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January 23, 2024

VIA ELECTRONIC MAIL (IMshareholderproposals@sec.gov)

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

RE: Nuveen Real Asset Income and Growth Fund,
Nuveen Multi-Asset Income Fund and
Nuveen Core Plus Impact Fund
Securities and Exchange Act of 1934
Omission of Shareholder Proposal Pursuant to Rule 14a-8

Ladies and Gentlemen:

We refer to our letters, dated December 15, 2023 (the "Initial Letters"), on behalf of each of Nuveen Real Asset Income and Growth Fund, Nuveen Multi-Asset Income Fund and Nuveen Core Plus Impact Fund (each a "Fund" and collectively, the "Funds"), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "Exchange Act"), pursuant to which we requested that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with our view that the Funds may exclude the shareholder proposals and supporting statements (collectively, the "Proposals") submitted by Saba Capital Master Fund, Ltd. (the "Proponent") from the proxy materials (the "Proxy Materials") to be distributed by the Funds in connection with their 2024 annual meetings of shareholders (collectively, the "Annual Meetings"). We also submitted legal opinions from special Massachusetts counsel to the Funds (the "Massachusetts Law Opinions") in support of the Initial Letters.

On behalf of the Funds, we are writing to respond, for the record and for the Staff's consideration, to a letter submitted by Eleazer Klein of Schulte Roth & Zabel LLP, counsel for the Proponent, to the Commission, which was delivered to the Funds on January 8, 2024 (the "Proponent Response Letter"). This letter is intended to supplement, but does not replace, the Initial Letters. In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter is being emailed to imshareholderproposals@sec.gov. In accordance with Rule 14a-8(j)(1), a copy of this letter is being sent simultaneously to the Proponent.

The Proponent Response Letter includes a protracted recitation of irrelevant information and goes to great lengths to impugn the motives of the Funds. Although we vehemently disagree with these and other contentions in the Proponent Response Letter, we will not repeat its approach and will instead remain factual in our response. Nor do we intend to refute each contention in the Proponent Response Letter with which we disagree, but are limiting this response to the relevant core issues raised. In addition, the Proponent Response Letter contends that the issues at hand relate to the "very survival of Rule 14a-8" and "have nothing to do with state law, trust law or corporate law." In fact, as set forth in our Initial Letters and explained further herein, the conclusion that the Funds can exclude the Proposals is the logical outcome of the application of both Rule 14a-8 and state law, as the Staff has correctly decided on several prior occasions.

The Proponent Response Letter inaccurately attempt to recharacterize precedent cited by the Funds in the Initial Letters. The Proponent Response Letter argues that the prior no-action Staff response letter cited by the Funds in the Initial Letters, *First Trust Senior Floating Rate Income Fund II* (June 17, 2020) ("First Trust"), is not "directly on point" with the Funds' current requests. Although *First Trust* was an investment company organized as a Massachusetts business trust seeking to exclude a proposal recommending that it declassify its board, which are precisely the same facts as are presented by the Funds and the Proposal, the Proponent Response Letter notes that in *First Trust*, the declaration of trust did not provide voting rights on matters "as may be required by law [or] the 1940 Act." Although such language may have been absent from the *First Trust* declaration of trust, we note that the absence of such language was not determinative, nor even mentioned, in the Staff's no-action response. Moreover, the *First Trust* declaration of trust contained language which is the practical equivalent of the language set forth in the Funds' Declarations of Trust insofar as Rule 14a-8 is concerned.[1] Additionally, we note that the declarations of trust in two other on point precedents cited by the Funds in the Initial

[1] The *First Trust* declaration of trust provided, in addition to the specific matters on which shareholders were entitled to vote, that shareholders shall have power to vote "(viii) with respect to such additional matters relating to the Trust as may be required by the Declaration, the By-Laws, or any registration of the Trust with the Commission (or any successor agency) or any other regulator having jurisdiction over the Trust, or as the Trustees may consider necessary or desirable."

Letters, *RAIT Financial Trust* (March 10, 2017)[2] ("RAIT") and *Dividend and Income Fund* (two letters, each dated April 10, 2020)[3] ("Dividend and Income Fund") included substantially equivalent language.

The Proponent Response Letter attempts to hand wave away this well established line of Staff precedent, stating that the Funds "only cite *RAIT* and the few no-action descendants that followed." This obscures that this line of Staff precedent encompasses six letters, dating back nearly seven years, addressing a variety of entities, including REITs formed as Maryland trusts, investment companies formed as Delaware statutory trusts and investment companies formed as Massachusetts business trusts. We refer the Staff to our Initial Letters for a further discussion of these precedents. This issue has been carefully considered by the Staff on these prior occasions, and we respectfully submit that this issue has been correctly decided by the Staff.

The Proponent Response Letter claims that the Funds' organizational documents "provide shareholders the right to vote on the [Proposals]." This is demonstrably false. As explained in detail in the Initial Letters, each Fund's Declaration of Trust clearly and unambiguously states that shareholders of the Fund are entitled to vote *only* on specific matters that are enumerated in the Funds' Declarations of Trust. Keying on clause (g) of Article IX, Section 1 of the Funds' Declarations of Trust, the Proponent Response Letter futilely hunts for a basis upon which a vote on the Proposals is required by law.

Most notably, the Proponent Response Letter argues, incorrectly, that Rule 14a-8 is a federal securities law which provides shareholders with an independent right to vote on proposals submitted in accordance with the procedural requirements of the rule and therefore

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[2] The declaration of trust in *RAIT* provided that "[s]ubject to the provisions of any class or series of Shares then outstanding, the shareholders shall be entitled to vote only on the following matters: (a) termination of REIT status as provided· in Article V, Section (l)(C), (b) election of Trustees as provided in Article V, Section 2(A) and the removal of Trustees as provided in Article V, Section 3; (c) amendment of the Declaration of Trust as provided in Article X; (d) termination of the Trust as provided in Article XII, Section 2; (e) merger or consolidation of the Trust, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (f) such other matters with respect to which a vote of the shareholders is required by applicable law or the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification." [*Emphasis added*.]

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

shareholders are granted the right to vote on such matters under clause (g) of Article IX, Section 1. The Proponent Response Letter is plainly incorrect. Contrary to the view espoused by the Proponent Response Letter, Rule 14a-8 does not create a separate and independent legal right for shareholders to vote on Rule 14a-8 proposals that does not otherwise exist pursuant to an issuer's organizational documents and applicable state law.[4] If that were the case, there would essentially be no limit on the scope of shareholder voting rights, absent a state law limitation. Such argument set forth in the Proponent Response Letter is inconsistent with a logical understanding of Rule 14a-8 and the interplay between Rule 14a-8 and applicable state law. 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*.[5] Moreover, the Staff has explained that the purpose of Rule 14a-8 is to effectuate the voting rights *granted to shareholders under state law*.[6] Rule 14a-8 provides shareholders with the information and means to vote on matters on which they are otherwise entitled to vote, but it is not the source of their voting rights.

If Rule 14a-8 could be interpreted as the Proponent Response Letter argues, there would be no reason for the requirement in Rule 14a-8(b)(1) that, in order to be eligible to submit a proposal, a shareholder must hold "securities entitled to vote on the proposal at the meeting" or for the basis for exclusion found in Rule 14a-8(i)(l), which provides for exclusion of a proposal that is not a "proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." To the contrary, the Commission has recognized that "[w]ith respect to subjects and procedures for shareholder votes, most state corporation laws provide that a corporation's charter or by-laws can specify the types of proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Rule 14a-8(i)(l) supports these determinations by providing that a proposal that is not a proper subject for action

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[4] As discussed below, specific federal laws, in particular the applicable shareholder voting provisions of the 1940 Act, also give rise to shareholder voting rights. See footnote 8 below.

[5] *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.

[6] In a speech given by Keith Higgins, then Director of the Division of Corporate Finance, on February 10, 2015, to a Practicing 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*.]

by shareholders under the laws of the jurisdiction of the corporation's organization may be excluded from the corporation's proxy materials."[7] [*Emphasis added*.]

In other words, the Proponent Response Letter attempts to elevate a rule governing the process for submitting shareholder proposals to a substantive federal law of the land on the scope of 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 essentially are governed by state law, as has always been the case in the United States.[8]

Compounding Proponent's attempts to find independent grants of voting rights in the federal securities laws where they don't exist, the Proponent Response Letter asserts that the requirement of Section 18(i) of the 1940 Act that every share of common stock be "voting stock" with "equal voting rights" renders Rule 14a-8(b) inapplicable to the Funds "other than with respect to requiring that a proponent own the (one) class of voting common stock issued by the [Funds] and that there be no contravening state law statute that says shareholders are not entitled to vote on a specific matter." This ignores the fact that the 1940 Act defines "voting security" to mean a "security presently entitling the owner or holder thereof to vote for the election of directors of a company" and the history that Section 18(i) of the 1940 Act was enacted to safeguard fairness and equality in the governance of registered investment companies by preventing the issuance of shares without voting rights in order to prevent a minority of shares

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7 *Shareholder Proposals Relating to the Election of Directors,* Final Rule, SEC Release No. 34-56914 (Jan. 10, 2008).

8 The Investment Company Act of 1940 (the "1940 Act") and the rules and regulations thereunder provide shareholders with specific rights to vote on certain enumerated matters, such as approval of advisory contracts, changes to fundamental investment policies and certain affiliated fund reorganizations, which is precisely what the language of clause (g) of Article IX, Section 1 of the Funds' Declarations of Trust is intended to respect. The adoption of these provisions demonstrates that (i) the federal securities laws and the Commission generally recognize that shareholder voting is primarily governed by state law and (ii) the federal securities laws and the Commission know how to provide specific voting rights to fund shareholders where deemed necessary. As an example, the Commission amended Rule 17a-8 to require shareholders of certain acquired funds seeking to rely on the exemption provided by Rule 17a-8 from the prohibitions under Section 17(a) of the 1940 Act to have an opportunity to vote on affiliated mergers in certain cirumstances, in light of state statutes that might not impose such a requirement. *See* Investment Company Mergers, Proposing Release, Investment Company Act Release No. 25259 (November 8, 2001) ("When we adopted rule 17a–8, we assumed that shareholders of acquired funds in an affiliated merger would have an opportunity to vote on the merger. State corporation statutes that govern funds typically impose such a requirement… Increasingly, however, funds have organized or reorganized as business trusts, which may not be required to receive shareholder approval before being acquired by another fund.").

from controlling an entire fund through the election of directors.[9] Section 18(i) therefore requires registered investment companies to issue shares that have the right to vote in director elections and have equal voting rights. It says nothing about the subjects on which the shares can be voted. Therefore Section 18(i) is not, as Proponent claims, a source, independent of state law, of voting rights on any and all matters (unless expressly disclaimed by state law).[10]

Furthermore, even if one were to accept Proponent's incorrect argument that Section 18(i) renders Rule 14a-8(b)[11] inapplicable to a registered investment company in the absence of contravening state law, it would not resolve the question at hand in favor of the Proponent. While the Proponent Response Letter argues that Rule 14a-8(b) would apply to a registered investment company only in the case of a contravening state law statute, there is nothing in Rule 14a-8(b) or Rule 14a-8(i) that would limit the scope to state ***statutory*** law.[12] The Funds are organized as Massachusetts business trusts. As explained in the Massachusetts Law Opinions, case law in Massachusetts generally holds that one should look to the provisions of the trust instrument, such as a declaration of trust, and the by-laws, to determine the rights of shareholders and other matters relating to the trust. State laws governing business organizations take various forms. Unlike many state corporate laws, which provide extensive statutory regimes for voting rights and other rules governing the operation and management of the entity, a Massachusetts business trust is a voluntary association created by agreement that forms a contract between the trustees of the trust and the shareholders and defines the rights of the trust's shareholders. As a matter of Massachusetts law, the scope of voting rights of a shareholder of a business trust are expressed not through statute but through the declaration of trust. Therefore,

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[9] *See* U.S. Securities and Exchange Commission, Investment Trusts and Investment Companies: Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies, H.R. Doc. 76-279 (1939) (the "SEC Report"), at 1875-96; *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Sub-Committee of the Committee On Banking and Currency*, 76th Cong. (1940), at 240 (David Schenker, Chief Counsel of the SEC Report, describing "one of the numerous instances that persuaded us to make provision that the persons who really own the company, at least ought to have a vote in some instances"); *see also id.* at 71-72 (Hugh Fulton, federal prosecutor, testifying to the use of voting classes to permit a small class of holders to exercise control over funds); *Id*. at 218 (Smith, Associate Counsel of the SEC Report, testifying to same).

[10] If Section 18(i) did create an unlimited voting right for investment company shareholders independent of state law, it would render redundant the various sections of the 1940 Act and the rules and regulations thereunder that provide specific rights to vote on enumerated matters as noted above in footnote 7.

[11] Presumably the Proponent Response Letter intends to refer only to the requirement in Rule 14a-8(b) that a proponent shareholder holds securities entitled to vote on the proposal, and not to the other procedural requirements of Rule 14a-8(b).

[12] For example, 14a-8(i) refers merely to whether a proposal is a proper subject "under the law of the jurisdiction of the company's organization."

even under Proponent's own incorrect interpretation of Section 18(i) and Rule 14a-8(b), Rule 14a-8(b) remains applicable to the Funds as there is contravening state law — in the form of the limited scope of voting rights set forth in the Funds' Declarations of Trust.

Continuing their search for an independent source of voting rights, the Proponent Response Letter states that the Funds must abide by the listing requirements of the New York Stock Exchange, which require listed companies to hold annual shareholder meetings every fiscal year, and that companies cannot contract the NYSE regulations away. The Proponent Response Letter then contends that the Funds disagree with "these uncontroversial premises." The Funds do not disagree, and have held an annual meeting each fiscal year since their inception in compliance with Section 302 of the NYSE Listed Company Manual. The NYSE has noted that "[i]n interpreting this Rule, the Exchange considers an annual shareholders' meeting to be one at which directors are elected."[13] Like Rule 14a-8, Section 302 of the NYSE Listed Company Manual is a procedural requirement to ensure that listed companies hold a meeting for the purpose of electing directors, and not an unbounded grant to shareholders of a right to vote on all matters that may come before such meeting, properly or improperly.

Next, the Proponent Response Letter incorrectly argues that Section 2.6(a) of the Funds' By-Laws provides that "proposals duly submitted in accordance with the requirements of Rule 14a-8 under the Exchange Act" shall be included in the Funds' proxy materials and therefore compels the inclusion of the Proposals. However, the Proponent Response Letter grossly misconstrues this provision of the By-Laws. In fact, the Proponent Response Letter fails to quote the full language of Section 2.6(a), which states that "proposals duly submitted in accordance with the requirements of Rule 14a-8 under the Exchange Act (or any successor provision thereto) upon which a requesting Shareholder is entitled to vote and required to be included therein by applicable law." [*Emphasis added.*] Clearly, Section 2.6(a) does not require the Funds to ignore the many potential grounds for exclusion of a proposal established by Rule 14a-8.[14] It is merely intended to provide that if a proposal is required to be included pursuant to Rule 14a-8 (taking into account all of the requirements of Rule 14a-8, including the applicable grounds for exclusion), then it will be included in the Funds' proxy materials. Section 2.6(a) of the By-Laws does not expand the scope of the proposals that the Funds must

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[13] *See* Listed Company Compliance Guidance for NYSE Domestic Companies (January 12, 2016).

[14] Section 2.6(a) expressly contemplates that proposals (i) that do not meet the requirements of Rule 14a-8, (ii) upon which the proponent shareholder is not entitled to vote and/or (iii) that are not required to be included in the Funds' proxy materials by applicable law, may be excluded from the Funds' proxy materials. Our Initial Letters outline the many ways in which the Proposals do not meet "the requirements of Rule 14a-8" and are not a matter upon which the "requesting Shareholder is entitled to vote" and are therefore not required to be included in the Funds' proxy materials pursuant to Rule 14a-8, in which case the Proposals are not required to be included in the Funds' proxy materials pursuant to Section 2.6(a).

include beyond the four corners of Rule 14a-8, nor does Section 2.6(a) of the By-Laws contradict or modify the scope of voting rights granted under the Funds' Declarations of Trust.

In summation, each Fund, as a Massachusetts business trust, is governed by the applicable laws of the Commonwealth of Massachusetts.[15] As described in the Massachusetts Law Opinions submitted with the Initial Letters, Massachusetts common law provides that the governing instruments of a Massachusetts business 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 by shareholders.[16] Each Fund's Declaration of Trust states that "[e]very Shareholder by virtue of having become a Shareholder shall be held to have expressly assented and agreed to the terms of this Declaration of Trust and to have become a party thereto." Thus, it seems the Proponent's issue with the scope of their voting rights as shareholders of the Fund is with the state law governing Massachusetts business trusts, and the Proponent's remedy, if any, lies in the Massachusetts legislature or in Proponent's initial diligence of its investment decisions. It should not lie in a request that the Staff set aside established state law, the Declarations of Trust to which the Proponent has agreed to be bound, the history of Rule 14a-8 and well decided Staff precedent addressing the issue at hand and instead rewrite the voting rights of the Funds' organizational documents to the Proponent's liking.

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With respect to the Funds' grounds for exclusion of the Proposals under Rule 14a-8(i)(3), the Funds continue to believe that the statements in the Proposals and supporting statements identified by the Funds as being materially misleading in the Initial Letters are materially misleading. Certain of the Proponent's arguments defending their supporting statements ignore or fail to address a key aspect of Rule 14a-9, specifically that statements that omit to state material facts necessary in order to make statements therein not false or misleading are in contravention of Rule 14a-9. Rather, we believe that the Proponent's arguments highlight that material information has been omitted from their supporting statements and that such statements are likely to be misleading to a reasonable shareholder without the proper context.

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Finally, although it has no bearing on the Proposal or the interpretation of Rule 14a-8 or Massachusetts state law and therefore no bearing on the issues at hand, the Funds

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[15] *See* Mass. Gen. Laws Ann. Ch. 182, § 1.

[16] *See Brigade Leveraged Capital Structures Fund Ltd. v. PIMCO Income Strategy Fund*, 466 Mass. 368, 373 (2013); *Western Investment, LLC v. Deutsche Multi-Market Income Trust*, No. SUCV20163082BLS1, 34 Mass. L. Rptr. 95, 2017 WL 1103425 (Mass. Super. Feb. 6, 2017).

seek to correct the mischaracterizations set forth in the Proponent Response Letter regarding the Funds' adoption of "control share" by-laws in October 2020. On May 27, 2020, the Staff issued a Statement on Control Share Acquisition Statutes (the "2020 Staff Statement") which stated that "the [S]taff would not recommend enforcement action to the Commission against a closed-end fund under section 18(i) of the [1940 Act] for opting in to and triggering a control share statute if the decision to do so by the board of the fund was taken with reasonable care on a basis consistent with other applicable duties and laws and the duty to the fund and its shareholders generally" and withdrew the Boulder Total Return Fund no-action letter issued on November 15, 2010, which had expressed a contrary view.[17] Following the Staff's Statement, the boards of trustees of the Funds (the "Board") carefully considered the application of control share provisions to the Funds, including the potential of such provisions to protect the ability of the Funds to operate in pursuit of their investment objectives and balance the long-term interests of shareholders against the shorter-term opportunistic goals of shareholders with idiosyncratic preferences. At the conclusion of a thorough process undertaken by the Board, which was composed entirely of trustees who are not "Interested Persons," as defined in Section 2(a)(19) of the 1940 Act, of the Fund or its investment adviser, over a series of months in accordance with its fiduciary duties, the Board, like the boards of many closed-end funds in 2020, determined to adopt control share by-laws for the Funds. Upon a court ruling that such by-laws were inconsistent with the 1940 Act, in contradiction of the view of the Staff expressed in the 2020 Staff Statement, the Boards promptly amended the by-laws to nullify the control share by-laws. The Proponent Response Letter stresses that this court ruling occurred at the summary judgment stage to suggest that "it was crystal clear to [the court] that Nuveen was violating federally protected shareholder rights… " However, that the ruling came at the summary judgment stage demonstrates only that the case was resolved as a matter of law, and further findings of fact were not necessary to the court's ruling. The Proponent Response Letter contends that in the court rulings with respect to the Funds' control share by-laws the district court and court of appeals "issued 'published case law', concluding that >10% shareholders were entitled to voting powers 'in addition' to those enumerated in the relevant funds' bylaws." These rulings invalidated the Funds' control share by-laws, which would have provided that a holder of shares who acquired such shares in a control share acquisition could only vote such shares if authorized by a vote of the remaining shareholders. These rulings did not grant or find voting rights with respect to matters beyond those established by Article IX, Section 1 of the Funds' Declarations of Trust.

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For the reasons set forth above and in our Initial Letters, the Funds respectfully request that the Staff confirm that it will not recommend any enforcement action if the Funds exclude the Proposals from their Proxy Materials. Please note that in preparing and submitting

[17] U.S. Securities and Exchange Commission, Control Share Acquisition Statutes (May 27, 2020).

this letter on behalf of the Funds, as to all matters of Massachusetts law, we have relied on the Massachusetts Law Opinions, which were filed as exhibits to the Initial Letters.

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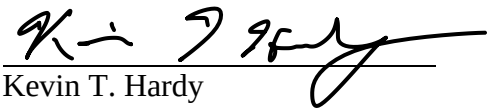
We appreciate your consideration of this letter. If the Staff has any questions or comments regarding the foregoing, please contact the undersigned at 312-407-0641.

Very truly yours,



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