Saba | Capital

VIA E-MAIL

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

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

Dear Ms. Larkin, Mr. Sutcliffe, and Mr. Sandoe,

We are providing a written submission in connection with the above-referenced matters (the "Nuveen No-Action Requests"). As you will recall, in the Nuveen No-Action Requests, each of Nuveen Real Asset Income and Growth Fund, Nuveen Multi-Asset Income Fund and Nuveen Core Plus Impact Fund (together, the "Nuveen Funds") asserts that it intends to exclude from its proxy statement and form of proxy card for its 2020 annual meeting of shareholders (collectively, the "Proxy Materials") the shareholder proposal (the "Proposal") submitted to it on December 1, 2023 by Saba Capital Master Fund, Ltd. ("Saba") pursuant to Rule 14a-8 ("Rule 14a-8") promulgated under the Securities Exchange Act of 1934, as amended (the "1934 Act"). On January 23, 2023, the Nuveen Funds submitted a written response (the "Nuveen January 23 Response") to a written response submitted on behalf of Saba on January 8, 2024 (the "Saba January 8 Response").

We would like to clarify and expand on the Saba January 8 Response to provide additional support for the inclusion of the Proposal in the Proxy Materials, as well as address certain aspects of the Nuveen January 23 Response. Rule 14a-8 is critical to the facilitation of shareholder participation in corporate governance, and funds seem to be increasingly relying on Rule 14a-8(b) as a means to exclude shareholder proposals, at times (as is the case here) and in a manner that entrenches the fund's organization, operation and management in the interests of directors, trustees and other insiders rather than in the interests of the fund's shareholders.

We plan to address the following points in this written submission:

- Any analysis of Saba's ability to include the Proposal in the Proxy Materials must take the 1940 Act into account, including the statutory provisions requiring that all shares of an investment company have the right to vote (Section 18(i)) and that directors and trustees be elected by shareholders (Section 16(a)).

- We must consider the Nuveen Funds' attempted exclusion of the Proposal in the context of the policy and purposes of the 1940 Act, in particular the purpose of preventing the organization and management of investment companies for the benefit of insiders (Section 1(b)(2)).

- Using Rule 14a-8, a procedural rule, to substantially limit the items on which shareholders have proxy access amounts to an end run around Rule 14a-8, with the Nuveen Fund insiders using control of their proxy materials to prevent investors like Saba from participating in corporate governance.

- Massachusetts law, including with respect to business trusts, has been selectively cited by the Nuveen Funds and, in fact, Massachusetts courts take the view that shareholders' ability to vote with respect to the election of trustees is of critical importance.

- We respectfully submit that the Staff's conclusion in the *First Trust* no-action letter cited by the Nuveen Funds should be not be repeated here, both for the reasons we will address below and in light of recent court decisions regarding the voting rights of closed-end fund shareholders.

- The Nuveen Funds have also failed to demonstrate that the Proposal can be properly excluded under Sections (i)(1), (i)(2) and (i)(3) of Rule 14a-8.

1. The Investment Company Act of 1940 (the "1940 Act") provides fund shareholders with substantive rights, including by requiring that all common shares be entitled to vote and that directors and trustees must be elected by shareholders, that should not be ignored.

The Nuveen Funds argue that the laws of the state of Massachusetts and the Nuveen Funds' declarations of trust compel the conclusion that Saba and other fund investors cannot vote on the Proposal. The January 23 Response also makes much of the fact that Saba has not identified an independent grant of voting rights in the federal securities laws. This argument ignores the unique considerations applicable to funds subject to the provisions of the 1940 Act, in particular the fundamental requirement that the common shares of such funds be "entitled to vote" in connection with the election of directors. A non-binding, precatory proposal relating to the process by which directors and trustees are elected falls squarely within that fundamental requirement under the 1940 Act.

Any analysis of Saba's ability to include the Proposal in the Proxy Materials must take the 1940 Act into account, including the statutory provisions requiring that all shares of an investment company have the right to vote and that directors and trustees be elected by shareholders. Under Section 18(i) of the 1940 Act, all common shares of an investment

company ***must*** be "voting stock," which is defined to mean stock "presently entitling the owner… to vote for the election of directors of a company."[1] The entitlement of fund shareholders to vote for directors and trustees under the 1940 Act is further enshrined in Section 16(a), which provides that directors and trustees of registered investment companies must be elected by shareholders.[2]

The shareholder governance system created by the 1940 Act relies on shareholders' voting rights to check the power of insiders charged with managing the affairs of the fund. Specifically, the 1940 Act requires shareholder approval of investment company directors, as noted, as well as any investment adviser.[3] Voting rights are particularly important for closed-end fund shareholders, whose ability to "vote with their feet" is circumscribed by the closed-end fund structure, which does not permit shareholders to redeem their shares at net asset value.[4]

Saba holds voting shares in each of the Nuveen Funds—shares that clearly and unambiguously are entitled to vote on the election of trustees. Those shares should not be precluded from voting on a non-binding, precatory proposal to make a request of the trustees to consider changing the boards' organizational structure in a manner that makes it easier for shareholders to elect new trustees. This is particularly true where, as here, shareholders are not able to remove trustees except in limited circumstances. Specifically, the Nuveen Funds' declarations of trust restrict the ability of shareholders to remove trustees to situations involving "cause". Implementing a classified board structure without shareholder approval, restricting shareholders' ability to remove trustees outside of a "cause" scenario, and blocking efforts by shareholders to seek shareholder engagement on the suitability of the classified board structure for these particular funds amounts to entrenchment of the Nuveen Funds' insiders which, as we will discuss below, is in direct conflict with the policy and purposes of the 1940 Act.

2. **The Nuveen Funds' exclusion of the Proposal would facilitate the entrenchment of the Nuveen Funds' organization, operation and management in the interests of the**

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1 15 U.S. Code § 80a–18(i); 15 U.S. Code § 80a–2(42). In addition, a fund's shareholders have the right to vote on certain additional matters under the 1940 Act, including approving fundamental changes to investment policies, investment advisory and distribution agreements, Rule 12b-1 plans and mergers of affiliated funds. Indeed, the Nuveen Funds' declarations of trust acknowledge this fact in the catchall voting provision, which contemplates that shareholders can vote on additional matters relating to the Funds as may be required by the 1940 Act.

2 15 U.S. Code § 80a–16(a). Section 16(a) of the 1940 Act provides that an investment company is not precluded from dividing its board into classes if done in accordance with certain requirements. The Proposal does not suggest that a classified board is impermissible and is therefore not inconsistent with this provision. Saba believes that declassifying the boards of the Nuveen Funds would be better for the Nuveen Funds' shareholders and would like the boards to *consider* implementing such a change.

3 *Id.*; 15 U.S. Code § 80a–15(a).

4 *See, e.g.*, Securities and Exchange Commission, *Report on Investment Trusts and Investment Companies,* pt. 3, ch.4, H.R. Doc. No. 136, 77th Cong., lst Sess. (1940), at p. 1874 ("In closed-end investment companies, where the shareholder does not have the right to compel redemption of his shares at asset value, the investor must dispose of his securities in the open market, and when performance is indifferent these securities may be selling at substantial discounts from their asset values.").

trustees and other insiders, in direct conflict with the policy and purposes of the 1940 Act.

As recently noted by the U.S. Court of Appeals for the Second Circuit in a decision invalidating the control share act provisions in the by-laws of certain funds operated by Nuveen, Congress passed the 1940 Act for the benefit of investors to correct and prevent certain abusive practices in the management of investment companies.[5] These corrections were enacted for the benefit of investors, not fund insiders.[6] Section 1(b)(2) of the 1940 Act states explicitly that investors are adversely affected when investment companies are organized, operated or managed in the interest of directors, officers, investment advisers and other insiders, rather than in the interest of the companies' security holders.[7]

A clear example of a fund organized and managed for the benefit of insiders is one that implements a classified board structure to guarantee longer terms for directors and trustees, restricts shareholders' ability to remove such board members outside of a "cause" scenario, and then blocks legitimate efforts by shareholders to have the board simply *consider* declassification. When the 1940 Act was being enacted, then-SEC Commissioner Healy noted that one of the "devices of control" that was preventing investors from meaningful participation in the management of investment companies was "control of the proxy machinery."[8] Here, the Nuveen Funds seek to control their Proxy Materials by excluding investors like Saba from meaningful participation.

3. **The Nuveen Funds' practice of excluding shareholder proposals pursuant to Rule 14a-8(b) amounts to an end-run around Rule 14a-8.**

Limiting the matters on which shareholders can vote to a narrow and exclusive list of items set forth in a declaration of trust, and then relying on Rule 14a-8(b) to exclude proposals that do not appear on the list, amounts to an end-run around Rule 14a-8, a *procedural* rule designed to facilitate proxy access by shareholders.[9] As has been explained by the Commission Staff, Rule 14a-8 "provides an avenue for communication between shareholders and companies, as well as among shareholders themselves."[10] Rule 14a-8 "generally requires the company to

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5 *Saba Capital CEF opportunities 1, Ltd. v. Nuveen Floating Rate Income Fund*, 88F.4th 103, 120 (2d. Cir. 2023).

6 *Id*.

7 15 U.S. Code § 80a–1(b)(2).

8 Hearings on H.R. 10065 Held before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives (June 13-14, 1940).

9 Rule 14a-8(i) contains 13 substantive bases on which companies may exclude shareholder proposals that otherwise meet "the procedural requirements" (which includes subsection (b)) contained in the remainder of the rule. These substantive bases include improper under state law, violation of law, violation of proxy rules, absence of power/authority, management functions and substantially implemented.

10 Division of Corporation Finance, Staff Legal Bulletin No. 14 (July 13, 2001), *available at* https://www.sec.gov/interps/legal/cfslb14.htm.

include the proposal unless the shareholder has not complied with the rule's procedural requirements or the proposal falls within one of the 13 substantive bases for exclusion."[11]

A company subject to the 1940 Act and the 1934 Act cannot restrict its *common* shareholders' voting rights to only a handful of enumerated matters and, further, prevent those shareholders from engaging through the proxy process with the company and the other shareholders on anything other than those enumerated matters. A fund that takes these actions, arguing the actions are in compliance with state law, while claiming a precatory shareholder proposal is in *violation* of state law in order to cut off shareholders' voices, is a fund that is using the tools provided in Rule 14a-8 to shut down legitimate shareholder participation in the proxy process. Consistent with the discussion above, such a result is antithetical to the policy and purposes of the 1940 Act and the statutory provisions themselves, which specifically require that all common shares of an investment company be entitled to vote and that such shares be able to vote for the election of directors and trustees.

4. **Massachusetts law has been selectively cited by the Nuveen Funds and, in fact, Massachusetts courts take the view that shareholders' ability to vote with respect to the election of trustees of a business trust is of critical importance.**

The Nuveen Funds rely on their governing documents—specifically, their declarations of trust and by-laws—to support their exclusion of the Proposal. In support of the apparent primacy of the provisions in these documents, the Nuveen Funds selectively cite to Massachusetts law for the proposition that what is set forth in the Nuveen Funds' governing documents must control.[12] Even accepting the Nuveen Funds' argument, there is no support in Massachusetts case law for restricting shareholder voting rights to a narrow, enumerated list of items and using that list as a basis to exclude a non-binding, precatory proposal relating to board declassification. Indeed, Massachusetts courts, including those discussing business trusts like the Nuveen Funds, have actually emphasized the critical importance of shareholders' ability to vote, particularly on matters relating to the election of trustees.

A Massachusetts superior court interpreting a Massachusetts business trust's declaration of trust and by-laws observed, "[t]he right of shareholders to vote for the trustees of a business trust is one of the most important rights arising from stock ownership. And the right to remove

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11 *Id*.

12 The Nuveen Funds overstate the importance of their governing documents in arguing that these documents compel a conclusion that shareholders are not entitled to vote on a non-binding, precatory proposal to declassify the board. The fact is that Massachusetts law does not even require a written declaration of trust to be on file with the state in order for a trust to exist as a separate legal entity. *See* Jones, Moret and Storey, *The Massachusetts Business Trust and Registered Investment Companies*, Delaware Journal of Corporate Law, vol. 13, no. 2, at pp. 424 (explaining that, in contrast to a corporation which does not exist prior to the filing of its certificate with the state, filing a declaration of trust with Massachusetts is not a condition precedent to the existence of the trust, and if no filing of any kind is made, the trust entity will still exist).

an existing trustee is particularly important."[13] As discussed above, the Nuveen Funds are not only seeking to entrench their classified board structure; they have *also* restricted shareholders' ability to remove trustees outside of a "cause" scenario.[14] The Nuveen Funds' posture is therefore in conflict with principles espoused by Massachusetts courts opining on matters relating to business trusts. Indeed, the Supreme Judicial Court of Massachusetts, the highest appellate court in the state, has stated that "[t]he ability to nominate and elect different trustees is a crucial means for shareholders to prevent the entrenchment of poorly performing trustees. *Delay in holding a shareholder election diminishes electoral rights by allowing these trustees to become more deeply entrenched and to continue to harm the interests of shareholders.*"[15] As described above, what the Nuveen Funds have done—implemented a classified board structure, restricted shareholder ability to remove trustees outside of a "cause" scenario, and, now, seeking to exclude a non-binding, precatory proposal to declassify the boards of directors—amounts to a *de facto* delay in shareholders' ability to elect new trustees, diminishing shareholders' electoral rights and allowing trustees to become more deeply entrenched.

Utilizing the proxy process to facilitate shareholder engagement on a non-binding, precatory proposal to declassify a board is exactly the type of action that appropriately allows shareholders to engage with the company and with each other on the subject of director and trustee elections. Massachusetts courts have acknowledged the importance of the custom of voting by proxy in the context of business trusts, pointing out that "there is nothing contrary to public policy for the owners of shares to authorize one to vote the shares at a meeting of the shareholders."[16]

A fulsome review of Massachusetts law therefore reveals that, while a business trust's governing documents should generally dictate the contours of shareholders' rights, questions

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[13] *Eaton Vance Senior Income Trust v. Saba Capital Master Fund, Ltd.,* 2021 Mass. Super. LEXIS 48 (Mar. 31, 2021) (internal citation omitted).

[14] Although not cited directly in their responses, the Nuveen Funds' opinion of Massachusetts counsel appended to the Nuveen No-Action Requests submitted on December 15, 2023 suggests that restricting shareholder voting rights is done for the shareholders' benefit, due to an apparent risk that shareholders of a trust could be found personally liable if they exert too much control over the trustees. Putting aside the fact that the Nuveen Funds' declarations of trust substantially mitigate this risk to shareholders through the use of customary provisions imposing limitations on liability and providing for indemnification, the risk of personal liability for shareholders of a Massachusetts business trust has been viewed to be low for quite some time. *See* Jones et. al, *supra* note 12, at pp. 441-42 (discussing then-current trends in investment company disclosure "reflecting an increased familiarity and level of comfort with the Massachusetts business trust" evidenced by the practice of addressing risks associated with shareholder liability in the statement of additional information incorporated by reference into the prospectus, rather than in the prospectus itself, where the risk disclosure would be more prominent). Moreover, as conceded in the Nuveen Funds' Massachusetts opinion, the shareholder liability analysis hinges on the shareholders' control over the trustees. The Proposal is a non-binding, precatory proposal and would not inhibit, bind or dictate the trustees' autonomy in any way. It would merely seek to have the trustees take steps to change the structure of the board from multi-class to a single class.

[15] *Brigade Leveraged Capital Structures Fund v. Pimco Income Strategy Fund,* 466 Mass. 368, 379 (2013) (internal citations omitted) (emphasis added).

[16] *Comstock v. Dewey,* 323 Mass. 583, 588 (1949).

relating to shareholders' fundamental right to elect trustees should be evaluated in a light that favors shareholders and accounts for applicable public policy considerations. In the context of the Proposal and the Nuveen Funds, applicable public policy considerations include the emphasis under *both* the 1940 Act and Massachusetts law on the right of shareholders to vote on the election of trustees and the importance of shareholder nominations and elections to prevent the entrenchment of poorly performing trustees.

5. **We respectfully submit that the Staff's conclusion in the *First Trust* no-action letter cited by the Nuveen Funds should not be repeated here, including in light of recent court decisions regarding the voting rights of closed-end fund shareholders.**

The Nuveen Funds rely heavily on the Staff's "precedential" no-action letters to rest their argument that the Proposal is properly excludable under Rule 14a-8(b). We respectfully submit that, for the reasons set forth above and in light of recent court actions, the shareholders of a closed-end fund governed by the 1940 Act are "entitled to vote" on a non-binding, precatory proposal that relates directly to the process by which trustees are elected.[17] It is not a proper interpretation of Sections 1(b) and 18(i) of the 1940 Act to conclude that a fund can prevent its shareholders from voting on matters relating to the election of directors. Merely drafting the voting provisions of an organizational document in the narrow way of the Nuveen Funds does not make their proposed prohibition proper under the 1940 Act.

The U.S. District Court for the Southern District of New York recently pointed out that the fact that state law *allows* funds to adopt control share resolutions does not in any way mean that state law *requires* as much.[18] The court went on to explicitly describe the by-laws of the relevant fund as a "contract" whose provisions must be rescinded when they violate the 1940 Act.[19] Here, we make no request to rescind any provision of the Nuveen Funds' organizational documents, but point out that, consistent with the Saba January 8 Submission, the Nuveen Funds' declarations of trust contemplate that shareholders can vote on additional matters relating to the Nuveen Funds as may be required by the 1940 Act. As discussed above, the 1940 Act explicitly requires that all common shares be entitled to vote for the election of directors, and the 1940 Act's policy and purposes provisions emphasize the importance of preventing entrenchment by insiders, which can result from classified boards in some cases. This provision of the declarations of trust (and the 1940 Act itself) therefore compels the conclusion that shareholders like Saba be able to propose and vote on a request to declassify the board.

6. **The Nuveen Funds should not be permitted to exclude the Proposal under Rule 14a-8(i)(1) (improper under state law).**

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17 *See Saba Capital CEF Opportunities v. Nuveen Floating Rate Income Fund*, 88 F.4th 103, 120-21 (2d Cir. 2023) (noting that the 1940 Act's statements of policy reflect Congress's concern over investment companies that are organized, operated and managed in the interest of directors and other insiders, and that the corrections enacted by the 1940 Act are for the benefit of fund *investors*, not fund *insiders*).

18 *Saba Capital Master Fund, Ltd. v. BlackRock Municipal Income Fund, Inc.,* 23-cv-5568 (JSR) (SDNY Jan. 4, 2024).

19 *Id*.

The Nuveen Funds have failed to demonstrate that the Proposal is improper under the laws of the State of Massachusetts. Indeed, the opinion of local counsel attached to the Nuveen Funds' no-action request letters clearly state that relevant statutes and case law in Massachusetts have nothing to say about matters on which shareholders of a business trust can and cannot vote, calling into question the Nuveen Funds' ability to rely on this provision as a basis for exclusion. As discussed above, Massachusetts courts have, in fact, strongly emphasized the importance of shareholder voting rights, particularly in the context of electing directors.[20]

Instead, the Nuveen Funds' argument rests on the provisions of their declarations of trust and by-laws as a basis to exclude the Proposal under Section (i)(1) of Rule 14a-8. Whether or not shareholders can vote on a proposal under a company's *organizational documents* is not relevant to a decision to exclude a proposal under Section (i)(1)—the SEC has previously stated that "[w]here management contends that a proposal may be omitted because it is not proper under State law, it will be incumbent upon management to refer to the applicable *statute* or *case law* and furnish a supporting opinion of counsel."[21]

The Nuveen January 23 Response argues that nothing in Rule 14a-8(b) or Rule 14a-8(i) limits the scope of these provisions to state statutory law. We respectfully submit that these provisions should not be interpreted in the broad manner proposed by the Nuveen Funds. Prior determinations that proposals to declassify a board were excludable under Rule 14a-8(i)(1) have been based on the failure of the proposals to meet certain procedural requirements under applicable state statutes. Specifically, where declassification of the board would require an amendment of the company's charter, and charter amendments are required under state law to be initiated by the board and approved by the shareholders, it was not proper for shareholders to vote on an action that would result in a charter amendment without such procedural steps first occurring.[22] The Proposal does not violate any state law procedural requirements. It is merely a non-binding, precatory proposal for the board to "take steps to" declassify itself.

In fact, even accepting the Nuveen Funds' argument that the terms of the declarations of trust and by-laws are captured within the meaning of Section (i)(1), the Nuveen Funds fail to properly differentiate the proposal from those that have been deemed acceptable by the Staff in the past. Section (i)(1) of Rule 14a-8 allows companies to exclude a proposal that is not a proper subject for action by shareholders under state law. In analogous prior examples, shareholder proposals were deemed improper under state law because declassifying the board required a

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[20] *See* notes 13-16, *supra*, and accompanying text.

[21] 19 Fed. Reg. 246 (1954). It is also notable that the opinion of Massachusetts counsel provided by the Nuveen Funds provides that, under Massachusetts law, a trust's declaration and by-laws are treated as *contracts*, and Massachusetts courts interpret them according to *traditional principles of contract law*. We also reiterate the recent opinion of the U.S. District Court for the Southern District of New York, which differentiated between matters of state or federal law and matters which may appear in an entity's organizational documents, characterized by the court as "contracts". *See supra* note 18 and accompanying text.

[22] *See, e.g.,* Shareholder Proposals: Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008), *available at* https://www.sec.gov/corpfin/staff-legal-bulletin-14d-shareholder-proposals; Gyrodyne Co. of America, Inc. No-Action Letter (Aug. 18, 1999); Sears, Roebuck and Co. No-Action Letter (Feb. 17, 1989).

charter amendment, and the board had not first initiated and approved the charter amendment as required by state law.[23] The impropriety was cured, and the proposals allowed to be included in the relevant proxy materials, by framing the proposal as a request to the board to "take steps to" effect the declassification. Consistent with longstanding precedent, the Proposal is already framed as a request to the boards to "take steps to" effect the declassification.

Section (i)(1) provides explicitly that the SEC will assume a proposal drafted as a recommendation or suggestion, which is the definition of a precatory proposal, is proper under state law unless the company demonstrates otherwise. The Nuveen Funds have failed to demonstrate why a non-binding, precatory proposal is not proper.

7. **The Nuveen Funds should not be permitted to exclude the Proposal under Rule 14a-8(i)(2) (violation of law).**

The Nuveen Funds have failed to demonstrate that the Proposal would, if implemented, cause the Nuveen Funds to violate applicable law. In seeking to rely on this provision, the Nuveen Funds argue that the Proposal, if included in the Proxy Materials, would prevent the Nuveen Funds' trustees from properly exercising their fiduciary duties and thereby cause the trustees to violate state law. The inclusion of a non-binding, precatory proposal in the Proxy Materials will not prevent the trustees from exercising their fiduciary duties, even if the trustees disagree with the subject matter of the proposal. In fact, the Nuveen Funds are expressly permitted by Rule 14a-8(m) to include in the Proxy Materials the reasons why they believe shareholders should not vote in favor of the Proposal. If the trustees ultimately determine that declassifying the boards of the Nuveen Funds would not be in the Nuveen Funds' best interests (and thus determine that, in taking action to declassify the boards, the trustees would be in violation of their fiduciary duties), they can simply not take the action, regardless of whether or not the Proposal is approved by the Nuveen Funds' other shareholders.

8. **The Nuveen Funds should not be permitted to exclude the Proposal under Rule 14a-8(i)(3) (violation of proxy rules).**

The Nuveen Funds have failed to demonstrate that the Proposal contains materially false and misleading statements. We refer back to the Saba January 8 Response, which walks through and rebuts the Nuveen Funds' arguments with respect to each of the four statements identified by the Nuveen Funds. We do not believe that any of these statements violate Rule 14a-9. Nonetheless, Saba would be willing to revise the statements should the Staff request any clarifications or edits.

9. **Conclusion.**

For the reasons set forth above, when confronted with a question of the scope of a shareholder's voting rights in a closed-end fund subject to the 1940 Act, those rights should be construed as broadly as possible. The U.S. District Court for the Southern District of New York recently addressed an argument by a fund that the fund would be irreparably harmed if Saba were able to improperly vote its shares. Noting that the policy and purpose of the 1940 Act is to

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[23] *See id.*

protect investors, including those like Saba, the court stated, "the fact that, as a result of the Court's ruling, Saba can advance its agenda by voting its shares is the very result the ICA was designed to promote, not a harm or injury against which the Court must guard."[24]

Here, Saba has submitted a non-binding precatory proposal requesting that the Nuveen Fund boards take steps to declassify themselves. The Proposal does not seek to amend the Nuveen Fund by-laws directly, or take any other action that would be impermissible for a Nuveen Fund shareholder. The Proposal merely requests that the boards take an action that the boards themselves are empowered to take. As discussed above in the context of Rule 14a-8(i)(1), the Staff has on many occasions determined that a request to a board to "take steps to" amend an organizational document may be included in a company's proxy materials, even when it would be impermissible for shareholders to vote to compel the amendment directly.[25] The facts here are no different. Shareholders in the Nuveen Funds may be precluded from directly amending the by-laws to declassify the boards, but the Proposal merely asks that the *boards* take such actions as are necessary to effect the declassification. Arguing that shareholders like Saba are not "eligible to vote" on the Proposal would be akin to arguing that shareholders in New York companies are not "eligible to vote" on a proposal that requests the board effect a charter amendment, when state law requires that charter amendments be initiated and approved by the company's board, not the shareholders.[26]

Allowing fund shareholders to submit and vote on such a proposal, one that relates directly to the manner in which shareholders elect trustees, is wholly consistent with principles of both the 1940 Act and Massachusetts law. Accordingly, we respectfully request that the Staff not concur with the Nuveen Funds' view that the Proposal may be excluded from the Proxy Materials under Rule 14a-8(b), (i)(1), (i)(2) or (i)(3).

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Should you have any questions regarding this submission, please do not hesitate to contact me at 212-542-4635.

Sincerely,

Michael D'Angelo

cc: Kevin T. Hardy, Skadden, Arps, Slate, Meagher & Flom LLP
Eleazer Klein, Schulte Roth & Zabel LLP

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24 *Saba v. BlackRock*, note 18, *supra*.

25 *See* note 22, *supra*, and accompanying text.

26 *See id*.