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July 14, 2022

VIA E-MAIL

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549
Shareholderproposals@sec.gov

Re: *Japan Smaller Capitalization Fund, Inc. (JOF)*
Shareholder Proposal of Kenneth Steiner
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Japan Smaller Capitalization Fund, Inc. ("JOF") intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (the "2022 Annual Meeting") (collectively, the "2022 Proxy Materials") a shareholder proposal received on April 11, 2022 (collectively with the supporting statement provided therewith, the "Proposal") from Kenneth Steiner (the "Proponent").

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, we have:

- Filed this letter with the Securities and Exchange Commission (the "Commission") no later than 80 calendar days before JOF intends to file its definitive 2022 Proxy Materials with the Commission; and

- Concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and *Staff Legal Bulletin No. 14D* (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of JOF pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

A copy of the Proposal and the corresponding supporting statement is attached hereto as Exhibit A. The Proposal requests that the "Board of Directors immediately establish a special committee consisting solely of independent directors to investigate suitable alternatives to replace the Fund's current investment manager, Nomura Asset Management U.S.A. Inc."

BASIS FOR EXCLUSION

We hereby request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to JOF's ordinary business operations, including JOF's business practices and operations, JOF's strategic decisions, and JOF's choice of service providers.

BACKGROUND

JOF and its Investment Strategy

JOF is a non-diversified, closed-end management investment company listed on the New York Stock Exchange and registered pursuant to the Investment Company Act of 1940, as amended. JOF's investment objective is to provide shareholders with long-term capital appreciation and to invest, under normal circumstances, at least 80% of its total assets in smaller capitalization Japanese equity securities traded on the Tokyo, Nagoya, and JASDAQ Stock Exchanges, the Mothers, Centrex Markets, and other indices or markets determined by JOF's investment manager to be appropriate indices or markets for smaller capitalization companies in Japan.

Nomura Asset Management U.S.A. Inc. ("NAM-USA") is the investment manager of JOF. Nomura Asset Management Co., Ltd. ("NAM") acts as investment adviser to JOF. NAM-USA is a wholly owned subsidiary of NAM. Both NAM-USA and NAM have served as investment manager and investment adviser to JOF, respectively, since JOF's inception in 1990.

Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit a proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." The purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See Release No. 34-40018* (May 21, 1998) (the "1998 Release"). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept of providing

management with flexibility in directing certain core matters involving the company's business and operations." *Id*.

The 1998 Release explains that there are two central components of the ordinary business exclusion. First, as it relates to the subject matter of the proposal, "[c]ertain tasks are so fundamental to management's ability to run a company on a 'day-to-day basis' that they could not, as a practical matter, be subject to direct shareholder oversight." *Id*. The Commission has differentiated between these ordinary business matters and "significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id*. The latter is not excludable as pertaining to ordinary business matters, and in assessing whether a particular proposal raises a "significant social policy issue," the Staff will review the terms of the proposal as a whole, including the supporting statement. *Id.*

Second, as it relates to the implementation of the subject matter of the proposal, the ability to exclude a proposal "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id*. As stated in *Staff Legal Bulletin No. 14L* (Nov. 3, 2021), the Staff will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management" while considering "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic."

Framing a shareholder proposal as a request that the company establish a committee to evaluate a certain matter does not change the underlying nature of the proposal. The Commission has stated that a proposal requesting the formation of a committee may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed committee is within the ordinary business of the issuer. *See Exchange Act Release No. 20091* (Aug. 16, 1983) (the "1983 Release"). In *Staff Legal Bulletin No. 14E* (Oct. 27, 2009) ("SLB 14E"), the Staff explained: "[S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business . . . ." In this case, the Proposal is requesting that the Board of Directors of JOF establish a committee, but the underlying subject matter of the committee relates to the engagement of JOF's investment manager, which, as further detailed below, is a matter of ordinary business to JOF.

ANALYSIS

For any company, but particularly for an investment company like JOF, decisions relating to investment management are an essential component of operations and strategy. JOF's choice of investment managers is a key strategic choice. The selection of an investment manager is a complex process and involves the consideration of many factors, which shareholders are not in a

position to adequately evaluate. The Board of Directors of JOF (the "Board") evaluates factors relevant to JOF's management and investment advisory engagements throughout the year. On an annual basis, the Board specifically considers whether to approve the continuance of these agreements for an additional one-year period. As part of this process, the independent directors separately conduct an inquiry and analysis to develop a recommendation. The specific agreements (the "Agreements") evaluated consist of JOF's management agreement with NAM-USA and the investment advisory agreement between NAM-USA and its parent, NAM.

The Board most recently approved the continuance of the Agreements in November 2021. In connection with their deliberations related to the Agreements, the directors received materials that included, among other items, (i) copies of the Agreements and actions taken regarding such Agreements including approval history, (ii) a presentation on JOF's investment strategy and accounts under management, (iii) the organizational structure of NAM and NAM-USA including biographical information about the personnel performing management and investment advisory services for JOF, (iv) responses to questionnaires from NAM-USA and NAM concerning their respective resources, services they provide to JOF, and other current matters, (v) the most current financial statements and profitability of NAM-USA and NAM including the management fee paid by JOF to NAM-USA and the advisory fee paid by NAM-USA to NAM, (vi) historical performance of JOF, performance of comparative small-cap funds, and performance of JOF's benchmark, (vii) historical fund and financial highlights and historical ratio of expenses to average net assets, and (viii) an analysis of the management fee structure with comparative closed-end funds with Asia equity strategies including assumed economies of scale, assets under management, and expense ratio. As part of the deliberations, the independent directors were advised by, and received materials (including a detailed memorandum reviewing the applicable legal standards and factors to be taken into account in considering the renewal of investment management agreements) from their independent counsel in considering these matters and the continuance of the Agreements.

In considering the continuance of the Agreements, the Board did not identify any single factor as determinative. Matters considered by the directors in connection with their review of the Agreements included the following:

- *The nature, extent and quality of the services provided to JOF under the Agreements.* The Board considered the nature, extent and quality of the services provided to JOF by NAM-USA and NAM and the resources dedicated by NAM-USA and NAM. These services included both investment advisory services and related services such as the compliance oversight provided by NAM-USA.

- *Performance.* The Board considered performance information provided by NAM-USA regarding JOF's performance over a number of time periods, including the three-month, year to date, one-year, three-year, five-year, and ten-year periods ended September 30, 2021. NAM-USA provided information about the performance of JOF compared to JOF's benchmark and comparative small-cap funds, JOF highlights and JOF financial highlights

for the last three fiscal year ends, data on JOF's expense ratio and summary of expenses for the last semi-annual period and prior five fiscal year ends, and comparative management fee structure, expense ratio, and other information on other closed-end funds with Asian Equity strategies.

- *The costs of the services to be provided and the profits to be realized by NAM-USA and its affiliates from their advisory relationships with JOF.* The Board considered the fee under JOF's management agreement in connection with other information provided for the Directors' consideration. The Board considered information provided by NAM-USA regarding fees charged by NAM-USA and its affiliates to institutional accounts and other investment companies having investment objectives similar to JOF's investment objective, including Japanese retail unit trusts.

NAM-USA also provided the Board with information prepared by NAM-USA and NAM indicating the profitability of the Agreements to these respective advisers. This presentation included information regarding methodologies used to allocate expenses in considering the profitability of the Agreements to NAM-USA and NAM.

Based on an evaluation of all factors deemed relevant, including the factors described above and taking into account information received throughout the preceding year, the Board concluded that each of the Agreements should be continued through December 31, 2022. As demonstrated above, the Board engaged in a complex analysis to support JOF's choice of investment management and advisory services, an essential component of operations and strategy. This matter of ordinary business is precisely the type of decision that properly resides with management.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that seek to micro-manage a company's ordinary business operations, including when proposals concern the determination and implementation, generally, of a company's investment strategies. In *LMP Real Estate Income Fund Inc.* (Mar. 25, 2015) ("*LMP Real Estate*"), the Staff concurred in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting the board of directors to study the performance of its investment manager. In *LMP Real Estate*, the company argued that the proposal amounted to an attempt to micro-manage the board in the conduct of its responsibility to evaluate and review the performance of its investment manager. Citing *Tri-Continental Corp.* (1996 SEC No-Act LEXIS 486), the company in *LMP Real Estate* noted that "nothing could be more in the ordinary course of business for an investment company and its Board of Directors than the evaluation… of the performance of its investment adviser. The fortunes of an investment company are directly linked to its investment performance, which is the responsibility of its investment adviser. An investment company's performance is always relevant to the Board's determination of whether to continue an advisory contract." *See also California Real Estate Investment Trust* (July 6, 1988) (concurring in the

exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal involving the determination of investment strategies). In this case, the Proposal clearly infringes on the authority of the Board and management to engage an investment manager as deemed necessary and appropriate in accordance with the Company's investment strategy. The decision to retain advisors and consultants is clearly a matter fundamental to management's ability to run the company and is not proper subject matter for shareholder oversight.

Further, it is well established through a long series of precedents that shareholder proposals relating to another key service provider—auditor selection and audit engagement—constitute ordinary business operations for the purposes of Rule 14a-8(i)(7). The Staff has repeatedly affirmed this position, stating on many occasions that proposals concerning "management of the independent auditor's engagement" may be excluded in reliance on Rule 14a-8(i)(7). In *ACE Limited* (Jan. 7, 2016), the Staff allowed the exclusion in reliance on Rule 14a-8(i)(7) of a proposal that provides that "the board shall require that the audit committee request proposals for the audit engagement no less than every eight years." According to the Staff, such proposal related to the company's ordinary business operations, noting that it related "to selection of independent auditors or, more generally, management of the independent auditor's engagement." Similarly, the Staff consistently allowed the exclusion of proposals relating to policies or practices of periodically seeking competitive bids from other public accounting firms for audit engagement. For example, *CA, Inc.* (May 3, 2012), where in its response, the Staff noted that the proposal requested "information about the company's policies or practices of periodically considering audit firm rotation, seeking competitive bids from other public accounting firms for audit engagement, and assessing the risks that may be posed to the company by the long-tenured relationship of the audit firm with the company," and that proposals concerning…management of the independent auditor's engagement…are generally excludable under rule 14a-8(i)(7). These precedents are also more broadly applicable to the retention and compensation of outside advisors generally, such as the retention of NAM-USA as the investment manager of JOF, the focus of the Proposal.

In addition, the Proposal could also be viewed as analogous to proposals relating to a company's employment decisions, which the Staff has routinely allowed to be excluded under Rule 14a-8(i)(7). The Commission itself cited as an example in the 1998 Release as representative of an "ordinary business" task is the "management of the workforce, such as the hiring, promotion, and the termination of employees." Although NAM-USA is not an employee of JOF, the same principles applicable to the Staff's decision to permit the exclusion of these proposals would apply. *See International Business Machines Corporation* (Nov. 16, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7) of a proposal requesting the resignation of the company's chief executive officer); *CVS Health Corporation* (Mar. 4, 2016) (concurring in the exclusion of a proposal requesting its board to terminate the employment agreements of certain officers); *Spartan Motors, Inc*. (Mar. 13, 2001) (concurring in the exclusion of a proposal requesting that directors immediately remove the company's chief executive officer); *Wisconsin Energy Corporation* (Jan. 30, 2001) (concurring in the exclusion of

a proposal requesting that directors seek the resignation of the chief executive officer and president of the corporation); and *Philadelphia Electric Corporation* (Jan. 29, 1988) (concurring in the exclusion of a proposal requesting the termination of certain senior executives for alleged incompetency). Like the cases cited above, the Proposal dictates a management decision with regard to terminating and hiring a service provider to JOF. In this case, a request to remove a specific investment manager it is an attempt to micro-manage JOF, and thus may be properly excluded pursuant to Rule 14a-8(i)(7).

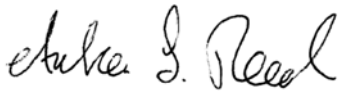
JOF understands that in cases in which shareholder proposals raise significant social policy issues the ordinary business exclusion of Rule 14a-8(i)(7) may be found not to apply. JOF respectfully submits, however, that the Proposal does not raise any significant social policy issue. As such, the Proposal does not transcend the day-to-day business matters addressed by the Proposal. JOF believes that the specific strategies relating to JOF's investment, including the choice of an investment manager, are properly within the purview of management, which has the necessary capability and knowledge to evaluate the particular facts and circumstances of its business operations, and take appropriate action. Based on the subject matter of the Proposal as discussed above, the exclusion provided under Rule 14a-8(i)(7) is applicable to the Proposal.

CONCLUSION

Based upon the foregoing analysis, JOF requests the Staff concur that it will take no enforcement action if JOF excludes the Proposal from its 2022 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance, please do not hesitate to contact me at the telephone number or e-mail address appearing on the first page of this letter.

Very truly yours,



Andrea L. Reed

Attachment

cc: Neil Daniele, Chief Compliance Officer and Secretary of Japan Smaller Capitalization Fund, Inc.

Kenneth Steiner
[redacted]

Mr. Neil A. Daniele
Secretary
Japan Smaller Capitalization Fund, Inc. (JOF)
309 West 49th Street
New York, New York 10019-7316
JOFInvestorRelations@nomura-asset.com

Dear Mr. Daniele,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I intent to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden at:
[redacted]
to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to [redacted]

I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from formally requesting a broker letter from me.

Sincerely,

Kenneth Steiner — 3/18/22
Kenneth Steiner — Date

[JOF: Rule 14a-8 Proposal, April 7, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Replace the Fund's Investment Manager

RESOLVED, that the stockholders of Fund hereby request that the Board of Directors immediately establish a special committee consisting solely of independent directors to investigate suitable alternatives to replace the Fund's current investment manager, Nomura Asset Management U.S.A. Inc.

The proposal provides stockholders with the opportunity to advise the Board of Directors of their serious concerns regarding the performance of the Fund's investment manager, Nomura Asset Management. In order to improve investment results and maximize stockholder value the Fund should replace its investment manager.

Nomura Asset Management's performance over the life of the Fund has been extremely disappointing. The Fund's $15 price in 1990 speaks for itself.

This performance, which spans the life of the Fund, shows no signs of improving and necessitates change beginning with the replacement of the party responsible for the Fund's poor performance, Nomura Asset Management.

In light of the Board of Directors' fiduciary obligations to stockholders, it is incumbent upon the Board to take immediate action to replace Nomura Asset Management with an investment manager for the Fund that will, at a minimum, bring the Fund's returns in line with the market. While the adoption of this proposal will not legally bind the Board of Directors, adoption will send the Board an important message.

If you believe the Fund should immediately explore alternatives and replace Nomura Asset Management with a truly first-rate fund manager in order to better maximize the value of your shares, please vote FOR this proposal:

Replace the Fund's Investment Manager – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

Notes:
"Proposal 4" stands in for the final proposal number that management will assign.
The proposal number and title at the top of proposal is the number and title intended for publication on the ballot – word for word with no added words. It is critically important that the proponent have control of the ballot title with no words added or subtracted from the title because the title of the propsal may be the only words a voting shareholder sees. If management disagrees then it has the option of asking for no action relief.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [redacted]

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **top** of the proposal and be **center justified**.