

3 Under Section 3806(b) of the DSTA, the governing instrument of a statutory trust may "contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons."

asserted that the 14a-8(b)(1) Exclusion is part of a larger "scheme" and that "there is no reason a corporation could not use [the 14a-8(b)(1) Exclusion], e.g., by adopting a bylaw to limit proposals that shareholders may vote upon to those submitted by the board or mandated by statute."[4] Mr. Goldstein argues that permitting companies to use the 14a-8(b)(1) Exclusion could make Rule 14a-8 an "empty shell."[5,6] This too is simply false. First, as explained above, in the case at hand shareholders in fact have the right to vote on many important matters which may be the subject of a Rule 14a-8 proposal. In addition, as to corporations, Delaware corporate law provides shareholders with a number of substantive voting rights, notably the right to adopt, amend or repeal the bylaws of a corporation.[7] Accordingly, if the board of directors of a Delaware corporation were to adopt bylaws that limited shareholder voting rights in a way that shareholders disapproved of, those same shareholders could simply repeal the offending bylaws through the exercise of their franchise as shareholders of the corporation. The issue that Mr. Goldstein complains of is limited to those entities that, under state law, are entitled to set their own voting requirements pursuant to their contract with shareholders, such as a Delaware statutory trust like the Fund.

Mr. Goldstein claims that Rule 14a-8(b)(1), in particular the phrase "entitled to be voted on the proposal," "is not intended to limit the types of proposals that may be voted on by shareholders." However, as we noted in the Letters, the Staff has concluded in at least three separate instances that Rule 14a-8(b)(1) provides substantive grounds for excluding proposals in circumstances in which a company's governing documents do not permit the shareholder proponent to vote on the subject of the proposal.[8] Additionally, Mr. Goldstein fails to mention that the Letters further state the Fund's belief that the Proposal may be excluded on several grounds, including pursuant to Rule 14a-8(b)(1) and Rule 14a-8(i)(1), in each case for different, substantive reasons. Instead, he has conflated Rule 14a-8(b)(1) and Rule 14a-8(i)(1), in disregard of the fact that Rule 14a-8(i)(1) provides a distinct and separate basis for exclusion, including,

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4 *See* Phillip Goldstein, *Can a Public Company Effectively Opt Out of Rule 14a-8?*, Harvard Law School Forum on Corporate Governance (Mar. 30, 2020), https://corpgov.law.harvard.edu/2020/03/30/can-a-public-company-effectively-opt-out-of-rule-14a-8 (the "Illegal Solicitation").

5 *Id.*

6 Mr. Goldstein continues to run rough-shod over federal securities laws in this 14a-8 process and with respect to the Fund's upcoming proxy solicitation. We call the Staff's attention to: (1) his misrepresentations to the Commissioners concerning the content of the Fund's organizational documents regarding shareholder voting rights; (2) his formation of a group under Rule 13d-5(b) under the Exchange Act and related refusal to disclose the existence of such group and his continued operation of such group in plain view, while at the same time dismissing and ridiculing the Fund's having pointed out to him the existence of this group and his failure to comply with related disclosure requirements and other federal securities laws; and (3) his recent violation of the proxy rules by publishing the Illegal Solicitation in which he publicly disseminates the Pampinella Proposal in violation of the proxy rule requirements and his use of materially false and misleading statements with respect to the Fund and its organizational documents to promote the Pampinella Proposal. The Fund respectfully requests that the Staff refer these violations to the Commission's Division of Enforcement for their consideration.

7 *See* Del. Code tit. 8, §109 regarding shareholder's right to vote on the adoption, amendment or repeal of a corporation's bylaws.

8 *See* Senior Housing Properties Trust (February 20, 2018); Government Properties Income Trust (Feb. 20, 2018); RAIT Financial Trust (March 10, 2017).

for example, in situations in which shareholders may have a right to vote on the subject matter of the proposal but do not have authority under applicable state law to effectuate it.[9] In those circumstances, the Staff has indicated that defects in such proposals may be cured by making the proposals precatory. That does not mean, however, that every precatory proposal is a proposal that shareholders are entitled to vote on. Mr. Goldstein has simply misread or has intentionally misconstrued these settled provisions of Rule 14a-8.

This issue has been carefully considered and decided by the Staff on three prior occasions. We respectfully submit that this issue has been correctly decided by the Staff and that it would be wrong for the Staff to use Rule 14a-8 to upend the balance between federal law and state law that Rule 14a-8 itself so carefully and correctly respects.

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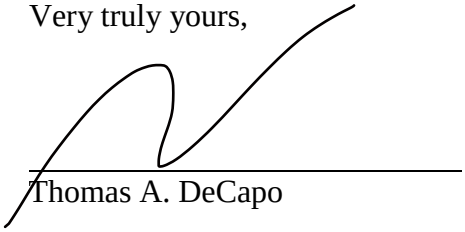
We appreciate your consideration of this letter. If you have any questions, please contact the undersigned at 617-573-4814.

Very truly yours,



Thomas A. DeCapo

cc: Thomas B. Winmill, President, Dividend and Income Fund
Russell Kamerman, Chief Compliance Officer, Secretary and General Counsel, Dividend and Income Fund
Vincent Di Stefano, Senior Counsel, Securities and Exchange Commission

[9] *See e.g.*, NextEra Energy, Inc. (February 25, 2016); PG&E Corp. (March 17, 2017).