K&L GATES

George Zornada
Partner
george.zornada@klgates.com

T +1 617 261 3231
F +1 617 261 3175

February 23, 2024

VIA EMAIL: IMshareholderproposals@sec.gov
Office of the Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: EXCHANGE ACT RULE 14a-8: OMISSION OF SHAREHOLDER PROPOSAL FROM THE 2024 PROXY STATEMENT OF HIGHLAND OPPORTUNITIES AND INCOME FUND

Dear Sir or Madam:

We are counsel to Highland Opportunities and Income Fund (the "Fund"), a Massachusetts business trust registered under the Investment Company Act of 1940 (the "1940 Act") as a closed-end management investment company. The Fund's shares are listed for trading on the New York Stock Exchange ("NYSE") under the ticker symbol "HFRO." The Fund has received a shareholder proposal from Mr. Allan D. Hausman (the "Proponent"), seeking inclusion in the proxy statement and related materials (the "Proxy Materials") in connection with the Fund's 2024 Annual Meeting of Shareholders (the "2024 Annual Meeting"). For the reasons discussed herein, the Fund intends to omit the Proponent's shareholder proposal from the Proxy Materials, and the Fund respectfully requests that the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "SEC") confirm that it will not recommend enforcement action if, in reliance on certain provisions of Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "1934 Act"), the Fund excludes the Proposal from its Proxy Materials.

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. The Fund currently intends to begin distribution of its definitive Proxy Materials on or after May 16, 2024. 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.

I. Background

On January 2, 2024, the Proponent submitted a shareholder proposal and supporting statement to be included in the Proxy Materials, attached hereto as Exhibit A (the "Proposal"). The Proposal states:

> RESOLVED: The shareholders recommend that the Board of Trustees commit to significantly reducing the percentage of the Fund's assets invested in affiliated companies.

*** FISMA & OMB Memorandum M-07-16

Following receipt of the Proposal, officers of the Fund and employees of the Fund's investment adviser met with Proponent, provided information to Proponent about the Fund, its strategies, organization and regulation under the 1940 Act and other securities laws, and discussed the Proposal. As a follow-up to the initial discussion, a second meeting took place, during which representatives of the Fund discussed the lack of a basis for inclusion of the Proposal in the Fund's proxy and respectfully requested the Proponent withdraw the Proposal. The Proponent did not accede to such request.

II. Summary of the Fund's Position

The Fund believes the Proposal may be excluded from its Proxy Statement for the 2024 Annual Meeting for the following reasons:

> **A.** The Fund may exclude the Proposal pursuant to Rule 14a-8(b) under the 1934 Act because the Proponent does not hold securities entitled to vote on the Proposal as determined under the Fund's organizational documents; and
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> **B.** The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(7) under the 1934 Act, because the Proposal deals with matters related to the Fund's ordinary business operations and seeks to impermissibly micromanage the Fund.

III. Discussion

A. The Proposal May Be Omitted Under Rule 14a-8(b) because the Proponent does not hold securities entitled to vote on the Proposal as determined under the Fund's organizational documents.

The Fund was established as a Massachusetts business trust in 2017 by its Declaration of Trust (the "Declaration of Trust").[1] There is no statute under Massachusetts law providing specific voting rights to beneficial owners of a Massachusetts business trust, such a trust is governed by its declaration of trust, and shareholders are only entitled to vote on those matters as specified in the business trust's governing instruments.

The Declaration of Trust unambiguously states that shareholders of the Fund are permitted to vote only on specific matters that are enumerated therein, in the Fund's By-Laws,[2] or as otherwise required by the 1940 Act[3] or other applicable law. Specifically, Article III, Section 9(b) and Article V, Section 1, respectively, of the Fund's Declaration of Trust provides:

> Rights of Shareholders. The Shares shall be personal property giving only the rights in this Declaration specifically set forth. The ownership of the Trust Property of every description and the right to conduct any business herein before described are vested exclusively in the Trustees, and the Shareholders shall have no interest therein other than the beneficial conferred by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust nor can they be called upon to share or assume any losses of the Trust or, subject to the right of the Trustees to charge certain expenses directly to Shareholders, suffer an assessment of any kind by virtue of their ownership of Shares. The Shares shall not entitle the

[1] The Fund was established under its original name Highland Income Fund.

[2] The Fund's By-Laws do not provide any rights to shareholders to request inclusion of proposals in the Fund's proxy statement.

[3] The 1940 Act does not provide shareholders with any right to vote on management strategies unless the vote would be changing a fundamental policy, which is not relevant here.

holder to preference, preemptive, appraisal, conversion or exchange rights (except as specified by the Trustees when creating the Shares, as in preferred shares).

Voting Powers. Subject to the voting powers of one or more classes of Shares as set forth elsewhere in this Declaration of Trust or in the Bylaws, **the Shareholders shall have power to vote only** (i) for the election of Trustees as provided in Article IV, Section I, (ii) for the removal of Trustees as provided in Article IV, Section 3, (iii) with respect to any termination of this Trust to the extent and as provided in Article IX, Section 4, (iv) with respect to any amendment of this Declaration of Trust to the extent and as provided in Article IX, Section 8, and (v) with respect to such additional matters relating to the Trust as may be required by applicable law, including the 1940 Act, this Declaration of Trust, the Bylaws or any registration of the Trust with the Securities and Exchange Commission (or any successor agency) or any state, or as the Trustees may consider necessary or desirable.

The Proponent does not hold securities entitled to be voted on the Proposal as determined under the Fund's organizational documents. The Proposal thus may be omitted under Rule 14a-8(b) under the 1934 Act[4] because it deals with a matter upon which the shareholders of the Fund do not have a right to vote.

The Proposal asks shareholders of the Fund to vote upon a request that the Board of Trustees (the "Board") reduce the Fund's investment in affiliated companies. Voting on a shareholder proposed change to investment strategy or a limitation on a particular investment are not among the enumerated matters on which shareholders are permitted to vote under the Fund's Declaration of Trust and By-Laws. Further, neither the 1940 Act[5] nor other applicable law nor the Fund's disclosures provide shareholders with the ability to vote to make management recommendations to the Board or to vote on investment management input of any type, including investment in affiliated companies. Accordingly, the Fund believes that the Proponent's shares are not entitled to vote on the Proposal as required by Rule 14a-8(b)(l).

The Staff has on a number of occasions permitted funds to exclude a shareholder proposal pursuant to Rule 14a-8(b) in circumstances where the applicable declaration of trust did not permit a shareholder proponent to vote on the subject of the proposal. Most recently, on February 16, 2024, the Staff issued a no-action letter to Nuveen Real Asset Income and Growth Fund et al. the ("Nuveen Letter").[6] The funds in the Nuveen letter are, like the Fund, Massachusetts business trusts and have provisions in their respective declarations of trust that provide a right to vote only on enumerated matters. The proponent in the Nuveen funds, like the Proponent, put forth a proposal (to vote to declassify the funds' boards) that was (i) clearly outside of the matters listed in the declarations of trust providing shareholders voting rights, and (ii) not a matter on which shareholders are able to vote under any provision of the 1940 Act or otherwise. The Staff agreed in the Nuveen Letter that where the declaration of trust did not provide shareholders the right to vote on the proposal put forth by the requesting shareholder, the funds properly could exclude such proposal under Rule 14a-8(b).

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[4] Rule 14a-8(b)(1) [Question 2] under the 1934 Act states (emphasis added):

> In order to be eligible to submit a proposal, [a shareholder] must have continuously held at least $2,000 in market value, or 1%, of <u>the company's securities entitled to be voted on the proposal</u> 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.

[5] Apart from voting with respect to change of fundamental policies, which is not here relevant.

[6] *See* Nuveen Real Asset Income and Growth Fund, Nuveen Multi-Asset Income Fund, and Nuveen Core Plus Impact Fund–Omission of Shareholder Proposal, SEC No-Action Letter (Feb. 16, 2024) (concurring with exclusion of proposal to declassify fund board because proponent did not hold securities entitled to vote on proposal per fund organizational documents).

The Staff also issued a no-action letter to the Templeton Emerging Markets Income Fund ("Templeton Letter"), on February 5, 2021, finding that a shareholder proposal regarding a self-tender offer for at least 30% of outstanding common shares was not a matter on which shareholders had the power to vote under the fund's declaration of trust and therefore were excludable under Rule 14a-8(b).[7] Similar to the Fund, as well as the funds in the Nuveen Letter, the Templeton Fund's declaration of trust enumerated specific voting rights for shareholders, which did not include the subject matter of the applicable shareholder proposal. Accordingly, the Staff has consistently allowed shareholder proposals to be excluded under Rule l4a-8(b) if shareholders are not specifically entitled to vote on the proposals.[8]

The Fund's Declaration of Trust does not provide that shareholders are entitled to vote to make management recommendations to the Board or on any investment management input. The Proponent therefore does not hold shares entitled to be voted on the Proposal in accordance with Rule 14a-8(b). Like the funds in the Nuveen Letter and Templeton Letter, the Fund's organizational document provisions do not provide for voting on the topic in the Proposal, and the Staff should agree that the Fund may exclude the Proposal. The Fund has concluded that the Proposal should be excluded from its Proxy Statement and requests the Staff's concurrence with this conclusion.[9]

> ***B. The Proposal May Be Omitted Under Rule 14a-8(i)(7) because the Proposal deals with matters related to the Fund's ordinary business operations and seeks impermissibly to micromanage the Fund.***

The Fund invests in a variety of assets using a variety of strategies, including investment in real estate-related strategies such as investment in real estate trusts ("REITS"), and also utilizes investments in wholly-owned subsidiaries for tax and other purposes in the course of its investment operations. The Fund's disclosure of investment strategies, most recently in the Fund's semi-annual shareholder report, states that the Fund may, for example, invest in, among other things, REITs "managed by affiliated or unaffiliated asset managers and their foreign equivalents," in "private REITs, generally wholly-owned by the Fund" and "in securities issued by other investment companies, including investment companies that are advised by the Investment Adviser or its affiliates." In addition, the Fund discloses, among other things, that an issuer "is defined as 'affiliated' if a fund owns five percent or more of its outstanding voting securities."[10]

The Proposal addresses the ordinary investment operations of the Fund and would micromanage Fund investment strategy. The Fund thus properly may omit the Proposal under Rule 14a-8(i)(7) because it "deals with a matter relating to the company's ordinary business operations."

The SEC has set forth in the Adopting Release of Rule 14a-8(i)(7) that the ordinary business exclusion under Rule 14a-8(i)(7) relies on the following:

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[7] *See* Templeton Emerging Markets Income Fund – Omission of Shareholder Proposal, SEC No-Action Letter (Feb. 5, 2021) ("Templeton Letter") (concurring with exclusion of proposal to undertake self-tender offer because proponent did not hold securities entitled to vote on proposal per fund organizational documents)

[8] *See e.g.*, Nuveen Letter; Templeton Letter; First Trust Senior Floating Rate Income Fund II, SEC No-Action Letter (June 17, 2020) (allowing for exclusion of proposal pursuant to Rule 14a-8(b) because proponent did not hold securities entitled to be voted on proposal pursuant to organizational documents); Senior Housing Properties Trust, SEC No-Action Letter (Feb. 20, 2018) (concurring with exclusion of proposal because such matter was not listed as one on which shareholders were entitled to vote in declaration of trust).

[9] *See* Nuveen Letter; Templeton Letter.

[10] As the Staff is familiar, the plain English term "affiliate" arises from the term "affiliated person" as defined in Section 2(a)(3) of the 1940 Act. Which issuers may be deemed affiliated persons of the Fund is a legal and compliance matter addressed by requirements of and definitions in the 1940 Act.

i. certain tasks are so fundamental for day-to-day management of the fund that the tasks could not, as a practical matter, be subject to direct shareholder oversight; and

ii. "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."[11]

Through numerous no-action letters and Staff bulletins, the Staff has recognized that shareholder proposals that attempt to micromanage the day-to-day decisions of company management fall within the "ordinary business" exception under Rule 14a-8(i)(7)."[12]

i. Controlling Day-to-Day Management

The Proposal seeks to have the Fund's Board "significantly reduc[e] the percentage of the Fund's assets invested in affiliated companies." This request, which lacks appreciation of the use of the term affiliate, clearly addresses basic investment management decision-making and is precisely the type of management function that Rule 14a-8(i)(7) recognizes as improper for direct shareholder oversight. In so doing, the Proposal impermissibly seeks to address ordinary investment operations of the Fund by (i) explicitly restricting the day-to-day decision making regarding selecting investments for the Fund and (ii) establishing criteria for limiting and reducing specific categories of investments. The precatory nature of the Proposal does not alter the basic subject of the request. The selection of all investments is the principal function of an investment company's management. The Board engages the Fund's investment adviser to manage the Fund's assets pursuant to the Fund's investment strategy. The Fund's investment adviser manages as a fiduciary the portfolio, evaluating complex investments within the Fund's disclosed strategies, a decision-making process which, under Rule 14a-8(i)(7), is intended to be separate and apart from direct shareholder input. The Proponent seeks to impose a specific outcome for this analysis without considering any other investment criteria established and followed by management.[13]

The Proposal interferes with the ability of the Fund's Board to oversee the day-to-day operations of the Fund by requiring the Board to consider change of investment strategies within the scope of the investment adviser's management of the Fund portfolio. As illustrated by the Staff's recent precedent, the Proposal impermissibly seeks to replace the informed and reasoned judgments of management with respect to the Fund's day-to-day operations, and therefore may be properly excluded under Rule 14a-8(i)(7).

[11] Securities Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

[12] *See e.g.*, Vanguard Funds (Vanguard U.S. Value Fund, Vanguard Health Care Fund, Vanguard Energy Fund) Omission of Shareholder Proposal, SEC No-Action Letter (Sept. 11, 2020) ("Vanguard Letter"); *see also* Morgan Stanley Africa Investment Fund, Inc, SEC No-Action Letter (Apr 26, 1991) (noting investment company's ordinary business operations include "purchase and sale of securities and the management of the fund's portfolio securities"). The 1998 Release stated the micromanagement consideration "may come into play in a number of circumstances, such as where the proposal involves intricate detail… or methods of implementing complex policies." In Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB 14J"), the Staff stated that "it is the manner in which a proposal seeks to address an issue that results in exclusion on micromanagement grounds." SLB 14J also provides that proposals "seek[ing] to impose specific time-frames or methods for implementing complex policies" are excludable under Rule 14a-8(i)(7) as seeking to micromanage a company. The Staff has also repeatedly recognized that "the ordinary business operations of an investment company include buying and selling portfolio securities."

[13] In two 2018 no-action letters submitted by JPMorgan Chase & Co., the Staff likewise agreed that similar proposals may be excluded because they sought to "impose specific methods for implementing complex policies." Though one letter did not explicitly dictate an alteration of company policy and the other did ask for a change in the policies and procedures, the Staff agreed that both proposals would micromanage the Company by seeking to "impose specific methods for implementing complex policies."

ii. Micromanaging the Fund

The Fund's Board has engaged NexPoint Asset Management, L.P. ("NexPoint"), an SEC-registered investment adviser, to manage the Fund. NexPoint's management relies on its understanding of complex investment categories, using information that the Fund's shareholders generally do not possess, to manage the Fund's portfolio under a complex regulatory scheme established by the 1940 Act. Such management, and the imposition of specific investment requirements without regard to potential regulatory impact on the portfolio simply is not the province of investors.[14] Among other examples, a wholly-owned subsidiary of a fund is an affiliated person of the fund under the 1940 Act,[15] and the Proposal therefore would restrict current use by the Fund of one or more of its wholly-owned subsidiaries used for investment and tax management purposes because such subsidiaries are "affiliates." Similarly, the Proposal would potentially impact investment decision making by limiting investment in any issuer to the extent the Fund owned greater than 5% of the voting interests of such issuer because such issuer would be deemed an affiliated person of the Fund upon such investment. Such results are the province of portfolio management, and clearly outside the scope of investor input. The Fund's management focuses extensively on establishing appropriate standards for making investment decisions, which are then implemented on a day-to-day basis when selecting investments. Per the terms of Rule 14a-8, a proposal is excludable on the basis of micromanagement, even with a proper subject matter, if it "probe[s] too deeply into matters of a complex nature," which the Proposal seeks to do.

By seeking to prohibit the Fund from making particular investments and forcing divestment from others, the Proposal can be excluded because it seeks to micromanage the Fund in a manner consistent with other instances the Staff reviewed in no-action letters. In the Vanguard no-action letter, shareholders set forth a proposal to update the procedures requiring Vanguard to monitor and advise the funds on the human rights practices of portfolio companies, and dictate how the funds implement those policies.[16] Vanguard argued, among other things, that the proposal unduly interfered with the company's board processes by assigning a specific set of responsibilities for how a new board committee should assess and manage climate related risks, thereby removing flexibility for the board in overseeing, assessing and managing those risks. The Staff agreed that "the [p]roposal micromanages the Funds by seeking to impose specific methods for implementing complex policies" based on the arguments set forth by Vanguard. In requiring a change in the investment decisions reducing and limiting certain types of investments, the Proposal similarly seeks to dictate specific actions to be taken by the Fund with respect to certain investment policies and decisions that the management of the Fund is well positioned to consider, whereas shareholders as a group are not.

As the Proposal seeks to dictate the day-to-day management decisions of the Fund by overlaying limitations on the investment portfolio, the Fund believes that the Proposal seeks to micromanage the Fund by addressing superficially highly complex management determinations about which shareholders would not be qualified to make an informed decision. As a result, the Proposal may be properly omitted pursuant to Rule 14-8(i)(7).

[14] The definition of "affiliate" is itself a highly complex definition within Section 2(a)(3) of the 1940 Act and not a matter for shareholder input.

[15] Section 2(a)(3) of the 1940 Act deems any entity the voting securities of which are owned by a fund in an amount greater than 5% to be an affiliated person of such fund.

[16] *See* Vanguard Letter.

IV. Additional Matters - false and misleading statements in violation of Rule 14a-8(i)(3) and Rule 14a-9.

The Fund also believe the Proposal is excludable pursuant to Rule 14a-8(i)(3) because it contains false and misleading statements in violation of Rule 14a-8(i)(3) and Rule 14 a-9. 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." Although the Fund believes it has set forth above ample bases for excluding the Proposal, the Fund wishes to note that further bases exists and, to the extent the Staff may not agree with the above positions of the Fund, the Fund can address such additional matters. Among other things, the Proposal's supporting statement makes claims purporting to explain the reasons for a closed-end fund to trade at a discount to net asset value which statements are false and misleading. To the extent the Staff does not agree the Fund may exclude the Proposal on the bases discussed above, the Fund will supplement the Fund's position under Rule 14a-8(i)(3).

V. Conclusion

For the foregoing reasons, the Fund respectively requests that the Staff concur that the Proposal may be excluded from the Proxy Materials, and that the Staff of the Division of Investment Management confirm that it will not recommend any enforcement action if the Fund excludes the Proposal from its Proxy Materials.

We would be happy to provide you with any additional information or answer any questions that you may have. Should you disagree with the conclusions set forth herein, we respectfully request the opportunity to confer with you prior to the determination of the Staff's final position. Please do not hesitate to call me at (617) 261-3231 or Jon-Luc DuPuy at (617) 261-3146, or email to, respectively, george.zornada@klgates.com and jon-luc.dupuy@klgates.com, if we may be of any further assistance in this matter.

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 george.zornada@klgates.com and jon-luc.dupuy@klgates.com

Very truly yours,

George J. Zornada

cc: Allan Hausman
Dustin Norris
Stephanie Vitiello

December 26. 2023

Highland Opportunities and Income Fund
300 Crescent Court
Suite 700
Dallas, Texas 75201

Attn: Stephanie Vitiello, Secretary

Dear Ms. Vitiello,

I own 5,000 shares of Highland Opportunities and Income Fund (HFRO) common stock in my Roth IRA account which is held at Muriel Siebert & Co. I have owned shares of HFRO stock valued at more than $15,000 for more than two years and plan to hold them through the next annual meeting of stockholders. (I am enclosing a verification letter from Siebert.) Pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, I hereby submit the following proposal and supporting statement for inclusion in management's proxy materials for the next meeting of stockholders for which this proposal is timely submitted.

I am available to discuss this proposal at any mutually agreeable time. Please email me at to arrange a meeting.

RESOLVED: The shareholders recommend that the Board of Trustees commit to significantly reducing the percentage of the Fund's assets invested in affiliated companies.

SUPPORTING STATEMENT

I am an unhappy stockholder of the Highland Opportunities and Income Fund. Nor do I believe I am alone. The main reason many stockholders are unhappy is that the Fund's shares have long traded at a huge discount from their net asset value (NAV). As of December 22, 2023, that discount stood at 38%.

The most likely explanation for such a persistently large discount is that investors are skeptical about the true value of the Fund's assets. As of June 30, 2023, almost 75% of the Fund's total assets (and 83% of its net assets) were investments in affiliated companies. And virtually none of those investments have a liquid market. Instead, they are "fairly valued." However, as the Fund concedes in its financial statements, "Determination of fair value is uncertain because it involves subjective judgements and estimates that are unobservable." Consequently, absent monetization of such investments, few investors will be willing to buy the Fund's stock except at a significant discount from NAV.

The problem of too many assets with unreliable valuations suggests a solution. Specifically, the Board should commit to a significant reduction in the percentage of investments in affiliated companies. I am not proposing a fire sale of any investments. Instead, such a reduction should be effected over time in an orderly fashion. To this end, I recommend that the

Board establish a goal to limit its investments in affiliated companies to 25% of its total assets by the end of 2027.

In sum, I believe the Fund's discount would narrow significantly if the Fund demonstrated that its affiliated party investments could actually be monetized at a value close to their "fair value." Absent such a reality check, I see little prospect of any meaningful reduction in the discount.

Very truly yours,

Allan D. Hausman

Muriel Siebert & Co., Inc.
4950 Northdale Blvd, Suite 105
Tampa, FL 33624

December 26, 2023

Re: Allan Hausman: Highland Opportunities and Income Fund (symbol HFRO)

To whom it may concern:

Allan Hausman has a Roth IRA account at Siebert Financial. Based on historical statements, Siebert Financial Services can confirm that the account has held in its possession greater than $15,000 HFRO (Highland Opportunities and Income Fund) continuously for more than two years.

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

Scott Halverson

Senior Vice President