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February 26, 2024

## **BY E-MAIL**

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

Re: BNY Mellon Municipal Income, Inc.  
Stockholder Proposal of Saba Capital Master Fund, Ltd. Under  
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

We represent Saba Capital Master Fund, Ltd. (“Saba”) in connection with the above-referenced matter and write in response to the letter submitted on behalf of BNY Mellon Municipal Income, Inc. (the “Fund”), dated February 8, 2024 (the “Fund’s No-Action Request”). In the Fund’s No-Action Request, the Fund asserts that it intends to exclude from its proxy statement and form of proxy for its 2024 annual meeting of stockholders (collectively, the “Proxy Materials”) the stockholder proposal submitted to it on December 29, 2023 by Saba (the “Subject Proposal”) pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (“Rule 14a-8”). We address and respond to the Fund’s No-Action Request herein.

Pursuant to Rule 14a-8, Saba submitted to the Fund the Subject Proposal which, including its supporting statement, reads:

RESOLVED, that the shareholders of BNY Mellon Municipal Income, Inc. (the “Fund”) request that the Board of Directors of the Fund (the “Board”) take all necessary steps in its power to declassify the Board so that all directors are elected on an annual basis starting at the next annual meeting of shareholders. Such declassification shall be

completed in a manner that does not affect the unexpired terms of the previously elected directors.

### ***SUPPORTING STATEMENT***

Saba believes the annual election of all of a company’s directors empowers shareholders to hold board members accountable for their decisions pertaining to capital allocation, corporate governance and strategy—all of which impact shareholder returns. We contend this level of accountability keeps a board focused on shareholders’ interests and sustained value creation. The leading independent proxy advisory firms and many, if not the overwhelming majority of, large institutional investors have policies supporting the annual election of directors. Companies have taken note in recent years, with ~90% of the S&P 500 and ~73% of the S&P 1,500 now holding annual elections for all of their board members.<sup>1</sup>

On the other hand, there is a direct connection between bad governance and poor shareholder returns. Empirical studies have found a statistically significant correlation between the presence of a classified board structure and a decline in valuation.<sup>2</sup>

It is notable that Mellon Investments Corporation (“Mellon”), an affiliate of the investment advisor to the Fund, shares our view that directors should be elected annually. Mellon Proxy Guidelines Summary states that it “*believes shareholders should annually vote for all members on a company’s board of directors*”.<sup>3</sup> We see no reason why shareholders of the Fund should be deprived of this.

Mellon also maintains that they “*employ proxy voting to: ... promote the accountability of a company’s management to its board of directors, as well as the accountability of the board of directors to the company’s shareholders and stakeholders*”.<sup>4</sup> We believe there is no better way to “*promote ... the accountability of the board of directors*” than through the annual election of all directors.

To help address the Fund’s anti-shareholder governance and increase boardroom accountability following a period of, in our view, extremely disappointing financial performance, Saba urges you to vote **FOR** this proposal.<sup>5</sup>

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<sup>1</sup> Additionally, ~60% of the companies in the Russell 3,000 elect all their board members annually. See Matteo Tonello et al., *Corporate Board Practices in the Russell 3000, S&P 500 and S&P Mid-Cap 400* (Nov. 2022) and Ernst & Young, *EY Center for Board Matters: Corporate Governance by the Numbers* (Mar. 2022).

<sup>2</sup> See generally Lucian A. Bebchuk and Alma Cohen, *The Costs Of Entrenched Boards* (2005), *Journal of Financial Economics*, v78, 409-433 and Lucian Bebchuk, Alma Cohen and Charles C.Y. Wang, *Staggered Boards and the Wealth of Shareholders: Evidence from a Natural Experiment* (2010), available at <http://ssrn.com/abstract=1706806>.

<sup>3</sup> Mellon, *Mellon Proxy Guidelines Summary*, 3 (Mar. 2023).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> As of December 28 2023, the Fund’s discount to Net Asset Value was ~ 16%.

**THE FUND HAS FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE SUBJECT PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14A-8(I)(3)**

Saba respectfully submits that the staff of the Securities and Exchange Commission (the “Staff”) should decline to endorse the Fund’s effort to exclude the Subject Proposal from the Proxy Materials as Saba believes the Fund has failed to demonstrate any basis to exclude the Subject Proposal from the Proxy Materials under Rule 14a-8(i)(3).

The Fund attempts to argue that the Subject Proposal and the supporting statement thereto (the “Supporting Statement”), or portions of same, may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) under the Exchange Act because, it claims, certain statements (collectively, the “Contested Statements”) in the Supporting Statement contain “materially false and misleading statements” in purported violation of Rule 14a-9 under the Securities Exchange Act of 1934. The Contested Statements are:

- *“The leading independent proxy advisory firms and many, if not the overwhelming majority of, large institutional investors have policies supporting the annual election of directors.”*
- *“[T]here is a direct connection between bad governance and poor shareholder returns. Empirical studies have found a statistically significant correlation between the presence of a classified board structure and a decline in valuation.”*
- *“It is notable that Mellon Investments Corporation ( ‘Mellon’ ), an affiliate of the investment advisor [sic] to the Fund, shares our view that directors should be elected annually. Mellon Proxy Guidelines Summary states that it ‘believes shareholders should annually vote for all members on a company’s board of directors’ .”*
- *“To help address the Fund’s anti-shareholder governance and increase boardroom accountability. . .”*

We address the Fund’s arguments in connection with each of the Contested Statements below.

- *“The leading independent proxy advisory firms and many, if not the overwhelming majority of, large institutional investors have policies supporting the annual election of directors.”*

The Fund’s position, as provided in the Fund’s No-Action Request, is that the above statement (the “First Statement”) “misleads stockholders by asserting without factual basis that ‘the leading’ proxy advisory firms and ‘the overwhelming majority’ of institutional investors support declassified board structures.”

That is incorrect. What Saba conveys in the First Statement is the simple, but critical and factual observation that board declassification is favored among proxy advisory firms and large stockholders of listed companies generally. As the Fund is undoubtedly aware, both Institutional Shareholder Services<sup>6</sup> and Glass Lewis,<sup>7</sup> which together represent over 90% of the estimated market share for proxy advisory services,<sup>8</sup> support proposals to repeal classified boards and to elect all directors annually. It is also widely known that the largest stockholders of publicly traded companies support declassification of corporate boards. For example, in their respective proxy voting policies and guidelines, BlackRock,<sup>9</sup> Vanguard,<sup>10</sup> and State Street<sup>11</sup> express their support for board declassification proposals. Taken together, these three investment managers constitute the largest shareholder in an estimated 40% of all listed companies in the United States.<sup>12</sup> They also collectively own 17% of the entire U.S. equity market.<sup>13</sup> Moreover, support for board declassification among “large institutional investors” extends well beyond the “Big Three”. For example, Fidelity,<sup>14</sup> Goldman Sachs Asset Management,<sup>15</sup> Legal & General Investment Management<sup>16</sup> and Wellington Management,<sup>17</sup> which (together with BlackRock, Vanguard and State Street) represent seven of the ten largest investment managers by institutional assets under management, have all indicated through their respective proxy voting guidelines their support for the declassification of corporate boards.

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<sup>6</sup> ISS, *United States Proxy Voting Guidelines Benchmark Policy Recommendations*, 19 (Dec. 13., 2022) ([US-Voting-Guidelines.pdf \(issgovernance.com\)](#)).

<sup>7</sup> Glass Lewis, *2023 Policy Guidelines*, 39 (Dec. 15, 2022) ([US-Voting-Guidelines-2023-GL.pdf \(glasslewis.com\)](#)).

<sup>8</sup> Paul Rose, Harvard Law School Forum on Corporate Governance, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting*, Section I (May 27, 2021) ([Proxy Advisors And Market Power: A Review of Institutional Investor Robovoting \(harvard.edu\)](#)).

<sup>9</sup> BlackRock, *BlackRock Investment Stewardship Proxy voting guidelines for U.S. securities*, 5 (Jan. 2023) ([blk-responsible-investment-guidelines-us.pdf \(blackrock.com\)](#)).

<sup>10</sup> Vanguard, *Proxy voting policy for U.S. portfolio companies*, 16 (Feb. 1, 2023) ([Proxy voting policy for U.S. portfolio companies \(vanguard.com\)](#)).

<sup>11</sup> State Street Global Advisors, *Proxy Voting and Engagement Guidelines*, 3 (Mar. 2023) ([proxy-voting-and-engagement-guidelines-us-canada.pdf \(ssga.com\)](#)).

<sup>12</sup> Jan Fichtner, Eelke M. Heemskerk and Javier Garcia-Bernardo, *Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk*, Section 3.2 (Apr. 25, 2017). ([Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk† | Business and Politics | Cambridge Core](#)).

<sup>13</sup> <https://journals.sagepub.com/doi/10.1177/0308518X231195890#:~:text=As%20the%20largest%20global%20shareholders,the%20non%2DU.S.%20equity%20market>.

<sup>14</sup> Fidelity Investments, *Proxy Voting Guidelines*, Section II(D), 3 (Feb. 2022) ([Full-Proxy-Voting-Guidelines-for-Fidelity-Funds-Advised-by-FMRCo-and-SelectCo.pdf](#)).

<sup>15</sup> Goldman Sachs Asset Management, *Policy, Procedures and Guidelines for Goldman Sachs Asset Management's Global Proxy Voting 2023 Edition*, 9 (Mar. 2023) ([GSAM Global Proxy Voting Policy.pdf](#)).

<sup>16</sup> Legal & General Investment Management, *2022 – North America corporate governance and responsible investment policy*, 11 (Apr. 2022) ([North America corporate governance and responsible investment policy \(lgim.com\)](#)).

<sup>17</sup> Wellington Management Company LLP, *Global Proxy Voting Guidelines 2022*, 3. ([Global Proxy Voting Guidelines](#)).

It is therefore clear that the First Statement is not only not false or misleading or lacking a factual basis, it is manifestly true and accurate. Contentions by the Fund otherwise are false and misleading.

In addition, the Fund highlights Saba's reference to the percentage of S&P 500 and S&P 1500 operating companies that have annual elections for all of their board members and asserts that Saba "neglects to state the percentage of registered closed-end funds that have staggered boards."

This is a distraction. Saba's reference to the S&P indices supports a well-established factual phenomenon—the strong shift among public companies toward board declassification. In the S&P 1500, the share of constituent companies with classified boards fell from 60% in the 1990s to 35% in 2017,<sup>18</sup> and further decreased to 29% by 2021.<sup>19</sup> In the S&P 500, the share of constituent companies with classified boards similarly fell from 60.6% in 1999 to 12% in 2021.<sup>20</sup>

While Saba neither expressly states nor implies that the S&P 500 or the S&P 1500 are the Fund's relevant performance benchmarks, the Fund's straw man argument fails to demonstrate the inapplicability of these S&P indices. Instead, these indices, which are well-known to institutional and retail investors alike, provide fulsome samples for evaluating corporate governance practices among listed companies across various industries. Thus, the prevalence of declassified boards across these indices is relevant for the Fund and its stockholders to consider when evaluating the Subject Proposal.

The Fund also mentions that there are state legislatures that permit classified board structures and that the NYSE does not prohibit their use. These further sidesteps neither address the matter at hand nor refute any of Saba's statements, which were and remain factual and true.

There is nothing in the First Statement that is false or misleading and it should not be excluded from the Proxy Materials.

- “[T]here is a direct connection between bad governance and poor shareholder returns. Empirical studies have found a statistically significant correlation between the presence of a classified board structure and a decline in valuation.”

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<sup>18</sup> Laura Field & Michelle Lowry, *Why Do Companies Going Public Choose Controversial Governance Structures, and Why Do Investors Let Them?*, The CLS Blue Sky Blog (Jun. 21, 2022) (<https://clsbluesky.law.columbia.edu/2022/06/21/why-do-companies-going-public-choose-controversial-governance-structures-and-why-do-investors-let-them/>).

<sup>19</sup> *EY Center for Board Matters, Corporate Governance by the Numbers*, EY (Jun. 30, 2021) ([https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_us/topics/board-matters/ey-cbm-june-2021.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_us/topics/board-matters/ey-cbm-june-2021.pdf)).

<sup>20</sup> *Id.*; Scott Hirst et al., *Towards the Declassification of S&P 500 Boards*, 3 Harvard Business L. Rev. 157, 165-166 (2013) ([https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1343&context=faculty\\_scholarship](https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1343&context=faculty_scholarship)).

As the Fund concedes, Saba supports the above statement (the “Second Statement”) with a citation to research studies (the “Studies”) conducted by Harvard Professors Lucian Bebchuk and Alma Cohen.

However, the Fund claims that the Second Statement “implies that a staggered board is *per se* bad governance which leads to poor shareholder returns,” and that it “incorrectly asserts that this conclusion is supported by the empirical data cited.” This is false. A plain reading of the Second Statement demonstrates that there is a connection between corporate governance and shareholder returns with empirical confirmation of this “correlation”. Saba uses the word “correlation” instead of “causation”.

Despite the Fund’s mischaracterization and selective quotation of the Studies, one of the Studies does, in fact, identify evidence consistent with causation. In fact, this study, after noting that “causal identification is notoriously difficult in empirical work on corporate finance and corporate governance” goes on to conclude that “we find evidence consistent with market participants’ viewing staggered boards as bringing about a reduction in firm value.”<sup>21</sup>. Again, the Second Statement limits itself to correlation. But even if it did not, the Studies cited by Saba would provide factual support that is consistent with such a statement.

The Fund further strays from the path by mentioning that the NYSE does not prohibit classified structures. That something is legally permissible under a listing rule or Maryland law does not *ipso facto* prove that it is the optimal choice for increasing board accountability any more than the fact that it is legally permissible under both regimes for boards to elect their directors annually.

There is nothing in the Second Statement that is false or misleading and it should not be excluded from the Proxy Materials.

- *“It is notable that Mellon Investments Corporation ( ‘Mellon’ ), an affiliate of the investment advisor [sic] to the Fund, shares our view that directors should be elected annually. Mellon Proxy Guidelines Summary states that it ‘believes shareholders should annually vote for all members on a company’s board of directors’ .”*

The Fund is claiming that the above statement (the “Third Statement”) is misleading “due to the fact that it references the proxy voting guidelines of an entity which is neither the Company’s adviser nor sub-adviser, in a manner that implies that the Company’s existing classified board structure is somehow internally inconsistent or self-contradictory.” This is false.

First, Saba does not state or imply that Mellon Investments Corporation is the Fund’s adviser or sub-adviser. In fact, the Third Statement makes clear that Mellon Investments

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<sup>21</sup> Lucian Bebchuk, Alma Cohen and Charles C.Y. Wang, *Staggered Boards and the Wealth of Shareholders: Evidence from a Natural Experiment* (2010) (<http://ssrn.com/abstract=1706806>).

Corporation is an “affiliate” of the Fund’s investment adviser. That Mellon Investments Corporation is an affiliate is a verifiable fact, and the Fund does not dispute this. Second, the guidelines Saba cites to are publicly-available and say what Saba says they say.<sup>22</sup> That Mellon Investments Corporation also notes that it will evaluate requests to declassify a company’s board on a case-by-case basis does not change or diminish its stated guidance that it “believes shareholders should annually vote for all members on a company’s board of directors”. In short, the Fund is claiming that it is misleading to quote a publicly-available and on-point statement made by an affiliate, to clearly identify the source of that statement, and to clearly identify who made the statement. Saba respectfully disagrees with that understanding of “misleading” and trusts its fellow shareholders to rely on their abilities to conduct a plain-reading of clear, true, and factual statements.

The Fund concludes its argument by calling the Third Statement “irrelevant” and implying that this alone is justification for the Fund to omit it. As outlined in the preceding paragraph, the Third Statement is, in fact, highly relevant. That an affiliate of the Fund’s investment adviser has taken a public position that the Fund does not like is, perhaps, an internal issue for the Fund’s investment adviser to sort through. To call it “irrelevant” in the current context is factually incorrect.

There is nothing in the Third Statement that is false or misleading and it should not be excluded from the Proxy Materials.

- *“To help address the Fund’s anti-shareholder governance and increase boardroom accountability. . .”*

The Fund inaccurately claims that the above statement (the “Fourth Statement”) is “asserted without basis and improperly impugns the character of the Directors by alleging the current Company leadership is ‘anti-shareholder’ and implying that the Directors lack accountability under the existing corporate governance structure.”

Yes, it is in fact true that directors who face annual elections are by definition more accountable to shareholders than those who are insulated by a staggered structure that allows them to avoid shareholder referendums for three years from their previous election. That is precisely the point of the Subject Proposal. No one is impugning the Fund’s directors. The Subject Proposal is seeking to increase boardroom accountability to shareholders, which annual elections accomplish. To stagger a board and limit shareholders’ ability to vote on who represents them is the opposite of pro-shareholder governance. This is why, as outlined above, the leading proxy advisory firms and the world’s largest institutional investors support declassification in the name of shareholder rights. As BlackRock notes in its guidelines, “classification of the board generally limits shareholders’ rights to regularly evaluate a board’s

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<sup>22</sup> Mellon Investments Corporation, *Mellon Proxy Guidelines Summary*, 3 (Mar. 2023).

performance and select directors”.<sup>23</sup> Limiting shareholder rights, despite the Fund’s claims otherwise, is anti-shareholder.

It should not be lost on the Staff that the fact that the Fund intends to “throw out” a precatory shareholder proposal that will do nothing more than provide shareholders with the opportunity to express their collective voices—on an important issue and in a non-binding manner, which, we note, the Fund’s board can simply ignore—is itself evidence of the Fund’s anti-shareholder approach to governance. The Fund clearly does not want to allow shareholders to express a view on governance and boardroom accountability.

There is nothing in the Fourth Statement that is false or misleading and it should not be excluded from the Proxy Materials.

In sum, the Fund fails to demonstrate that the Subject Proposal, the Supporting Statement, or any of the Contested Statements are excludable under Rule 14a-8(i)(3). Moreover, the Contested Statements are true and based in fact, as explained above. That said, should the Staff decide additional context or clarity would be conducive here, Saba would revise the Supporting Statement in a manner acceptable to the Staff.

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For the reasons outlined above, Saba respectfully submits that the Fund has failed to meet the burden of demonstrating that it may exclude the Subject Proposal from the Proxy Materials.

Sincerely,

Ele Klein

cc: David Stephens, Proskauer Rose LLP  
Michael D’Angelo, Saba Capital Management, L.P.  
Abraham Schwartz, Schulte Roth & Zabel LLP

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<sup>23</sup> BlackRock, *BlackRock Investment Stewardship Proxy voting guidelines for U.S. securities*, 6 (Jan. 2023) ([blk-responsible-investment-guidelines-us.pdf \(blackrock.com\)](https://www.blackrock.com/asset-management/insights/articles-perspectives/responsible-investment-guidelines-us)).