UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 31, 2022

Robert K. Smith
Hunton Andrews Kurth LLP

Re: Arlington Asset Investment Corp. (the "Company")
Incoming letter dated January 14, 2022

Dear Mr. Smith:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by VA Property 1 LLC for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal recommends that the board take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(1) or Rule 14a-8(i)(6). We note the Proposal recommends that the board take the actions necessary to effectuate a liquidation of the Company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). We note that the Proposal focuses on an extraordinary business transaction.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(8). We note that the Proposal does not relate to director elections.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company has not substantially implemented the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Meagan M. Reda
Olshan Frome Wolosky LLP

HUNTON
ANDREWS KURTH

January 14, 2022

VIA ELECTRONIC MAIL

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Re: **Stockholder Proposal to Arlington Asset Investment Corp. from VA Property 1 LLC**

Ladies and Gentlemen:

This letter is submitted on behalf of Arlington Asset Investment Corp. (the "***Company***") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Company has received a stockholder proposal and related supporting statement, attached hereto as Exhibit A (the "***Proposal***"), from VA Property 1 LLC (the "***Proponent***") for inclusion in the Company's proxy statement for its 2022 annual meeting of stockholders.[1] The Company hereby advises the staff (the "***Staff***") of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2022 annual meeting (the "***Proxy Materials***"). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "***Commission***") if the Company excludes the Proposal on the following grounds:

(i) pursuant to Rule 14a-8(i)(7), as the Proposal relates to the ordinary business operations of the Company;

[1] We note for the Staff that the Proposal set forth on Exhibit A is the "final" Proposal received from the Proponent on December 14, 2021. For the Staff's reference, Exhibit A-1 also sets forth five prior iterations of the Proposal that the Proponent sent to the Company on an unsolicited basis. The final version of the proposal received on December 14, 2021 mirrors the previous version of the proposal, received on December 1, 2021, but includes new ownership language and a description of the nature of the proposal. The Company has indicated on Exhibit A-1 the dates on which these prior iterations were received. In response to the Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials published by the SEC on December 17, 2021, we have removed any potential personally identifiable information from Exhibit A.

(ii) pursuant to Rule 14a-8(i)(1), as the Proposal is not a proper subject for action by stockholders under the laws of the jurisdiction of the Company's organization;

(iii) pursuant to Rule 14a-8(i)(8), as the Proposal questions the competence, business judgment and character of one or more of the directors;

(iv) pursuant to Rule 14a-8(i)(3), as the Proposal violates proxy rules and contains materially false and misleading statements;

(v) pursuant to Rule 14a-8(i)(10), as the Proposal has already been substantially implemented; or

(vi) pursuant to Rule 14a-8(i)(6), as the Company lacks the authority to implement the Proposal.

By copy of this letter, we are advising the Proponent of the Company's intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal, and (ii) the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

I. The Stockholder Proposal

The Proposal reads, in full, as follows:

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of

> 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.
>
> Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.
>
> As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.
>
> In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

II. Grounds for Exclusion

The Company intends to exclude this Proposal from its Proxy Materials and respectfully requests that the Staff concur that the Company may exclude the Proposal on the following grounds.

A. <u>Rule 14a-8(i)(7) – The Proposal may be excluded because it deals with a matter relating to the ordinary business operations of the Company</u>.

The Proposal and the Supporting Statement may be excluded from the Proxy Statement under Rule 14a-8(i)(7), which provides that a proposal may be excluded "[i]f the proposal deals with a matter relating to the company's ordinary business operations." The Commission has stated that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to "tasks [that] are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"; and

- second, whether a "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."

Exchange Act Release No.40018 (May 21, 1998) ("***1998 Release***").

Strategic Alternative Proposals

The Staff has consistently determined that a proposal concerning the exploration of a strategic alternative for maximizing shareholder value, including a proposal that relates to both extraordinary transactions and non-extraordinary transactions, is generally excludable under Rule 14a-8(i)(7). See General Electric Co. (Jan. 7, 2011); see also Central Federal Corp. (Mar. 8, 2010) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) and stating that "[p]roposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary transactions and non-extraordinary transactions are generally excludable under Rule 14a-8(i)(7)"); Guaranty Bancorp (Mar. 4, 2009) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) where the proposal requested that the company engage an advisory firm to develop a strategy to enhance shareowner value and also requested that such strategy include possible liquidation); Anchor Bancorp, Inc. (July 11, 2013) (concurring that a proposal to "maximize shareholder value, including, but not limited to a sale of the Company as a whole, merger or other transaction for all or substantially all of the assets of the Company" related to both extraordinary and non-extraordinary transactions and could be excluded from the company's proxy materials under Rule 14a-8(i)(7)). Similarly, in Donegal Group Inc. (Feb. 16, 2012), the Staff concurred with the exclusion of a proposal that requested that the company's board appoint an independent board committee and retain a leading investment banking firm "to explore strategic alternatives to maximize shareholder value, including consideration of a merger."

The Proposal, like the proposals discussed in the No-Action letters cited above, relates to the ordinary business of the Company, and therefore it may be excluded. Like the proposal in General Electric Co., the Proposal relates to a strategic alternative that, on its face, purports to maximize the value of the Company's assets to its shareholders. Similar to the proposal in Guaranty Bancorp, the Proposal not only relates to an action that purports to enhance shareholder value but also, more specifically, a *liquidation* of assets. Like the proposal in Anchor Bancorp, the Proposal in substance relates to "a transaction for all or substantially all of the assets of" the Company, in this case pursuant to a liquidation (rather than a merger or singular asset sale). Along the lines of Donegal Group Inc., the Proposal relates to an extraordinary transaction that would have the same effect – a sale of the Company's assets – as the merger in the proposal described in that No-Action letter.

In addition, the Proposal relates to a transaction – in this case, a liquidation of the Company's assets – which by definition includes the sale of a number of non-core assets, very similar to Central Federal Corp. and therefore falling within the scope of shareholder proposals that are intended to be excludable under Rule 14a-8(i)(7); [2] See Telular Corporation (Dec. 5, 2003)

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2 In particular, the Staff has determined that, consistent with state corporate law, the sale of a non-core business or asset is not an extraordinary transaction, and is excludable as an ordinary business matter. See General Electric Co. (Jan. 22, 2007) (concurring with the exclusion of a proposal under rule 14a-8(i)(7) because it dealt with the disposition of non-core assets); see also Lancer Corporation (Mar. 10, 2003); Archon Corporation (Mar. 10, 2003); and Virginia Capital Bancshares (Jan. 16, 2001). The Proposal would, by definition, require the Company to sell a number of non-core assets given that it seeks the sale of all of the Company's assets pursuant to a liquidation. As the Proponent must know, a

(concurring that a proposal could be excluded because it related "in part to non-extraordinary transactions" where it requested that the board of directors appoint a committee of independent directors to explore strategic alternatives, including a "sale, merger,…or divestiture of the Company or a division thereof").

In short, the Proposal is directly analogous to the numerous proposals discussed in these prior No-Action letters; that is, the Proposal seeks to cause the Company to effect an extraordinary transaction through the sale of all of the Company's assets (including numerous non-core assets). In fact, the Proposal goes a step further than prior precedent; it doesn't *request* an exploration of a strategic alternative but rather *directs* the Board of Directors of the Company (the "***Board***") to "take all lawful, extraordinary actions necessary to effectuate" the liquidation of the Company's assets. For these reasons, the Proposal deals with a matter relating to the ordinary business of the Company, and therefore it may be excluded.

Ability of Shareholders to Make an Informed Judgment

The Staff recently reiterated that, when considering arguments for exclusion based on micromanagement, it looks to whether the shareholders, as a group, can make an informed judgment based on "the sophistication of investors generally on the matter, the availability of the data, and the robustness of public discussion and analysis on the topic." Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("***SLB 14L***"). This includes any proposal that "seeks to impose . . . specific methods for implementing complex policies." Id. The Staff has historically viewed stockholder proposals relating to corporate financing decisions, *including* liquidation of assets, to be within a company's ordinary business operations, and, therefore, unsuitable topics for shareholder proposals. See IEC Electronics Corp. (Nov. 3, 2011) (proposal requesting that the company, at each quarter end retain, a cash balance of a certain percentage of cash flow); see also Vishay Intertechnology, Inc. (Mar. 28, 2008) (proposal recommending that the company eliminate its long-term debt); Stewart Enterprises, Inc. (Jan. 2, 2001) (proposal requiring immediate liquidation of all cash investments and the use of proceeds for reduction of debt). The Commission also stated in SLB 14L that they will focus on the "extent [a shareholder proposal] inappropriately limits discretion of the board or management" and that the Staff "would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, *risks* or other strategic matters appropriate for shareholder input."

A liquidation of a viable operating public company is extremely rare, and even more so in the REIT industry. One reason for this is the nature of a liquidation of a public company and the various uncertainties related thereto. For example, a liquidation is not a singular event and does not occur at a single point in time; rather, it involves the sale of many assets and satisfaction of many liabilities, which can take years. Obviously, valuing such an event is extremely difficult because a company is forced to value assets and liabilities at a point in time that could be years before the actual disposition of the asset or satisfaction of the liability, as applicable. Further, the

liquidation is not a singular event, such as a merger; rather, it can be a long, drawn-out process that effectively winds down a company over time (sometimes over many years), and involves the sale or other disposition of all of the company's assets, and does not distinguish between core and non-core assets.

value (or cost) ascribed to assets and liabilities on a company's balance sheet differ for purposes of GAAP accounting and a liquidation, for the simple reason that such valuation is much different in the context of the company winding down. Additionally, liquidations involve various costs that would not be obvious on the company's GAAP financial statements, such as costs and expenses associated with winding down a company, breaking contractual commitments and the fact that assets sold in a liquidation may be for much less than fair value. This the primary reason that the Company believes that most liquidations of public companies occur in the context of a bankruptcy or an otherwise financially distressed situation.

The Proposal would require the Board to take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company. However, as noted above, the Proposal does not in any way provide the type of information the shareholders would need to even understand the Proposal, let alone make an informed judgment on this topic. Rather, the Proponent has resorted to making false and misleading statements and impugning the character of the Company's Board and management (see **Section C** below, at page 7 and **Section D** below, at page 9). Simply put, the liquidation of a public company is an exceedingly rare event that would require much more detailed information and analysis than the Proponent provides and the Company believes it is therefore excludable under Rule 14a-8(i)(7).

B. Rule 14a-8(i)(1) – The Proposal may be excluded because the Proposal is not a proper subject for action by stockholders under Virginia law.

Rule 14a-8(i)(1) permits a company to exclude a stockholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." As explained more broadly in the supporting opinion of Hunton Andrews Kurth LLP with respect to matters of Virginia law attached hereto as Exhibit B (the "***Virginia Law Opinion***"), the Proposal is not a proper subject for action by stockholders under Virginia law.

Virginia law requires that a board of directors approve and recommend the liquidation of all the corporation's assets before such a plan may be presented for shareholder approval. See Va. Code Ann. § 13.1-742. Pursuant to § 13.1-742 Virginia Stock Corporation Act (the "VSCA"), the "shareholders entitled to vote shall approve the proposal" in order to dissolve the company. The board of directors must also recommend dissolution to the shareholders, unless the board of directors determines that it should make no recommendation because of a conflict of interest or some other circumstance. The board of directors is also entitled to set the conditions for the approval or on the effectiveness of the dissolution. Similarly, pursuant to § 13.1-724 of the VSCA, "sale, lease, exchange or other disposition of the corporation's assets" of the nature described in the proposal "requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant business activity," but "shall be initiated by adoption of a resolution by the board of directors authorizing the disposition." In order to lawfully seek the liquidation of a corporation's assets, board approval and recommendation of the liquidation must precede seeking shareholder approval. See Va. Code Ann. § 13.1-742A; see also Arlington Asset Investment Corp. (Apr. 23, 2021) (concurring with the exclusion of a proposal demanding management liquidate the company's entire investment portfolio where the implementation of the proposal would violate Virginia law as the board of directors must authorize dissolution and set conditions for shareholder approval of the liquidation before any dissolution may begin); Willard ex rel. Moneta Bldg. Supply, Inc. v. Moneta Bldg. Supply, Inc., 258 Va. 140, 155, 515 S.E.2d 277, 287 (1999) (holding that the sale of a corporation's assets was proper when first approved by the board of directors); WBM, LLC v. Wildwoods Holding Corp., 270 Va. 156, 161, 613 S.E.2d 402, 405 (2005) (holding that board approval was required prior to the sale of substantially all of the assets).

Additionally, § 13.1-673 of the VSCA states that "[a]ll corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation managed under the direction, and subject to the oversight, of the board of directors, subject to any limitation set forth in the articles of incorporation permitted by subdivision B 3 of § 13.1-619 or in an agreement authorized under § 13.1-671.1." Therefore, in the absence of a provision reserving power to the shareholders in the articles of incorporation or a provision of the VSCA directing or requiring that shareholders take action, the directors, rather than the shareholders, manage the business and affairs of a Virginia corporation. The articles of incorporation of the Company contain no reservation by the shareholders of the power and duty to manage the business and affairs of the Company. Rather, the power and duty to manage the business and affairs of the Company is vested exclusively with the Board.

Simply put, the Proposal seeks to indirectly, prematurely and impermissibly acquire the approval of the Company's shareholders of a liquidation of the Company's assets *before* the Board (in exercising the authority specifically reserved to it under the VSCA) has even determined to specifically approve such an action and present it to the shareholders for consideration. There is no other way to interpret the Proposal other than as having its sole purpose to be to circumvent the requirements of the VSCA. As such, the Proposal seeks to influence the Board in a way that the Company believes would involve a derogation of the Board's fiduciary duties and involve an impermissible delegation to the shareholders since the Board (not the shareholders) are charged with managing the business and affairs of the Company. This is particularly troublesome in the context of a liquidation of the Company, as any recommendation and/or determination to cause a liquidation of a public company is complex, contextual and time-consuming (see **Section A** above, at page 3). For these reasons, the Proposal is excludable pursuant to Rule 14a-8(i)(1).

C. Rule 14a-8(i)(8) – The Proposal may be excluded because it improperly questions the competence, business judgment, or character of one or more of the directors.

The Proposal is excludable pursuant to Rule 14a-8(i)(8), which permits the exclusion of shareholder proposals that, among other things, "(i) [q]uestions the competence, business judgment, or character of one or more nominees or directors; or (ii) [o]therwise could affect the outcome of the upcoming election of directors." The purpose of the exclusion is to ensure that the shareholder proposal process is not used to circumvent more elaborate rules governing election contests. See Caterpillar Inc. (Mar. 24, 2014). As the Commission has stated, "the principal purpose of this grounds for exclusion is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting elections or effecting reforms in elections of that nature, since other proxy rules ... are applicable thereto." Exchange Act Release No. 12598 (July 7, 1976).

In Exchange Act Release No. 56914, at n. 56 (Dec. 6, 2007), the Commission acknowledged the Staff's position that "a proposal relates to 'an election for membership on the company's board of directors or analogous governing body' and, as such, is subject to exclusion under Rule l4a-8(i)(8) if it could have the effect of ... questioning the competence or business judgment of one or more directors." The Commission codified this interpretation in 2010 by adopting amendments to Rule 14a-8(i)(8) to expressly allow for the exclusion of a proposal that "[q]uestions the competence, business judgment, or character of one or more nominees or directors." Exchange Act Release No. 62764 (Aug. 25, 2010).

The Staff has consistently permitted exclusion of proposals where the proposal or supporting statement questioned the business judgment, competence or service of directors who will stand for re-election at an upcoming annual meeting of shareholders. See Marriott International, Inc. (Mar. 12, 2010) (permitting the exclusion of a proposal criticizing suitability of members of the board of directors to serve, and such members were expected to be nominated by the company for election at the upcoming annual meeting of shareholders); see also Brocade Communication Systems, Inc. (Jan. 31, 2007) (permitting the exclusion of a proposal criticizing directors who ignore certain shareholder votes); Exxon Mobil Corp. (Mar. 20, 2002) (permitting the exclusion of a proposal condemning the CEO for causing "reputational harm" to the company and for "destroying shareholder value"); AT&T Corp. (Feb. 13, 2001) (permitting the exclusion of a proposal criticizing the board chairman, who was also the CEO, for company performance); Honeywell International Inc. (Mar. 2, 2000) (permitting the exclusion of a proposal making directors who fail to enact resolutions adopted by shareholders ineligible for election); Black & Decker Corp. (Jan. 21, 1997) (permitting exclusion of a proposal under the predecessor to Rule l4a-8(i)(8) that questioned the independence of board members where contentions in the supporting statement questioned the business judgment, competence and service of a chief executive officer standing for re-election to the board); Rite Aid Corp. (Apr. 1, 2011) (permitting the exclusion of a proposal, with the Staff noting that "the proposal appears to question the business judgment of board members whom Rite Aid expects to nominate for re-election at the upcoming annual meeting of shareholders").

The Proposal, in violation of Rule 14a-8(i)(8)(iii), overtly and directly questions the competence and business judgment of not only the Board, but also the President and Chief Executive Officer of the Company, J. Rock Tonkel, Jr., who serves as a director on the Board and will, notably, be a director nominee at the 2022 annual meeting of shareholders along with all of the other members of the Board. Specifically, the Proposal questions the competence and business judgment of the Board and Chief Executive Officer with the following statements:

- "Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period."

- “Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company’s chronic underperformance.”

- “In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset’s persistent underperformance.”

The proposal directly attacks the competency and business judgment of the entire Board, including Mr. Tonkel, and therefore is a not-so-veiled attempt to interfere in the election of directors in violation of Rule 14a-8(i)(8)(iii). Specifically, the statements above directly charge the Board with a failure to fulfill its fiduciary duties (a charge that is not only completely without factual foundation but also wholly inappropriate to make by means of a shareholder proposal, as noted by Commission in its rule making and by the Staff pursuant to numerous No-Action letters). Like the long line of No-Action letters cited in this **Section C**, because the Proposal questions the business judgment of the Board members, it is excludable in reliance on Rule 14a-8(i)(8) as relating to the election of a director to the Board. We note further that, very similar to the proposals in Exxon Mobil Corp. and Black & Decker Corp., the Proposal directly attacks Mr. Tonkel by suggesting without any factual foundation that his compensation (all of which was properly approved)[3] was wrongly paid to him at the expense of the Company’s shareholders. This is an impermissible, back-door attempt to affect the outcome of election of not only Mr. Tonkel but also the members of the Board who approved his compensation, and is therefore excludable in reliance on Rule 14a-8(i)(8).

D. Rule 14a-8(i)(3) – The Proposal may be excluded because it violates proxy rules and is materially false and misleading contrary to Rule 14a-9.

The Proposal and the Supporting Statement may be excluded from the Proxy Statement because they violate the prohibition on “materially false or misleading statements” contained in Rule 14a-8(i)(3). Specifically, Rule 14a-8(i)(3) allows for the exclusion of proposals or supporting statements that are “contrary to any of the Commission’s proxy rules, including Rule 14a-9.” Rule 14a-9 prohibits solicitation by means of any material “containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact.” In addition, Note (b) to Rule 14a-9 states that material may be considered misleading, depending upon particular facts and circumstances, if it “directly or indirectly impugns character, integrity or personal reputation ... without factual foundation.”

The Staff has previously granted no-action relief where a proposal or supporting statement impugned the character, integrity or personal reputation of directors and management and their fiduciary duty to shareholders. See The Swiss Helvetia Fund, Inc. (Apr. 3, 2001) (allowing exclusion of a proposal which implied that the directors had violated, or may choose to violate, their fiduciary duty, because it impugned their character, integrity and personal reputation); see

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[3] All of Mr. Tonkel’s compensation has been approved by the Company’s Compensation Committee of the Board. We also note that the Company’s say-on-pay vote has consistently been approved by the Company’s shareholders, suggesting that a majority of the Company’s shareholders do not share the Proponent’s view on Mr. Tonkel’s compensation.

also CCBT Bancorp, Inc. (Apr. 20, 1999) (allowing exclusion of a supporting statement which stated that the board of directors had violated their fiduciary duty); ConocoPhillips (Mar. 13, 2012) (allowing exclusion of unsubstantiated allegations that the company's management had illicit associations with groups whose agendas were adverse to the company's shareholders, implying that the company's directors were unethical and had breached their fiduciary duties to the shareholders).

The Supporting Statement contains materially false and misleading statements, and impugns the Board's reputation without factual foundation, as follows:

- The Proponent states: "Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period."

This statement is false and misleading and is without factual foundation. As noted above, all of Mr. Tonkel's compensation has been properly approved and the Company's say-on-pay vote has consistently been approved by the Company's shareholders, suggesting that a majority of the Company's shareholders do not share the Proponent's view on Mr. Tonkel's compensation. Further, there is no evidence that any compensation paid to Mr. Tonkel was at the expense of shareholders, or that it wasn't otherwise earned, despite the obvious implication of the Proponent's statement. And while it is true that the Company suspended its common stock dividend in April 2020, as previously disclosed by the Company, this action was taken to conserve liquidity in the wake of the severe COVID-19 related volatility experienced by the entire mortgage REIT industry at that time. More recently and as publicly disclosed, rather than allocating cash to shareholders in the form of dividends, the Company has determined that it is in the best interests of the shareholders to invest that capital in what it believes to be very desirable, higher return assets. In addition, during this same period of time, the Company has returned capital to its shareholders in the form of accretive common stock repurchases; in fact, as of September 30, 2021, the Company has repurchased approximately 16% of its outstanding common stock, and the Company estimates that such repurchases added approximately $0.40 per common share to the Company's book value. Yet, the Proponent omits all of this material information and does not otherwise contextualize its statements. It goes without saying that, as discussed above, the Proponent also impugns the character of the Board and Mr. Tonkel without factual foundation, which also makes the Proponent's statements false and misleading. See **Section C** above, at page 7.

- The Proponent states: "Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance." The Proponent later states that "In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance."

This statement is false and misleading and is without factual foundation because, as noted in **Section C** above at page 7, the Proponent impugns the character of the Board without factual foundation by suggesting a failure by the Board to exercise its fiduciary duties.

- The Proponent states: "As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern."

This statement is false and misleading and is without factual foundation, and is particularly egregious because it purports to place a value of a liquidation of the Company. Note (a) to Rule 14a-9 states that material may be considered misleading, depending upon particular facts and circumstances, when it contains "[p]redictions as to specific future market values." The Commission has taken the position that statements of value in stockholder proxy proposals are inappropriate where no basis or support is given for such statement. See Exchange Act Release No. 16833 (May 23, 1980); see also ICN Pharmaceuticals, Inc. (Apr. 4, 2001). Here, the Proponent makes misleading statements predicting the market value of a hypothetical liquidation of the Company's portfolio, without any factual foundation. As discussed in **Section A** above, at page 3, liquidations of otherwise viable, operating public companies are exceedingly rare. One reason for this is that a liquidation is not a singular event that occurs at a point in time (such as a merger or other sale event) when an enterprise can be more easily valued. Simply stated, the Proponent is not in any position to predict the future value of the sale of the Company's assets nor how such a sale compares with the value created by the Company's current strategy. The misleading nature of the Proponent's statement is further highlighted by the fact that the Proponent equates the Company's book value per share with a liquidation value of the Company's assets. Yet, the Proponent fails to qualify its statement by other relevant facts, including that not all of the Company's assets and liabilities are recorded at fair value, and even if such assets and liabilities are recorded at fair value, such fair value under GAAP is not based on a liquidation value (which, under GAAP, would typically be less in the case of assets) nor would it include the cost of selling an asset (such as commissions and related fees). Finally, the Company's book value per share does not contemplate or otherwise reflect the cost associated with liquidating and winding down a public company, including for example the cost of breaking various contractual commitments.

Because the Supporting Statement contains false and misleading statements about the Board and predictions of future value, the Company believes that the Proposal and the related Supporting Statement may be excluded from its Proxy Statement pursuant to Rule 14a-8(i)(3).

E. Rule 14a-8(i)(10) – The Proposal may be excluded because it has already been substantially implemented.

Rule 14a-8(i)(10) allows a registrant to omit a proposal from its proxy materials if "the company has already substantially implemented the proposal." To the extent that the Staff does not believe there is some basis for exclusion on the other grounds the Proposal is excludable under Rule 14a-8(i)(10) because the recommended actions set forth in the Proposal would already be substantially implemented by the past and current actions of the Company's Board.

At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable under this provision only if it had been "'fully' effected" by the company. See Exchange Act Release No. 19135 at §II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff's narrow interpretation of the predecessor rule "may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process," in particular by enabling proponents to argue "successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal." Id. Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." See Exchange Act Release No. 20091, at §II.E.6. (Aug. 16, 1983) (the "***1983 Release***") (indicating that the Staff's "previous formalistic application of" the predecessor rule "defeated its purpose" because the interpretation allowed proponents to obtain a stockholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in the 1998 Release. Accordingly, the actions requested by a proposal need not be "fully effected" by the company to be excluded; rather, to be excluded, they need only have been "substantially implemented" by the company. Id. Thus, when a company has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the proposal has been "substantially implemented" and may be excluded. See Exelon Corp. (Feb. 26, 2010); see also Exxon Mobil Corp. (Mar. 23, 2009).

The Proposal's ultimate purpose is to have the Board initiate the liquidation of Company's asset portfolio. As discussed above, § 13.1-724 of the VSCA requires that liquidation "shall be initiated by adoption of a resolution by the board of directors authorizing the disposition." The Board would ultimately have to consider liquidation and, once the Board approved and recommended such liquidation to the Company's shareholders, submit the matter before shareholders for a vote. In exercising its fiduciary duties, the Board regularly considers a range of strategic alternatives, which from to time includes extraordinary transactions such as mergers, sales of assets and liquidation, among other possibilities. At this time, the Board has not determined that liquidation is in the best interests of the Company's shareholders**.** Rather, as publicly disclosed, the Company and the Board are committed to their current strategic plan of identifying and evaluating various investment strategies that complement the Company's historical focus of levered agency mortgage investing and leverage the Company's historic expertise in the mortgage, housing and structured products sectors. The Company believes the realization of this differentiated investment strategy has established a strong foundation for the Company's future growth, profitability and value creation for shareholders. Thus the Proposal has been substantially implemented because, in light of the Board's commitment to the Company's current strategic plan, the Board does not intend to submit a proposal to the Company's shareholders that the Company's assets be liquidated. Accordingly, the Company intends to omit the Proposal from its proxy materials pursuant to Rule 14a-8(i)(10).

F. <u>Rule 14a-8(i)(6) – The Proposal may be excluded because the Company lacks the authority to implement the Proposal</u>.

Rule 14a-8(i)(6) provides that a shareholder proposal may be excluded from a company's proxy materials "[i]f the company would lack the power or authority to implement the proposal." The Proposal may be excluded under Rule 14a-8(i)(6) because it is not possible to effect the Proposal under Virginia law. § 13.1-742 of the VSCA provides that the dissolution of a Virginia corporation can occur once the Board "recommend[s] dissolution to the shareholders unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation, in which case the board of directors shall inform the shareholders of the basis for that determination . . . ." As noted in **<u>Section E</u>**, above at page 11, because the Board has not determined that liquidation is in the best interests of the Company's shareholders, the Board does not intend to submit a proposal to the Company's shareholders that the Company's assets be liquidated. As explained more broadly in the Virginia Law Opinion, the Company therefore lacks the power or authority to implement the Proposal, and the Proposal may therefore be excluded.

III. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned to discuss any questions you may have regarding this matter.

Very truly yours,

Robert K Smith

Robert K. Smith
Hunton Andrews Kurth LLP

Enclosures

cc: J. Rock Tonkel, Jr., Arlington Asset Investment Corp.
Richard Konzmann, Arlington Asset Investment Corp.

Scott Parish, Arlington Asset Investment Corp.
Daniel E. Berce, Arlington Asset Investment Corp.
Alexander Snowdon, VA Property 1 LLC
Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz
Andrew J. Nussbaum, Wachtell, Lipton, Rosen & Katz
Brandon C. Price, Wachtell, Lipton, Rosen & Katz

<u>Exhibit A</u>

PROPOSALS FROM VA PROPERTY 1 LLC

Text of Resolution

RESOLVED − Shareholders recommend that the Board of Directors (the “Board”) of Arlington Asset Investment Corp. (“Arlington Asset” or the “Company”) take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Nature of Proposal

VA Property 1 LLC recommends that the company’s directors act to liquidate Arlington Asset’s portfolio, and to wind up the business of the company. The proponent is submitting this proposal for consideration at the annual meeting so that the company’s shareholders have an opportunity to express their opinions as to whether the company should continue its operations, or monetize the value of its assets.

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the “Board”) of Arlington Asset Investment Corp. (“Arlington Asset” or the “Company”) take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company’s book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has “earned” over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.

Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company’s chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.

As of December 1st, 2021, Arlington Asset’s most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset’s persistent underperformance. In the interest of reclaiming the fair value of the Company’s assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 5 – Received on 12/1/2021

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.

Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.

As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 4 – Received on 12/1/2021

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, non-ordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the last five years alone, the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over that same period.

Fundamentally, we believe that management has proven incompetent in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's underperformance. To these ends, we believe shareholders would be best served by an orderly liquidation of the Company.

As of December 1st, 2021, the Company's most recently reported book value per share exceeded the YTD average closing price by over 50%. Stated simply, Arlington Asset's portfolio appears to offer far more value in a sale than in the control of its current managers. We believe a liquidation could offer shareholders both a large premium over any stock price observed since April of 2020, and valuable liquidity on otherwise stagnant capital.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 3 – Received on 10/8/21

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful actions necessary to effectuate the orderly liquidation of the Company's investment portfolio and the distribution of net proceeds to shareholders.

Supporting Statement

After a decade of persistent underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the last five years alone, the Company's book value has declined by over 50%. The common stock has fallen even more precipitously.

Despite this consistently abysmal performance, management has been richly compensated at the expense of shareholders. In the twenty months preceding this October 2021 writing, CEO Rock Tonkel has "earned" over $3 million in personal compensation. This is an impressive figure by any measure, but particularly when compared to the $0.00 distributed to common shareholders over the same period.

On the topic of not returning capital, buybacks of deeply discounted stock might have enhanced shareholder value meaningfully since March 2020. Yet despite this widely available opportunity, management has failed to employ the great majority of its repurchase authorization. We find this choice, among others, intensely concerning.

Fundamentally, we believe these decisions reflect an inability to act in the Company's best interest, and a level of mismanagement that shareholders can no longer afford.

As of October 5th, 2021, the Company's most recently reported book value per share exceeded the YTD average closing price by approximately 50%. Stated simply, Arlington Asset's portfolio appears to offer far more value in a sale than in the control of its current managers. We believe a liquidation could offer shareholders both a large premium over any stock price observed since April 2020, and valuable liquidity on otherwise stagnant capital.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent decline. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 2 – Received on 9/24/21

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors take all lawful actions necessary to effectuate the orderly liquidation of the company's investment portfolio and the distribution of net proceeds to shareholders.

Supporting Statement

DISCLAIMER: With the exception of references to numerical figures, the contents of this supporting statement should be viewed exclusively as the subjective opinions of the proponent, and should not be interpreted as any citation of facts.

Over many years, Arlington Asset's management team has shown a remarkable tendency to destroy shareholder value.

After cutting book value roughly in half over the last five years, management achieved an even more dubious distinction recently, passing seven consecutive quarters without declaring a common stock dividend.

Notably, while the company distributed exactly $0.00 to common shareholders during this period, CEO Rock Tonkel still "earned" roughly $3.5 million in personal compensation. While Mr. Tonkel deserves congratulations for a rare feat − making money through AAIC − this imbalance in distributions raises certain questions as to who is working for whom.

Adding insult to injury, while management has enjoyed rich compensation to the detriment of shareholders, their penchant for underperformance may have contributed significantly to the stock's deep and persistent discount to book value.

Worst of all, while repurchasing deeply discounted stock might have created enormous shareholder value over the last two years, management has declined to employ the great majority of its repurchase authorization. Though such an inexplicable decision is unsurprising given their track record, it reflects a level of mismanagement that shareholders can no longer afford.

If Arlington Asset's management is fundamentally incapable of acting in the best interest of shareholders, it is now incumbent on shareholders to act for ourselves.

As of September 15th, 2021, the company's most recently reported book value per share exceeded the YTD average closing price by approximately 50%. Stated simply, AAIC's portfolio would appear to offer far more value in a liquidation than in the control of its current management. A sale of these assets could offer shareholders both a large premium over any share price observed since April of 2020, and valuable liquidity on otherwise stagnant capital.

In the interest of reclaiming the fair value of our assets, I would urge my fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 1 – Received on 8/4/21

Proposed Resolution

RESOLVED – The board of directors should consider the liquidation of the company's investment portfolio and the distribution of net proceeds to shareholders. If such action is deemed advisable by the board of directors, and approved by shareholders upon the board's recommendation, the board should then take any actions necessary to effectuate such liquidation and distribution.

Supporting Statement

Over many years, and under some extremely favorable macroeconomic conditions, Arlington Asset's management team has shown a remarkable ability to destroy shareholder value.

Not content with cutting book value in half over the last five years, management achieved an even more dubious distinction recently, when the company became the first agency mortgage REIT in history to go 20 months without a dividend.

Notably, while common shareholders received exactly $0.00 in distributions during this period, CEO Rock Tonkel still "earned" in excess of $3 million in personal compensation. While Mr. Tonkel deserves congratulations for achieving the seemingly impossible − making money in connection with AAIC − this imbalance in distributions raises certain questions as to who is working for whom.

Adding insult to injury, management's penchant for underperformance has earned the stock a persistent and staggering discount to book value, which regrettably shows few signs of reversal.

Worst of all, while repurchasing deeply discounted stock could have created enormous shareholder value over the last two years, management has failed to pursue accretive buybacks at a scale even remotely commensurate with the available opportunity. In an apparent coup de grâce to already suffering shareholders, these intellectuals have explained this choice by citing their preference for mortgage investments − seeming to ignore that those assets reached historically high prices over the last two years, while their own stock remained dirt cheap. Though such an inexplicable decision is unsurprising given their track record, it constitutes a level of mismanagement that shareholders can no longer afford.

Recognizing that Arlington Asset's management is either unwilling or unable to act in the best interest of shareholders, it is now incumbent on shareholders to act for ourselves.

As of this writing in August 2021, the company's book value per share exceeds the YTD average share price by approximately 49%. Stated simply, AAIC's portfolio is worth far more in a liquidation than in the control of its current management. A sale of the company's assets would offer shareholders both an enormous premium over any share price observed since March 2020, and valuable liquidity on otherwise stagnant capital.

In the interest of reclaiming the fair value of our assets, I would urge my fellow shareholders to vote in favor of this proposal.

Exhibit B

VIRGINIA LAW OPINION

January 14, 2022

Arlington Asset Investment Corp.
6862 Elm Street, Suite 320
McLean, VA 22101

Re: Arlington Asset Investment Corp. — Omission of the Shareholder Proposal Submitted by VA Property 1 LLC

Ladies and Gentlemen:

We are Virginia counsel to Arlington Asset Investment Corp., a Virginia corporation (the "Company"), in connection with certain matters of Virginia law arising out of a shareholder proposal (the "Proposal") submitted by VA Property 1 LLC for inclusion in the Company's proxy materials for the 2022 Annual Meeting of Stockholders. We have been asked to consider whether (1) the Proposal is a proper subject for action by shareholders under Virginia law and (2) the Company lacks the power and authority to implement the Proposal. In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined the amended and restated articles of incorporation, as amended (the "Charter"), of the Company, the Proposal and such matters of law as we have deemed necessary or appropriate to issue this opinion.

The Proposal reads, in full, as follows:

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

> Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.
>
> Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.
>
> As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.
>
> In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

I. <u>The Proposal is not a proper subject for action by shareholders under Virginia law</u>.

The Proposal is not a proper subject for action by shareholders under the Virginia Stock Corporation Act, as amended (the "VSCA"), because it would request shareholder approval for the liquidation of a corporation's assets in a manner inconsistent with the approval process set forth in VSCA § 13.1-742.

All corporate powers of a corporation shall be exercised by or under the authority of the board of directors.[4] For a corporation's most fundamental decisions, the board of directors must first approve the transaction and then it must be submitted to the shareholders for their

4 *See* VSCA Section 13.1-673B.

approval.[5] Specifically, under the VSCA, the following corporate acts are subject to the dual approval process: an amendment of the articles of incorporation, a merger, a statutory share exchange, a domestication, a conversion, a sale of assets that would leave the corporation without a significant continuing business activity, and the dissolution of the corporation.

Liquidation of assets and distribution of the net proceeds to shareholders is considered a dissolution under the VSCA, requiring the approval process set forth in VSCA § 13.1-742. VSCA § 13.1-742 provides that before a corporation can liquidate its assets, the board of directors must first adopt a resolution authorizing the dissolution. When determining whether to adopt such resolution, directors of a Virginia corporation are required to act in accordance with their "good faith business judgment of the best interests of the corporation."[6] Under § 13.1-742B1 of the VSCA, the board of directors must then recommend dissolution to the shareholders unless the board of directors determines because of a conflict of interest or other special circumstances not to make a recommendation. Except in certain cases in which there is unanimous shareholder approval, in order to lawfully seek the liquidation of a corporation's assets, as in other transactions requiring shareholder approval, board approval and recommendation of the liquidation *must precede* seeking shareholder approval.[7] The board of directors can set conditions for shareholder approval or for the effectiveness of the dissolution.[8] The notice of the shareholders meeting must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation. Next, the shareholders must approve the dissolution with the affirmative vote of more than two-thirds of the outstanding voting shares, though the articles of incorporation may provide for a greater or lesser vote threshold so long as the vote provided for is not less than a majority.[9] Only after the board of directors has authorized dissolution and the shareholders approved it, can the officers begin the liquidation process. If the Board or management of the Company sold all or substantially all of the assets without an authorization obtained in accordance with the VSCA, this would be a violation of Virginia law.[10]

As noted above, in order to carry out a liquidation as contemplated by the Proposal, the Company's board of directors (the "Board") must initiate the dissolution process by adopting a resolution authorizing the dissolution and recommending dissolution to the

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[5] *See Barris Industries, Inc. v. Bryan*, 686 F. Supp. 125, 129-30 (E.D. Va. 1988); *Willard ex rel. Moneta Bldg. Supply, Inc. v. Moneta Bldg. Supply, Inc.*, 258 Va. 140, 155, 515 S.E.2d 277, 288-89 (1999); *WBM, LLC v. Wildwoods Holding Corp.*, 270 Va. 156, 161, 613 S.E.2d 402, 405 (2005).

[6] *See* VSCA Section 13.1-690.

[7] *See* VSCA Section 13.1-724B; Allen C. Goolsby & Steven M. Haas, *Goolsby & Haas on Virginia Corporations*, §16.2 (6th ed. 2017).

[8] *See* VSCA Section 13.1-742C.

[9] *See* VSCA Section 13.1-742E.

[10] *See* VSCA Section 13.1-724 (requiring shareholder approval if the corporation sells assets that leave the corporation without a continuing business activity).

shareholders at an annual or special meeting *prior to* a vote of shareholders to approve the dissolution. If implemented, the Proposal would usurp the Board's statutory right to initiate the dissolution procedures of the Company after making the determination discussed above and is therefore not a proper subject for shareholder action under Virginia law.

II. The Company lacks the power or authority to implement the Proposal.

Approval of the Proposal by the Company's shareholders would not constitute the necessary shareholder approval of the dissolution of the Company required by the VSCA. The VSCA only provides for shareholder approval of a dissolution after the board of directors has authorized the resolution in accordance with the directors' "good faith business judgment of the best interests of the corporation." Because the Proposal requests shareholder approval without following the required approval process mandated by the VSCA and the Charter, the Proposal is not a proper subject for action by shareholders under Virginia law.

Under the VSCA, it is impermissible for the Board to liquidate the Company without following the required approval process discussed above. Because the implementation of the Proposal would cause the Company to violate Virginia law, the Company lacks the power and authority to implement the Proposal and any attempt to do so would be voidable under Virginia law.[11]

III. Conclusion.

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth herein, it is our opinion that (1) the Proposal is not a proper subject for action by shareholders under the laws of the Commonwealth of Virginia and (2) the Company lacks the power and authority to implement the Proposal.

The foregoing opinion is limited to the VSCA, and judicial interpretations thereof, in effect on the date hereof and we do not express any opinion herein concerning any law other than the VSCA. Furthermore, the foregoing opinion is limited to the matters specifically set forth therein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any provision of the VSCA, or any judicial interpretation of any provision of the VSCA, changes after the date hereof.

The opinion presented in this letter is solely for your use in connection with the Proposal and may not be relied upon by any other person or entity, or by you for any other

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[11] *See* VSCA Section 13.1-627A; *Princess Anne Hills Civic League, Inc. v. Susan Constant Real Estate Trust*, 243 Va. 53, 413 S.E.2d 599 (1992); *see also* Allen C. Goolsby & Steven M. Haas, *Goolsby & Haas on Virginia Corporations*, §13.2 n.11B (6th ed. 2017).

HUNTON
ANDREWS KURTH

purpose, without our prior written consent. However, we consent to inclusion of this opinion with a request by you to the Securities and Exchange Commission (the “Commission”) for concurrence by the Commission with your decision to exclude the Proposal from the proxy materials for your next annual meeting of shareholders.

Very truly yours,

Hunton Andrews Kurth LLP

EMAIL: MREDA@OLSHANLAW.COM
DIRECT DIAL: 212.451.2260

January 21, 2022

VIA EMAIL (shareholderproposals@sec.gov)

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-8626

Re: Arlington Asset Investment Corp.
Securities Exchange Act of 1934 – Section 14(a), Rule 14a-8
Statement in Response to No-Action Letter regarding Shareholder Proposal

Ladies and Gentlemen:

Our client, VA Property 1 LLC (the "Proponent"), submitted a shareholder proposal, pursuant to Rule 14a-8, promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to Arlington Asset Investment Corp., a Virginia corporation ("AAIC" or the "Company"), for inclusion in the Company's proxy statement for the 2022 Annual Meeting of Stockholders (the "2022 Annual Meeting"). On January 14, 2022, the Proponent received a letter (the "No-Action Letter") from Hunton Andrews Kurth LLP, counsel to the Company, requesting that the Staff (the "Staff") of the Securities and Exchange Commission (the "SEC" or the "Commission") confirm to the Company that the Commission will not recommend enforcement action if the Company excludes the Proponent's proposal and supporting statement (together, the "Proposal") from its proxy materials (the "Proxy Materials") for the 2022 Annual Meeting, which No-Action Letter is attached hereto as Exhibit A.

Pursuant to Rule 14a-8(k), the Proponent has the right to submit this statement (the "Response Letter") to the Commission in response to the Company's arguments set forth in the No-Action Letter. For the reasons discussed in this Response Letter, the Proponent believes that the Proposal (i) does not deal with a matter relating to ordinary business operations in violation of Rule 14a-8(i)(7), (ii) does not contain an improper subject for action by shareholders under Virginia law in violation of Rule 14a-8(i)(1), (iii) does not improperly question the competence, business judgement or character of one or more of the directors in violation of Rule 14a-8(i)(8), (iv) does not contain statements that are materially false and misleading in violation of Rule 14a-9, (v) has not been substantially implemented in violation of Rule 14a-8(i)(10), and (vi) the Company does not lack the authority to implement the Proposal in violation of Rule 14a-8(i)(6). In Sections I through VI below, the Proponent provides support and justification for the statements referenced in the No-Action Letter to show that such statements are not in violation of Rule 14a-8(i)(7), Rule 14a-8(i)(1), Rule 14a-8(i)(8), Rule 14a-9, Rule 14a-8(i)(10) and Rule 14a-8(i)(6).

Pursuant to Rule 14a-8(k), this Response Letter is being filed with the Commission as soon as possible following the Company's submission of the No-Action Letter. Pursuant to Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), such submission is being made via electronic mail to the Staff. A copy of this submission is also being provided simultaneously to the Company and their counsel via electronic mail. Pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D, the Company is requested to copy the undersigned on behalf of the Proponent on any correspondence the Company may choose to make to the Staff.

I. <u>The Proposal may not be excluded pursuant to Rule 14a-8(i)(7) because the Proposal does not deal with a matter relating to the ordinary business operations of the Company</u>.

The Company contends that the Proposal may be omitted from the Proxy Materials because the Proposal deals with those operations or matters relating to the Company's ordinary business operations. As support for its conclusion, the Company cites Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release") in which the Commission explained that the ordinary business exclusion rests on two central considerations: (i) the subject matter of the proposal and (ii) the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature.

With respect to the first consideration, the Company cites the 1998 Release, stating that the Proposal "relates to the ordinary business of the Company, and therefore it may be excluded." However, the Company's basis for this statement is not supported by the previous examples it references. The Company claims that the Proposal "relates to a strategic alternative that, on its face, purports to maximize the value of the Company's assets to its shareholders," but the Proposal, unlike the examples the Company uses for the basis of this argument, does not seek a process that would explore various strategic alternatives and opportunities, and instead proposes that the Company's Board of Directors (the "Board") take every lawful action to dissolve the Company. Unlike the proposals the Company references, the Proposal does not relate to both extraordinary and non-extraordinary transactions, which were the basis for the Commission's recommendation of no-action in those cases. <u>See</u> <u>Guaranty Bancorp</u> (Mar. 4, 2000) (where the Commission recommended no-action against a shareholder proposal that concerned "the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary and non-extraordinary transactions").

Further, contrary to AAIC's misleading assertions, in <u>Guaranty Bancorp</u>, the non-extraordinary transaction that the company argued permitted exclusion of the shareholder proposal was the formation of a committee to explore strategic alternatives to enhance shareholder value, not the liquidation of the company. In fact, in its letter to the Commission, Guaranty Bancorp argued that the shareholder proposal "does not focus on any single extraordinary transaction" and "mentions 'liquidation' as a possible strategic option for the Company but does not go on to discuss the potential merits of liquidation or any other specific extraordinary transaction." Here, the Proponent is seeking a specific extraordinary transaction of liquidating the Company and the Proposal includes a discussion of the merits of such a liquidation, including the decline of the Company's book value and AAIC's chronic underperformance. In fact, the plain text of the Proposal specifically restricts the recommendation to "extraordinary" actions.

The Proponent believes the dissolution of a public company, which must be approved by the Company's shareholders, is certainly not a "day-to-day" matter. In fact, the Company appears to have the same belief, as it stated in the No-Action Letter that "[a] liquidation of a viable operating public company is *extremely rare*, and even more so in the REIT industry" (emphasis added). The Company then states again that "[s]imply put, the liquidation of a public company is an exceedingly rare event." Accordingly, it appears that both the Company and the Proponent agree that this is not an ordinary action, but a rare, extraordinary action.

Irrespective of the fact that this Proposal *only* deals with a specific *extraordinary* action and is different than the proposals cited by the Company, the Staff has also *denied* the exclusion under Rule 14a-8(i)(7) for proposals similar to those cited by the Company and that appeared to address both ordinary and extraordinary courses of action. For example, in <u>Temple Inland Inc.,</u> SEC No-Action Letter (Feb. 24, 1998), the shareholder proposal stated "that shareholders of Temple-Inland recommend that the board of directors immediately engage the services of a nationally recognized investment banker to explore all alternatives to enhance the value of the company, including, but not limited to, possible sale, merger, or other transaction for any or all assets of the company." The Staff did not concur with the company's view that the proposal could be excluded in reliance on the grounds that it dealt with ordinary business operations. The Staff concluded "in particular that the proposal, when read together with the supporting statement, appears to focus on possible extraordinary business transactions." See also Hampden Bancorp, Inc., SEC No-Action Letter (Sept. 5, 2012) (where the Staff refused no-action relief on the grounds that the shareholder proposal focused on an extraordinary business transaction, where the proposal requested the board of directors to explore avenues to enhance shareholder value through an extraordinary transaction, including but not limited to, selling or merging the company); National Technical Systems Inc., SEC No-Action Letter (March 29, 2011) (where the Staff rejected a request to exclude a shareholder proposal that directed the company to immediately hire an investment bank to initiate a search for a buyer of the company in order to maximize value); Student Loan Corp. (Lincluden Management), SEC No-Action Letter (Mar. 18, 1999) (denial of no-action relief for the exclusion of a proposal requesting the board of directors engage the services of a nationally recognized investment banking firm…to explore all alternatives to enhance the value of the company, including, but not limited to the possible sale or merger of the company, or premium tender offer share repurchases of the stock of the company); Topps, Inc., SEC No-Action Letter (Apr. 02, 1997) (denial of no-action relief for the exclusion of a proposal requesting the board of directors explore all alternatives to enhance the value of the company, including, but not limited to, the possible sale, merger or other transaction involving the company); MSB Bancorp, Inc., SEC No-Action Letter (Feb. 20, 1996) (denial of no-action relief for the exclusion of a proposal requesting the corporation engage a qualified, untainted, independent, investment banking firm to explore alternatives for maximizing stockholder value including, but not limited to the sale of the institution in a tax free exchange of stock to another financial institution, and the corporation promptly make the results of these investment banking efforts available to all the stockholders of the corporation); Quaker Oats Co., SEC No-Action Letter (Dec. 28, 1995) (denial of no-action relief for the exclusion of a proposal requesting the board retain an investment banking firm to explore all alternatives to enhance the value of the Company including, but not limited to, a plan to separate the Foods and Beverages businesses into two separate and independent publicly owned corporations, or possible sale to or merger with another corporation); and First Franklin Corporation, SEC No-Action Letter (Feb. 22, 2006) (where the Staff rejected the company's argument that the proposal can be excluded on the grounds that it implicates both ordinary business transactions and extraordinary business matters, where the proposal requested that the company engage an investment bank to evaluate alternatives that could enhance stockholder value, including, but not limited to, a merger or outright sale of the company). If the Staff has previously denied no-action relief in situations requesting that the Board broadly explore strategic alternatives to enhance value on the grounds that it constituted an extraordinary transaction, the Proponent believes that a proposal to liquidate a company as set forth in its Proposal, is clearly an action that is well beyond the Company's ordinary business operations.

The Company also argues that AAIC shareholders cannot make an informed judgement on the Proposal due to the complex nature of a liquidation of a public company. First, the Proponent believes that the Proposal explicitly demonstrates the significant gap between the book value of the Company and the Company's stock price as support for warranting a liquidation, which any shareholder should understand. Second, the book value figure referenced in the Proposal is a figure provided by the Company itself in every quarterly earnings release in order to convey the value of its asset portfolio. By providing this figure as a headline item on every quarterly earnings release, and even providing emergency updates in situations like March 2020, as described in more detail below, the Company demonstrates that the book value figure referenced by the Proponent is critical to shareholders' evaluation of the Company's assets. The Proponent believes that book value provides shareholders, at a minimum, an accurate starting point to evaluate a potential liquidation.

In addition, the Proposal is precatory and intended to give shareholders an opportunity to express their views on a potential liquidation of the Company, which is different than a binding vote on an actual plan of dissolution approved by the Board, where more detailed information would be disseminated to shareholders (and where there are no character limitations and related restrictions as there are under Rule 14a-8). Notwithstanding the fact that the Proposal is non-binding, approval of the Proposal should send a clear message to the Board that shareholders are dissatisfied with the status quo and that action is required. If the Board has concerns regarding the ability of its shareholders to understand the concept of liquidation, then it should provide shareholders with explanatory comments in its opposition statement to the Proposal in its Proxy Materials.

Additionally, the Proponent believes that, because shareholders cannot realistically obtain access to all information relating to the Company's specific assets and liquidation costs, the Company's argument that this Proposal is excludable due to the omission of this information would be to categorically preclude shareholders from having the ability to bring similar proposals as they are unable to provide that information without the assistance of the Company's management and Board, which expressly contradicts the Commission's statement in Staff Bulletin 14L that Rule 14a-8 "has provided a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement" and which process "has become a cornerstone of shareholder engagement on important matters."

For the reasons set forth above, the Proponent does not believe the Proposal violates Rule 14a-8(i)(7). The Proposal specifically requests the Board to take all actions necessary to liquidate the Company and by its very effect of ending the Company's existence, a liquidation is the least 'ordinary' event possible in the life of a Company. The Proposal focuses solely on an extraordinary transaction and neither interferes with the Board's ability to run the day-to-day business of the Company nor micro-manages the Company by taking away from the Board the prerogative to deal with matters of a complex nature. Accordingly, the Proposal is fully in line with both the language and underlying policy of Rule 14a-8(i)(7).

II. <u>The Proposal may not be excluded pursuant to Rule 14a-8(i)(1) because the Proposal is a proper subject for action by shareholders under Virginia law.</u>

The No-Action Letter also argues that the Proposal may be excluded on the basis of Rule 14a-8(i)(1), which allows the exclusion of a shareholder proposal that "is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." The Company falsely contends that the Proposal is excludable under Virginia law because it seeks to "indirectly, prematurely and impermissibly acquire the approval of the Company's shareholders of a liquidation of the Company's assets before the Board." The Company also incorrectly claims that the intent of the Proposal is to avoid the "dual approval process" required under §13.1-742 of the Virginia Stock Corporation Act (the "VSCA"). As expressly stated in the Proposal, the Proposal recommends that the Board take all *lawful* actions necessary to effectuate a liquidation of the Company. The inclusion of this language in the Proposal and specifically, the term "lawful", was purposefully intended to ensure that the Proposal did not attempt to, or in any way violate, the VSCA.

The Proposal does not in any way, form or manner ask that the Board effectuate a liquidation without complying with applicable law, including by seeking shareholder approval. The Proponent clearly understands the requirements for liquidating the Company under the VSCA, which first requires the Board to adopt a resolution authorizing the dissolution and then recommending dissolution to the shareholders (unless the Board determines that because of conflict of interests or other special circumstances it should make no recommendation), followed by a vote of the shareholders to approve the proposal to dissolve the Company. The text of §13.1-742 of the VSCA does not preclude the Proponent from submitting a precatory Proposal regarding a potential liquidation of the Company prior to this process but only requires that this process occur, which corresponds to the language of the Proposal.

The Company seems incapable of understanding that the shareholder vote on the Proposal is a *recommendation* that the Board take action to dissolve the Company and is therefore neither binding upon the Board nor does it constitute the shareholder vote required under the VSCA to approve a liquidation, which cannot occur unless recommended by the Board as noted above. Contrary to the Company's assertions, the Proponent is therefore not seeking to evade the "dual approval process" but is rather providing shareholders with an opportunity to first express their views on a potential liquidation of the Company. The Proposal does not suggest that Board action alone would ever be sufficient to liquidate the Company, just that it is necessary. Further, the Proposal is specifically limited to *lawful* actions. If the Board took the actions it claims are requested by the Proposal, namely, effectuating a liquidation without submitting the Board's plan of dissolution to a shareholder vote, it would explicitly be violating the VSCA, and would therefore be acting outside of the explicit language of the Proposal.

The shareholder vote on the Proposal is intended to serve as a referendum on the liquidation of the Company, not an attempt to skirt any legal requirements to effectuate a liquidation as the No-Action Letter seems to erroneously conclude. This is clearly within the purpose of Rule 14a-8, which is intended to provide "a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement" and which process "has become a cornerstone of shareholder engagement on important matters". If shareholders approve the Proposal at the 2022 Annual Meeting, we believe it would be incumbent upon the Board to seriously consider an orderly liquidation of the Company given shareholders' views on the matter. However, per the VSCA, the Board must first make a recommendation to shareholders to liquidate the Company and then present such plan of liquidation to a vote of AAIC shareholders. Contrary to the Company's misleading assertions, the Proposal does not suggest that any such shareholder vote is not required. The Proponent believes that it is clear that by requesting that the Board take all lawful actions necessary to effectuate a liquidation, such actions include all of the requirements under the VSCA. In fact, it is a plain contradiction in terms to say that the Proposal requests actions that violate the law, when the Proposal explicitly limits its request to actions that comply with the law.

Further, AAIC's argument that "the power and duty to manage the business and affairs of the Company is vested exclusively with the Board" as a reason for deeming the Proposal unlawful under state law seems to suggest that a proposal can only be submitted on a matter that the Board, in its sole discretion, determines is appropriate for vote. This is exactly the opposite of what Rule 14a-8 stands for. Rule 14a-8 permits shareholders to propose matters that generally affect shareholders and the issuer and lets shareholders' voices be heard. Unfortunately, the Company appears to be taking actions in bad faith to suppress shareholder voices.

III. The Proposal may not be excluded under Rule 14a-8(i)(8) because it does not improperly question the competence, business judgment, or character of one or more of the directors.

The Company argues that the Proposal improperly questions the business judgement and competence of the Board in a "not-so-veiled attempt to interfere in the election of directors" at the 2022 Annual Meeting. The Proponent expressly denies this and points to the fact that the Proposal neither questions the competence, business judgement or character of any AAIC director nor does it relate to the election of director candidates at the 2022 Annual Meeting in any manner. The Proposal recommends a lawful liquidation of the Company and properly questions AAIC management given the Company's chronic underperformance, as a means to explain to shareholders why the Proponent believes a liquidation of the Company is in the best interests of shareholders, which is not excludable under Rule 14a-8(i)(8).

In Exchange Act Release No. 12598 (July 7, 1976) (the "1976 Release"), referenced in the No-Action Letter, the Commission stated the following when explaining when a shareholder proposal may be excluded under Rule 14a-8(i)(8): "In its application of the Commission's explanation, the staff has permitted companies to exclude any shareholder proposal that may result in a contested election. For purposes of Rule 14a-8, the staff has expressed the position that a proposal may result in a contested election if it is a means either to campaign for or against a director nominee or to require a company to include shareholder-nominated candidates in the company's proxy materials." The Proponent is not seeking to nominate a competing slate of director candidates and in any event, AAIC directors are elected by a plurality vote so it is nearly guaranteed they will be elected at the 2022 Annual Meeting irrespective of whether the Proposal appears in the Proxy Materials. Accordingly, the Proposal has nothing to do with the election of directors, and is neither intended to, nor would it result in, a contested election of directors. The purpose of the Proposal is to help shareholders reclaim the fair value of the Company's assets through an orderly liquidation of the Company given the Company's material underperformance. The Proposal only discusses the Board's failure to take action, not its competence, business judgment or character. A request to completely dissolve the Company couldn't be any farther from a targeted attempt to intervene in the election of directors, as the Company falsely asserts.

To be clear, and as discussed in more detail below, when discussing Mr. Tonkol in his individual capacity, the Proponent specifically refers to him in his role as Chief Executive Officer of the Company, not as a member of the Board. The discussion of Mr. Tonkel's compensation since January 2020 is intended to illustrate to shareholders that he is dramatically over-compensated given the poor performance of the Company during that time period. The Proposal does not indicate or allude to any improper means by which Mr. Tonkel received his compensation and in any event, does not impugn his character. The Proponent's inclusion of this information is meant to demonstrate to shareholders why it believes a liquidation of the Company is warranted.

Below, we address each of the statements of the Proposal specifically called-out by the Company in Section C of the No-Action Letter.

1. *Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.*

First and foremost, this statement relates solely to Mr. Tonkel's role as Chief Executive Officer of the Company (not as a director) and presents factual information regarding the earnings he received in such capacity since January 2020, as compared to the Company's performance and shareholder earnings during the same timeframe. The Proponent does not see how discussing the poor financial performance of the Company in relation to the Chief Executive Officer's inflated earnings over the same period is an improper questioning of Mr. Tonkel's competence, business judgment or character as a director. Instead, such statements provide factual support and necessary background in order for shareholders to understand why the Proponent believes a liquidation of the Company is in the best interests of shareholders.

Unfortunately, the Company has completely mischaracterized the Proponent's statements regarding Mr. Tonkel in an effort to exclude a valid shareholder proposal. Contrary to what the Company alleges, the purpose of discussing Mr. Tonkel's compensation is to demonstrate that such compensation is inconsistent with AAIC's poor performance, not that it is improper as a matter of corporate law or that the Board engaged in any misconduct in approving such compensation. Mr. Tonkel's earnings since January 2020 have clearly come at the expense of AAIC shareholders, as he has continued to receive lofty payments while the shareholders of the Company, the true owners, have not received any dividends or reciprocal upside in the shares. These statements are not improperly attacking Mr. Tonkel's or the Board's business judgement, competence or character, but instead, are intended to provide shareholders with support for the Proponent's belief that continuing the Company's operations under the current stewardship is not a practicable strategy for enhancing shareholder value and that support for the Proposal is therefore warranted. The Proponent has included this information in order to assist shareholders with making an informed decision about the Proposal, not for the purpose of interfering with the election of directors at the 2022 Annual Meeting.

2. *Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance*.

As discussed above, this statement merely questions the stewardship of AAIC management due to the Company's poor performance, which is not a violation of Rule 14a-8(i)(8). Further, reference to the Board's collective failure to take action is neither an attack on the Board's nor any specific director's competence, business judgement or character. Importantly, the Proponent characterizes this statement as its opinion and provides factual support by way of referencing the Company's continued underperformance (which such underperformance is further supported by the Proponent's inclusion of more specific data on such underperformance elsewhere in the Proposal).

3. *In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance*.

Despite the Company's erroneous assertions, this statement likewise does not attack the Board's competency, business judgement or character. It simply expresses the Proponent's *belief,* similar to the statement above, that the Company's continued underperformance has significantly harmed shareholder value and will continue to do so if the Board does not take action, which the Proponent believes should be in the form of a dissolution of the Company. The Board's fiduciary duties include, among others, taking actions that are in the best interests of the Company and its shareholders. For the reasons set forth in the Proposal and this Response Letter, the Proponent believes dissolving the Company is in the best interests of AAIC shareholders and that the Board should take action if AAIC shareholders agree by supporting the Proposal at the 2022 Annual Meeting. Contrary to the Company's erroneous assertions, this statement is not attacking the Board, but rather is indicating that the Proposal provides an opportunity for the Board to fulfill its fiduciary duties.

The Proponent's discussion of the Board and management in the Proposal, including with respect to Mr. Tonkel, has nothing to do with seeking to influence the election of directors or attacking their competence, business judgment or character. These statements are intended solely to provide shareholders with background and relevant information in order to help them make an informed decision on whether to recommend that the Board order a liquidation of the Company by voting in favor of the Proposal at the 2022 Annual Meeting. The Company's claims are completely unfounded.

In an attempt to support the Company's argument that the Proposal directly attacks the competency and business judgment of the entire Board, the Company references a number of examples where the Staff has found violations of Rule 14a-8(i)(8), which are completely distinguishable from this Proposal. The proposals in Exxon Mobile Corp. (Mar. 20, 2002) and Black & Decker Corp. (Jan. 21, 1997), for example, related to the separation of the roles of chairman of the board of directors and chief executive officer and as such, specifically discussed the role of the CEO as a director of the Company. The proposal in Exxon Mobile Corp. directly attacked the CEO and Chairman, stating that his "unflinching attitude" has caused "reputational harm" to the company. In Black & Decker Corp., the proposal directly attacked the "personal characteristics" of the CEO and Chairman. The Proponent, on the other hand, has not engaged in any such personal attacks and to the contrary, has provided factual support for the statements in the Proposal in an effort to provide shareholders with sufficient information to support the Proposal. The Proposal neither questions the competence, business judgement or character of any AAIC director nor could it reasonably be interpreted as influencing the election of directors. Rather than allow shareholders to make their own decision on the merits of the Proposal, the Board is wasting shareholder capital trying to exclude it from the Proxy Materials for a second consecutive year.[1]

Importantly, the aforementioned statements are characterized as the Proponent's belief, the basis for the belief is included in the statements, and they reflect a reasonable conclusion. There is no risk that a shareholder would be confused by any of these statements, or infer other misdeeds. Further, it should be noted that the Proponent offered to negotiate the language of the Proposal with the Company on at least three separate occasions and was willing to consider reasonable revisions suggested by the Company. However, the Company did not reply to a single one of the Proponent's offers, choosing instead to waste resources disputing a shareholder proposal that could have been resolved.

Although the Proponent believes its Proposal is valid, it is willing to remove any disputed language from the supporting statement, if absolutely necessary, in order to allow shareholders to vote on the Proposal. The Proponent believes it is critical that shareholders get to vote on this important issue, especially on a non-binding basis.

IV. The Proposal may not be excluded pursuant to Rule 14a-8(i)(3) because it does not contain materially false and misleading statements in violation of Rule 14a-9.

Contrary to the Company's assertion, the Proposal may not be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) because none of the statements contained in the Proposal include anything that is "contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials."

The Commission drafted Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("Staff Bulletin 14B"), in part, to clarify its views with respect to the application of Rule 14a-8(i)(3). In Staff Bulletin 14B, the Commission expressed its frustration that Staff Legal Bulletin 14 (July 13, 2001) "has resulted in an unintended and unwarranted extension of Rule 14a-8(i)(3)" and that "many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify

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[1] See Arlington Asset Investment Corp. (Apr. 23, 2021), where the Company sought to exclude a thematically similar shareholder proposal just last year from the Company's proxy materials in connection with the 2021 annual meeting of shareholders, which proposal directed that "the officers of the company will liquidate the company's entire investment portfolio in an orderly manner by 1 July 2021, and thereafter promptly distribute the net proceeds of such liquidation to shareholders." To clarify, the Proponent's Proposal does not contain any of the purported errors in the prior proposal and in the Proponent's view, should not be excluded from the Proxy Materials.

exclusion of the proposal in its entirety." As a result, the Commission specifically listed four circumstances where "it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3)" and those are: (i) the company objects to factual assertions because they are not supported; (ii) the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered; (iii) the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or (iv) the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such. The Commission stated that companies should not seek to exclude such statements, but to address their objections to them in their statements of opposition. The No-Action Letter calls out nearly all of the statements from the Proposal and attempts to do precisely what the Commission warned against in Staff Bulletin 14B – the assertion of excessive deficiencies as a means to justify exclusion of the Proposal in its entirety.

Below, we address each of the statements of the Proposal specifically called-out by the Company in Section D of the No-Action Letter, which the Proponent believes are neither false nor misleading in violation of Rule 14a-8(i)(3) or Rule 14a-9. In addition, the Proponent refers the Staff to the responses provided directly above in Section III of this Response Letter, which refute any claim by the Company that the Proposal impugns the character, integrity or personal reputation of the Company's directors or officers without factual support.

1. Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.

The Company erroneously argues that these statements are false and misleading because Mr. Tonkel's compensation has been approved by a vote of the shareholders and the Board's Compensation Committee. The Proponent does not believe that these factors are relevant to the Proponent's purpose of including these statements, namely, to demonstrate how shareholders have suffered while the Company's CEO has been handsomely compensated despite the Company's chronic underperformance. The inclusion of this information was not intended to opine upon the method by which such compensation was approved. Even if such compensation was approved by the shareholders and the Board, that does not diminish the fact that, when compared to the disappointing returns of shareholders, Mr. Tonkel's payment appears unjustified. The Company further argues that it has returned capital to shareholders in the form of accretive common stock repurchases, but this does not change the fact that the Board has declared $0.00 in common dividends since January 2020. While share repurchases are a form of capital return to shareholders, it is not directly analogous to the declaration of dividends, as explained by the Staff that "[d]ividends fluctuate less than repurchases," and are viewed "by the market as a commitment to regularly return cash to shareholders." See Exchange Release Nos. 34-93783 (December 15, 2021).

2. *Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance.*

For the reasons discussed above in Section III, the Proponent does not believe that this statement "impugns the character of the Board without factual foundation" as the Company falsely alleges. This statement is characterized as the Proponent's belief and is adequately supported by the Proponent's reference to the Company's chronic underperformance, which is also further detailed elsewhere in the Proposal. See Hyperion 2005 Investment Grade Opportunity Term Trust, Inc., SEC No-Action Letter

(January 12, 1999) (where the Commission denied no-action relief where the company argued that the shareholder proposal contained false and misleading statements in violation of Rule 14a-8(i)(3), where the proposal sought the orderly liquidation of securities held by the Trust immediately and termination of the Trust within 90 days of the annual meeting).[2] In Hyperion 2005 Investment Grade Opportunity Term Trust, Inc., the company asserted the proposal contained numerous misleading statements, including the proponent's statement that the fees paid by the Trust "can be viewed as exorbitant". The Staff specifically rejected this argument, among others, on the grounds that it "represents simply the proponent's opinion and not an objective statement of fact." While the AAIC Board may disagree with the Proponent's belief, it does not mean that the language of the Proposal impugns the Board's character or is otherwise misleading in violation of Rule 14a-8(i)(3).

3. *In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance.*

For the reasons discussed above in Section III, the Proponent does not believe that this statement impugns the Board's character in any manner. The Proponent is not accusing the Board of violating its fiduciary duties, and similar to the statement above, reflects the Proponent's opinion and is backed by factual support in the form of the Company's persistent underperformance (which as noted above, is also discussed elsewhere in the Proposal).

4. *As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.*

The Company falsely argues that this statement is "particularly egregious because it purports to place a value of a liquidation of the Company" and attempts to predict "the market value of a hypothetical liquidation of the Company's portfolio, without any factual foundation." The Proponent believes the Company has completely mischaracterized its statement, consistent with the Company's approach to the Proposal as a whole, as detailed throughout this Response Letter. The Proposal does not attempt to estimate the future liquidation value of the Company or the costs associated with such a liquidation, as the Proponent would need access to all relevant information in order to make such a determination, which it clearly does not have access to.

Further, all references to book value and stock prices are either current or backward-looking with zero speculation as to future market values. Moreover, the referenced statement clearly states that these valuations are "[a]s of December 1st, 2021," and do not reference any future valuations but, instead, state that based on the current reported book value per share and current share price as of December 1, 2021, a dissolution appears to the Proponent to offer more value than those current figures. The purpose of referencing book value and the Company's chronic underperformance is to provide support for the Proponent's belief that a liquidation "appears" to offer more value for shareholders.

The Company also asserts that "the misleading nature of the Proponent's statement is further highlighted by the fact that the Proponent equates the Company's book value per share with a liquidation

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[2] It should be noted that the Staff did comment on the company's allegation that the proposal violated Rule 14a-8(i)(1) because it was phrased as a mandate and not a recommendation. However, the Staff further stated that it "believe[s] that any deficiency would be cured if the form of the proposal is changed from a mandate for the immediate dissolution of the Trust to a request or recommendation that the board of directors take the steps necessary in order to dissolve the Trust."

value of the Company's assets" and that "the Company's book value per share does not contemplate or otherwise reflect the cost associated with liquidating and winding down a public company, including for example the cost of breaking various contractual commitment." The Proponent finds the Company's statements to be both false and misleading.

First, as noted above, the book value figure referenced in the Proposal is a figure provided by the Company itself in every quarterly earnings release in order to convey the value of its asset portfolio. By providing this figure as a headline item on every quarterly earnings release, and even providing emergency updates in situations like March 2020, the Company demonstrates that the book value figure referenced by the Proponent is critical to shareholders' evaluation of the Company's assets. In its March 26, 2020 press release,[3] for example, the Company included a book value update on the portfolio's weathering of the coronavirus crisis. Providing a non-quarterly "emergency" update on book value would only make sense if the Company's self-reported book value fluctuated with market conditions, indicating that the Company's book value figure does track, with some precision, the current value of the Company's asset portfolio. The Proponent believes that this also demonstrates that the Company knows book value is a critical metric that investors use in analyzing the status of Company's investment portfolio, especially relative to its stock price.

With regard to the same March 26, 2020 press release, the Company was able to nail down the book value decline to a precise range of 32-36%, without conducting a quarter-end accounting, which would be nearly impossible to do if book value were not readily discernable by looking to market conditions and pricing. This figure is only discernable if the assets are largely market-to-market, and thus fairly reflective of FMV. Further, on numerous analyst calls Mr. Tonkel has described the stock as undervalued specifically because it is trading far below book value. In the Company's Q3 2021 earnings results call[4], for example, Mr. Tonkel describes the stock as undervalued in direct response to Jason Stewart's question about the discount to book value, and the associated benefits of buybacks, thereby admitting the Proponent's exact point – that the stock does indeed trade at a substantial discount to the Company's net assets. The Company's own actions concede that management believes book value to be extremely important to investors in evaluating the Company's asset portfolio. The Proponent merely accepts management's statements about book value, and presents them to shareholders as a rationale for supporting the Proposal.

Further, analysts regularly ask for book value updates in the month since quarter end, indicating that book value is reactive to market conditions. For example, on the Company's Q2 2021 earnings results call[5], Trevor Cranston asks for a book value update since quarter-end, which Mr. Tonkel gives without hesitation. Clearly book value cannot be considered an arcane accounting tool if Mr. Tonkel knew the book value off the top of his head. On the contrary, every mortgage REIT provides its book value down to the cent, and wide quarter-over-quarter fluctuations are extremely common. This is precisely because their assets can be valued with precision.

Further, the Staff has previously denied no-action relief where a company sought to exclude a similar shareholder proposal on the grounds that it was purportedly misleading, provided no factual foundation, and impugned the character of the company's management in violation of Rule 14a-8(i)(3). See American Building Control, Inc., SEC No-Action Letter (April 4, 2003) (where the Commission was

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[3] See https://www.sec.gov/Archives/edgar/data/0001209028/000156459020013233/ai-ex991_6.htm
[4] See https://seekingalpha.com/article/4467948-arlington-asset-investment-corp-aaic-ceo-rock-tonkel-on-q3-2021-results-earnings-call
[5] See https://seekingalpha.com/article/4445006-arlington-asset-investment-corp-aaic-ceo-rock-tonkel-on-q2-2021-results-earnings-call

unable to concur that the company may exclude the proposal under Rule 14a-8(i)(3) where the shareholder proposal requested the company's board of directors to take such actions necessary to dissolve and liquidate the company by effecting the sale of substantially all of the company's assets and distributing the net proceeds to the Company's stockholders). In American Building Control, Inc., the company tried to exclude the proposal on similar grounds based on allegedly misleading statements in the proposal, including that the proposal allegedly suggested that directors and management are not committed to enabling the company's shareholders "to realize the full value of their shareholdings in the Corporation" and that their actions have been "detrimental to the Corporation and its shareholders". American Building Control tried to similarly assert that the shareholder proponent's statement that the "current market price of the Corporation's stock does not reflect the true value of the underlying assets because of investors' lack of confidence that the Corporation's present management is prepared to adopt appropriate strategies with respect to the business of the Corporation and its future prospects so as to enable the Corporation and its shareholders to realize or benefit from such value" was misleading with respect to alleged management failure, which the Staff rejected. The Staff also rejected the company's argument, which is similar to AAIC's assertion, that the shareholder proposal was misleading because it did not consider all potential costs of a liquidation such as the tax effect of a liquidation. The Proponent's supporting statement likewise does not purport to calculate liquidation value, or the costs associated with liquidation, as the Proponent does not have access to all information required to conduct such an analysis. Notwithstanding the foregoing, the Proponent does not believe this information is necessary for shareholders to make an informed decision on the Proposal, especially on a non-binding basis. The Proponent believes that book value provides shareholders, at a minimum, an accurate starting point to evaluate a potential liquidation. The Proponent believes the Staff should likewise concur that this Proposal does not violate Rule 14a-8(i)(3).

Notwithstanding the foregoing, it should be noted that generally, unless the Commission considers a statement to violate Rule 14a-8(i)(3) or that any required changes would also "require detailed and extensive editing in order to bring them into compliance with the proxy rules," the Staff has traditionally provided shareholders who are attempting to submit proposals under the proxy access rules some ability to make reasonable modifications if necessary. Accordingly, if the Staff has concerns with any of these statements, the Proponent would be willing to revise such statements in a manner acceptable to the Staff. In addition, if the Company has any concerns that not enough information was provided, including with respect to liquidation costs, the Company should provide such information to shareholders in the form of an opposition statement to the Proposal in its Proxy Materials, rather than attempt to exclude an otherwise important shareholder proposal.

V. The Proposal may not be excluded because it has not already been substantially implemented in violation of Rule 14a-8(i)(10).

The Company's claim that the Board's exploration of strategic alternatives, which unbeknownst to shareholders allegedly included its consideration of a liquidation of the Company, and its commitment to its current strategic plan, serves as an indication that the Board has "substantially implemented" the Proponent's liquidation Proposal is not only completely without merit but appears to reflect yet another bad faith attempt to exclude the Proposal. As discussed in the No-Action Letter, a proposal may be excluded under Rule 14a-8(i)(10) if the proposed plan has previously been "substantially implemented" by the company, which includes if the company has already taken action to address the underlying concerns and essential objectives of a shareholder proposal. See Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"); see also TexaCo, Inc. (March. 28, 1991) (concurring that when determining whether a company's particular policy has "substantially implemented" a shareholder proposal depends on "whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal"). Here, the Company has neither implemented a policy nor taken any action that even closely compares to a liquidation of the Company's assets but, instead, has simply reviewed a number of different strategic options, allegedly including a potential liquidation of the Company. As the Company argued in the No-Action Letter, a strategic review process is a part of the day-to-day management of a company and, accordingly, does not address the underlying concerns or essential objectives of the Proposal, which specifically requests that the Board dissolve the Company.

Further, the Proponent believes the Company's argument that the Board's apparent determination that a liquidation is not in the best interests of the shareholders as evidence that the Proposal has been substantially implemented is not only unfounded but completely incongruous. Considering a corporate action and rejecting it, is the exact opposite of implementing it. If the Board opposes such a liquidation, then it should explain its reasoning to shareholders in its opposition statement to the Proposal, not by attempting to muzzle shareholder voices by excluding the Proposal.

If shareholders support the Proposal, it shall serve as a referendum, consistent with the intent of Rule 14a-8, on the future state of the Company, and the Proponent believes it would be incumbent upon the Board to seriously consider shareholders' wishes and reconsider a liquidation of the Company at that time. The Board should not be permitted to evade shareholder input by alleging to have substantially implemented a liquidation of the Company when that cannot be farther from the truth.

Accordingly, the Proponent believes the Company's argument that the Proposal violates Rule 14a-8(i)(10) is severely lacking and reflects yet another misguided attempt to exclude the Proposal from a vote of the shareholders.

VI. The Proposal may not be excluded because the Company does not lack the authority to implement the Proposal in violation of Rule 14a-8(i)(6).

The Company erroneously argues that "because the Proposal requests shareholder approval without following the required approval process mandated by the VSCA and the Charter, the Proposal is not a proper subject for action by shareholders under Virginia law" and the Board therefore does not have authority to implement the Proposal. The Company's claim is completely unfounded.

As described in detail in Section II of this Response Letter above, the Proposal requests that the Board take all *lawful* actions necessary to liquidate the Company, which term "lawful" is specifically intended to include all requirements under the VSCA, including the Board first making a recommendation to shareholders regarding a dissolution of the Company, followed by a shareholder vote on the Board's plan of dissolution. The Proposal *recommends* that the Board take action and is therefore precatory in nature. Contrary to the Company's false and misleading allegations, the Proponent is seeking shareholder input on whether a liquidation is warranted and if approved by shareholders at the 2022 Annual Meeting, is requesting that the Board then take action to effectuate a liquidation in compliance with applicable law. Accordingly, the Board clearly has the requisite authority to implement the Proposal and any argument to the contrary is both false and highly misleading.

The Staff previously denied no-action relief with respect to a substantially similar shareholder proposal where the company tried to allege it violated Rule 14a-8(i)(6). In American Building Control, Inc., which is discussed in more detail above, the proposal requested that the board of directors of the company take such actions necessary to dissolve and liquidate the company by effecting the sale of substantially all of the company's assets and distributing the net proceeds to the company's stockholders. The company similarly tried to assert that the Board lacks authority to implement the proposal because the company's board "has determined that dissolution of the Company is not in the best interests of the stockholders and thus will not propose dissolution to the stockholders."[6] The Proponent believes the Staff should likewise concur that this Proposal does not violate Rule 14a-8(i)(6).

VII. Conclusion

As discussed above, the Proponent believes that the Company's arguments in the No-Action Letter are not only wholly unfounded but reflect the Company's bad faith attempts to prohibit shareholders from expressing their view on the future of the Company. Accordingly, the Proponent does not believe that the Company has met its burden of demonstrating its entitlement to exclude the Proposal pursuant to Rule 14a-8(g).

As noted above, a thematically-similar shareholder proposal was submitted for inclusion in the Company's proxy materials in connection with the 2021 Annual Meeting, which was excluded by the Company on technical grounds (which the Proponent notes are not applicable to its Proposal). Clearly, the issue of liquidation of the Company is a matter of significant enough interest to the shareholders of the Company such that it has now been raised in two consecutive years. The Proponent believes that this is a clear indication that shareholder democracy would be best promoted by allowing shareholders to vote on this critical issue.

It is also important to note that the Proponent first submitted the Proposal to the Company in early August 2021 and subsequently offered to discuss the Proposal and any desired revisions with the Company on numerous occasions over the course of three months, which the Company repeatedly declined. Rather than work constructively with the Proponent to address any concerns the Company may have with the Proposal, the Company chose to wait until the very end of the submission window to send the No-Action Letter to the Commission, which the Proponent believes was a deliberate attempt to preclude the Proponent from making any further revisions to the Proposal. Rather than waste shareholder capital trying to exclude lawful shareholder proposals, the Company should simply explain their views in a statement in opposition to the Proposal in the Proxy Materials.

As outlined above, the Company's arguments do not support excluding the Proposal from the Proxy Materials. However, should the Commission object to the language in the Proposal, including in the supporting statement, the Proponent is willing to revise the language in a manner that the Commission deems acceptable. Furthermore, if the Commission believes that any required revisions would be too substantial, the Proponent is willing, if the Commission finds that it is absolutely necessary, to sever the supporting statement entirely from the Proposal for inclusion in the Proxy Materials. Although the Proponent believes its Proposal complies with applicable law in all respects, it is willing to take any action the Commission deems necessary to allow for the shareholders of the Company to vote on the Proposal and to finally have a say on their investment in, and the future of, the Company.

On behalf of the Proponent, we hereby respectfully request that the Staff confirm to the Company that it is unable to concur with the Company's view that the Proposal may be excluded from the Proxy Materials.

Should you have any questions regarding this Response Letter or a need for additional information or clarification, please call me at (212) 451-2260 or by email at mreda@olshanlaw.com.

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[6] Although the governing law in this case was Delaware, similar steps are required to effectuate a liquidation, including that the company's board of directors adopt a resolution, which then must be submitted to a vote of the stockholders.

We would appreciate it if you would please acknowledge receipt of this Response Letter via electronic mail. Thank you for your consideration to this matter.

Respectfully submitted,

Meagan M. Reda

Enclosure

cc: Alexander Snowdon, VA Property 1 LLC
Scott Parish, Arlington Asset Investment Corp.
Robert K. Smith, Hunton Andrews Kurth LLP
Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz

<u>Exhibit A</u>

No-Action Letter

(*See attached*)

HUNTON
ANDREWS KURTH

January 14, 2022

VIA ELECTRONIC MAIL

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Re: **Stockholder Proposal to Arlington Asset Investment Corp. from VA Property 1 LLC**

Ladies and Gentlemen:

This letter is submitted on behalf of Arlington Asset Investment Corp. (the "***Company***") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Company has received a stockholder proposal and related supporting statement, attached hereto as Exhibit A (the "***Proposal***"), from VA Property 1 LLC (the "***Proponent***") for inclusion in the Company's proxy statement for its 2022 annual meeting of stockholders.[1] The Company hereby advises the staff (the "***Staff***") of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2022 annual meeting (the "***Proxy Materials***"). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "***Commission***") if the Company excludes the Proposal on the following grounds:

(i) pursuant to Rule 14a-8(i)(7), as the Proposal relates to the ordinary business operations of the Company;

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[1] We note for the Staff that the Proposal set forth on Exhibit A is the "final" Proposal received from the Proponent on December 14, 2021. For the Staff's reference, Exhibit A-1 also sets forth five prior iterations of the Proposal that the Proponent sent to the Company on an unsolicited basis. The final version of the proposal received on December 14, 2021 mirrors the previous version of the proposal, received on December 1, 2021, but includes new ownership language and a description of the nature of the proposal. The Company has indicated on Exhibit A-1 the dates on which these prior iterations were received. In response to the Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials published by the SEC on December 17, 2021, we have removed any potential personally identifiable information from Exhibit A.

(ii) pursuant to Rule 14a-8(i)(1), as the Proposal is not a proper subject for action by stockholders under the laws of the jurisdiction of the Company's organization;

(iii) pursuant to Rule 14a-8(i)(8), as the Proposal questions the competence, business judgment and character of one or more of the directors;

(iv) pursuant to Rule 14a-8(i)(3), as the Proposal violates proxy rules and contains materially false and misleading statements;

(v) pursuant to Rule 14a-8(i)(10), as the Proposal has already been substantially implemented; or

(vi) pursuant to Rule 14a-8(i)(6), as the Company lacks the authority to implement the Proposal.

By copy of this letter, we are advising the Proponent of the Company's intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal, and (ii) the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

I. The Stockholder Proposal

The Proposal reads, in full, as follows:

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of

> 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.
>
> Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.
>
> As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.
>
> In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

II. Grounds for Exclusion

The Company intends to exclude this Proposal from its Proxy Materials and respectfully requests that the Staff concur that the Company may exclude the Proposal on the following grounds.

A. Rule 14a-8(i)(7) – The Proposal may be excluded because it deals with a matter relating to the ordinary business operations of the Company.

The Proposal and the Supporting Statement may be excluded from the Proxy Statement under Rule 14a-8(i)(7), which provides that a proposal may be excluded "[i]f the proposal deals with a matter relating to the company's ordinary business operations." The Commission has stated that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to "tasks [that] are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"; and

- second, whether a "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."

Exchange Act Release No.40018 (May 21, 1998) ("***1998 Release***").

Strategic Alternative Proposals

The Staff has consistently determined that a proposal concerning the exploration of a strategic alternative for maximizing shareholder value, including a proposal that relates to both extraordinary transactions and non-extraordinary transactions, is generally excludable under Rule 14a-8(i)(7). See General Electric Co. (Jan. 7, 2011); see also Central Federal Corp. (Mar. 8, 2010) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) and stating that "[p]roposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary transactions and non-extraordinary transactions are generally excludable under Rule 14a-8(i)(7)"); Guaranty Bancorp (Mar. 4, 2009) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) where the proposal requested that the company engage an advisory firm to develop a strategy to enhance shareowner value and also requested that such strategy include possible liquidation); Anchor Bancorp, Inc. (July 11, 2013) (concurring that a proposal to "maximize shareholder value, including, but not limited to a sale of the Company as a whole, merger or other transaction for all or substantially all of the assets of the Company" related to both extraordinary and non-extraordinary transactions and could be excluded from the company's proxy materials under Rule 14a-8(i)(7)). Similarly, in Donegal Group Inc. (Feb. 16, 2012), the Staff concurred with the exclusion of a proposal that requested that the company's board appoint an independent board committee and retain a leading investment banking firm "to explore strategic alternatives to maximize shareholder value, including consideration of a merger."

The Proposal, like the proposals discussed in the No-Action letters cited above, relates to the ordinary business of the Company, and therefore it may be excluded. Like the proposal in General Electric Co., the Proposal relates to a strategic alternative that, on its face, purports to maximize the value of the Company's assets to its shareholders. Similar to the proposal in Guaranty Bancorp, the Proposal not only relates to an action that purports to enhance shareholder value but also, more specifically, a *liquidation* of assets. Like the proposal in Anchor Bancorp, the Proposal in substance relates to "a transaction for all or substantially all of the assets of" the Company, in this case pursuant to a liquidation (rather than a merger or singular asset sale). Along the lines of Donegal Group Inc., the Proposal relates to an extraordinary transaction that would have the same effect – a sale of the Company's assets – as the merger in the proposal described in that No-Action letter.

In addition, the Proposal relates to a transaction – in this case, a liquidation of the Company's assets – which by definition includes the sale of a number of non-core assets, very similar to Central Federal Corp. and therefore falling within the scope of shareholder proposals that are intended to be excludable under Rule 14a-8(i)(7);[2] See Telular Corporation (Dec. 5, 2003)

[2] In particular, the Staff has determined that, consistent with state corporate law, the sale of a non-core business or asset is not an extraordinary transaction, and is excludable as an ordinary business matter. See General Electric Co. (Jan. 22, 2007) (concurring with the exclusion of a proposal under rule 14a-8(i)(7) because it dealt with the disposition of non-core assets); see also Lancer Corporation (Mar. 10, 2003); Archon Corporation (Mar. 10, 2003); and Virginia Capital Bancshares (Jan. 16, 2001). The Proposal would, by definition, require the Company to sell a number of non-core assets given that it seeks the sale of all of the Company's assets pursuant to a liquidation. As the Proponent must know, a

(concurring that a proposal could be excluded because it related "in part to non-extraordinary transactions" where it requested that the board of directors appoint a committee of independent directors to explore strategic alternatives, including a "sale, merger,…or divestiture of the Company or a division thereof").

In short, the Proposal is directly analogous to the numerous proposals discussed in these prior No-Action letters; that is, the Proposal seeks to cause the Company to effect an extraordinary transaction through the sale of all of the Company's assets (including numerous non-core assets). In fact, the Proposal goes a step further than prior precedent; it doesn't *request* an exploration of a strategic alternative but rather *directs* the Board of Directors of the Company (the "***Board***") to "take all lawful, extraordinary actions necessary to effectuate" the liquidation of the Company's assets. For these reasons, the Proposal deals with a matter relating to the ordinary business of the Company, and therefore it may be excluded.

Ability of Shareholders to Make an Informed Judgment

The Staff recently reiterated that, when considering arguments for exclusion based on micromanagement, it looks to whether the shareholders, as a group, can make an informed judgment based on "the sophistication of investors generally on the matter, the availability of the data, and the robustness of public discussion and analysis on the topic." Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("***SLB 14L***"). This includes any proposal that "seeks to impose . . . specific methods for implementing complex policies." Id. The Staff has historically viewed stockholder proposals relating to corporate financing decisions, *including* liquidation of assets, to be within a company's ordinary business operations, and, therefore, unsuitable topics for shareholder proposals. See IEC Electronics Corp. (Nov. 3, 2011) (proposal requesting that the company, at each quarter end retain, a cash balance of a certain percentage of cash flow); see also Vishay Intertechnology, Inc. (Mar. 28, 2008) (proposal recommending that the company eliminate its long-term debt); Stewart Enterprises, Inc. (Jan. 2, 2001) (proposal requiring immediate liquidation of all cash investments and the use of proceeds for reduction of debt). The Commission also stated in SLB 14L that they will focus on the "extent [a shareholder proposal] inappropriately limits discretion of the board or management" and that the Staff "would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, *risks* or other strategic matters appropriate for shareholder input."

A liquidation of a viable operating public company is extremely rare, and even more so in the REIT industry. One reason for this is the nature of a liquidation of a public company and the various uncertainties related thereto. For example, a liquidation is not a singular event and does not occur at a single point in time; rather, it involves the sale of many assets and satisfaction of many liabilities, which can take years. Obviously, valuing such an event is extremely difficult because a company is forced to value assets and liabilities at a point in time that could be years before the actual disposition of the asset or satisfaction of the liability, as applicable. Further, the

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liquidation is not a singular event, such as a merger; rather, it can be a long, drawn-out process that effectively winds down a company over time (sometimes over many years), and involves the sale or other disposition of all of the company's assets, and does not distinguish between core and non-core assets.

value (or cost) ascribed to assets and liabilities on a company's balance sheet differ for purposes of GAAP accounting and a liquidation, for the simple reason that such valuation is much different in the context of the company winding down. Additionally, liquidations involve various costs that would not be obvious on the company's GAAP financial statements, such as costs and expenses associated with winding down a company, breaking contractual commitments and the fact that assets sold in a liquidation may be for much less than fair value. This the primary reason that the Company believes that most liquidations of public companies occur in the context of a bankruptcy or an otherwise financially distressed situation.

The Proposal would require the Board to take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company. However, as noted above, the Proposal does not in any way provide the type of information the shareholders would need to even understand the Proposal, let alone make an informed judgment on this topic. Rather, the Proponent has resorted to making false and misleading statements and impugning the character of the Company's Board and management (see **Section C** below, at page 7 and **Section D** below, at page 9). Simply put, the liquidation of a public company is an exceedingly rare event that would require much more detailed information and analysis than the Proponent provides and the Company believes it is therefore excludable under Rule 14a-8(i)(7).

B. Rule 14a-8(i)(1) – The Proposal may be excluded because the Proposal is not a proper subject for action by stockholders under Virginia law.

Rule 14a-8(i)(1) permits a company to exclude a stockholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." As explained more broadly in the supporting opinion of Hunton Andrews Kurth LLP with respect to matters of Virginia law attached hereto as Exhibit B (the "***Virginia Law Opinion***"), the Proposal is not a proper subject for action by stockholders under Virginia law.

Virginia law requires that a board of directors approve and recommend the liquidation of all the corporation's assets before such a plan may be presented for shareholder approval. See Va. Code Ann. § 13.1-742. Pursuant to § 13.1-742 Virginia Stock Corporation Act (the "VSCA"), the "shareholders entitled to vote shall approve the proposal" in order to dissolve the company. The board of directors must also recommend dissolution to the shareholders, unless the board of directors determines that it should make no recommendation because of a conflict of interest or some other circumstance. The board of directors is also entitled to set the conditions for the approval or on the effectiveness of the dissolution. Similarly, pursuant to § 13.1-724 of the VSCA, "sale, lease, exchange or other disposition of the corporation's assets" of the nature described in the proposal "requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant business activity," but "shall be initiated by adoption of a resolution by the board of directors authorizing the disposition." In order to lawfully seek the liquidation of a corporation's assets, board approval and recommendation of the liquidation must precede seeking shareholder approval. See Va. Code Ann. § 13.1-742A; see also Arlington Asset Investment Corp. (Apr. 23, 2021) (concurring with the exclusion of a proposal demanding management liquidate the company's entire investment portfolio where the implementation of the proposal would violate Virginia law as the board of directors must authorize dissolution and set conditions for shareholder approval of the liquidation before any dissolution may begin); Willard ex rel. Moneta Bldg. Supply, Inc. v. Moneta Bldg. Supply, Inc., 258 Va. 140, 155, 515 S.E.2d 277, 287 (1999) (holding that the sale of a corporation's assets was proper when first approved by the board of directors); WBM, LLC v. Wildwoods Holding Corp., 270 Va. 156, 161, 613 S.E.2d 402, 405 (2005) (holding that board approval was required prior to the sale of substantially all of the assets).

Additionally, § 13.1-673 of the VSCA states that "[a]ll corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation managed under the direction, and subject to the oversight, of the board of directors, subject to any limitation set forth in the articles of incorporation permitted by subdivision B 3 of § 13.1-619 or in an agreement authorized under § 13.1-671.1." Therefore, in the absence of a provision reserving power to the shareholders in the articles of incorporation or a provision of the VSCA directing or requiring that shareholders take action, the directors, rather than the shareholders, manage the business and affairs of a Virginia corporation. The articles of incorporation of the Company contain no reservation by the shareholders of the power and duty to manage the business and affairs of the Company. Rather, the power and duty to manage the business and affairs of the Company is vested exclusively with the Board.

Simply put, the Proposal seeks to indirectly, prematurely and impermissibly acquire the approval of the Company's shareholders of a liquidation of the Company's assets *before* the Board (in exercising the authority specifically reserved to it under the VSCA) has even determined to specifically approve such an action and present it to the shareholders for consideration. There is no other way to interpret the Proposal other than as having its sole purpose to be to circumvent the requirements of the VSCA. As such, the Proposal seeks to influence the Board in a way that the Company believes would involve a derogation of the Board's fiduciary duties and involve an impermissible delegation to the shareholders since the Board (not the shareholders) are charged with managing the business and affairs of the Company. This is particularly troublesome in the context of a liquidation of the Company, as any recommendation and/or determination to cause a liquidation of a public company is complex, contextual and time-consuming (see **Section A** above, at page 3). For these reasons, the Proposal is excludable pursuant to Rule 14a-8(i)(1).

C. Rule 14a-8(i)(8) – The Proposal may be excluded because it improperly questions the competence, business judgment, or character of one or more of the directors.

The Proposal is excludable pursuant to Rule 14a-8(i)(8), which permits the exclusion of shareholder proposals that, among other things, "(i) [q]uestions the competence, business judgment, or character of one or more nominees or directors; or (ii) [o]therwise could affect the outcome of the upcoming election of directors." The purpose of the exclusion is to ensure that the shareholder proposal process is not used to circumvent more elaborate rules governing election contests. See Caterpillar Inc. (Mar. 24, 2014). As the Commission has stated, "the principal purpose of this grounds for exclusion is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting elections or effecting reforms in elections of that nature, since other proxy rules ... are applicable thereto." Exchange Act Release No. 12598 (July 7, 1976).

In Exchange Act Release No. 56914, at n. 56 (Dec. 6, 2007), the Commission acknowledged the Staff's position that "a proposal relates to 'an election for membership on the company's board of directors or analogous governing body' and, as such, is subject to exclusion under Rule l4a-8(i)(8) if it could have the effect of ... questioning the competence or business judgment of one or more directors." The Commission codified this interpretation in 2010 by adopting amendments to Rule 14a-8(i)(8) to expressly allow for the exclusion of a proposal that "[q]uestions the competence, business judgment, or character of one or more nominees or directors." Exchange Act Release No. 62764 (Aug. 25, 2010).

The Staff has consistently permitted exclusion of proposals where the proposal or supporting statement questioned the business judgment, competence or service of directors who will stand for re-election at an upcoming annual meeting of shareholders. See Marriott International, Inc. (Mar. 12, 2010) (permitting the exclusion of a proposal criticizing suitability of members of the board of directors to serve, and such members were expected to be nominated by the company for election at the upcoming annual meeting of shareholders); see also Brocade Communication Systems, Inc. (Jan. 31, 2007) (permitting the exclusion of a proposal criticizing directors who ignore certain shareholder votes); Exxon Mobil Corp. (Mar. 20, 2002) (permitting the exclusion of a proposal condemning the CEO for causing "reputational harm" to the company and for "destroying shareholder value"); AT&T Corp. (Feb. 13, 2001) (permitting the exclusion of a proposal criticizing the board chairman, who was also the CEO, for company performance); Honeywell International Inc. (Mar. 2, 2000) (permitting the exclusion of a proposal making directors who fail to enact resolutions adopted by shareholders ineligible for election); Black & Decker Corp. (Jan. 21, 1997) (permitting exclusion of a proposal under the predecessor to Rule l4a-8(i)(8) that questioned the independence of board members where contentions in the supporting statement questioned the business judgment, competence and service of a chief executive officer standing for re-election to the board); Rite Aid Corp. (Apr. 1, 2011) (permitting the exclusion of a proposal, with the Staff noting that "the proposal appears to question the business judgment of board members whom Rite Aid expects to nominate for re-election at the upcoming annual meeting of shareholders").

The Proposal, in violation of Rule 14a-8(i)(8)(iii), overtly and directly questions the competence and business judgment of not only the Board, but also the President and Chief Executive Officer of the Company, J. Rock Tonkel, Jr., who serves as a director on the Board and will, notably, be a director nominee at the 2022 annual meeting of shareholders along with all of the other members of the Board. Specifically, the Proposal questions the competence and business judgment of the Board and Chief Executive Officer with the following statements:

- "Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period."

- "Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance."

- "In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance."

The proposal directly attacks the competency and business judgment of the entire Board, including Mr. Tonkel, and therefore is a not-so-veiled attempt to interfere in the election of directors in violation of Rule 14a-8(i)(8)(iii). Specifically, the statements above directly charge the Board with a failure to fulfill its fiduciary duties (a charge that is not only completely without factual foundation but also wholly inappropriate to make by means of a shareholder proposal, as noted by Commission in its rule making and by the Staff pursuant to numerous No-Action letters). Like the long line of No-Action letters cited in this **Section C**, because the Proposal questions the business judgment of the Board members, it is excludable in reliance on Rule 14a-8(i)(8) as relating to the election of a director to the Board. We note further that, very similar to the proposals in Exxon Mobil Corp. and Black & Decker Corp., the Proposal directly attacks Mr. Tonkel by suggesting without any factual foundation that his compensation (all of which was properly approved)[3] was wrongly paid to him at the expense of the Company's shareholders. This is an impermissible, back-door attempt to affect the outcome of election of not only Mr. Tonkel but also the members of the Board who approved his compensation, and is therefore excludable in reliance on Rule 14a-8(i)(8).

D. Rule 14a-8(i)(3) – The Proposal may be excluded because it violates proxy rules and is materially false and misleading contrary to Rule 14a-9.

The Proposal and the Supporting Statement may be excluded from the Proxy Statement because they violate the prohibition on "materially false or misleading statements" contained in Rule 14a-8(i)(3). Specifically, Rule 14a-8(i)(3) allows for the exclusion of proposals or supporting statements that are "contrary to any of the Commission's proxy rules, including Rule 14a-9." Rule 14a-9 prohibits solicitation by means of any material "containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact." In addition, Note (b) to Rule 14a-9 states that material may be considered misleading, depending upon particular facts and circumstances, if it "directly or indirectly impugns character, integrity or personal reputation ... without factual foundation."

The Staff has previously granted no-action relief where a proposal or supporting statement impugned the character, integrity or personal reputation of directors and management and their fiduciary duty to shareholders. See The Swiss Helvetia Fund, Inc. (Apr. 3, 2001) (allowing exclusion of a proposal which implied that the directors had violated, or may choose to violate, their fiduciary duty, because it impugned their character, integrity and personal reputation); see

[3] All of Mr. Tonkel's compensation has been approved by the Company's Compensation Committee of the Board. We also note that the Company's say-on-pay vote has consistently been approved by the Company's shareholders, suggesting that a majority of the Company's shareholders do not share the Proponent's view on Mr. Tonkel's compensation.

also CCBT Bancorp, Inc. (Apr. 20, 1999) (allowing exclusion of a supporting statement which stated that the board of directors had violated their fiduciary duty); ConocoPhillips (Mar. 13, 2012) (allowing exclusion of unsubstantiated allegations that the company's management had illicit associations with groups whose agendas were adverse to the company's shareholders, implying that the company's directors were unethical and had breached their fiduciary duties to the shareholders).

The Supporting Statement contains materially false and misleading statements, and impugns the Board's reputation without factual foundation, as follows:

- The Proponent states: "Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period."

This statement is false and misleading and is without factual foundation. As noted above, all of Mr. Tonkel's compensation has been properly approved and the Company's say-on-pay vote has consistently been approved by the Company's shareholders, suggesting that a majority of the Company's shareholders do not share the Proponent's view on Mr. Tonkel's compensation. Further, there is no evidence that any compensation paid to Mr. Tonkel was at the expense of shareholders, or that it wasn't otherwise earned, despite the obvious implication of the Proponent's statement. And while it is true that the Company suspended its common stock dividend in April 2020, as previously disclosed by the Company, this action was taken to conserve liquidity in the wake of the severe COVID-19 related volatility experienced by the entire mortgage REIT industry at that time. More recently and as publicly disclosed, rather than allocating cash to shareholders in the form of dividends, the Company has determined that it is in the best interests of the shareholders to invest that capital in what it believes to be very desirable, higher return assets. In addition, during this same period of time, the Company has returned capital to its shareholders in the form of accretive common stock repurchases; in fact, as of September 30, 2021, the Company has repurchased approximately 16% of its outstanding common stock, and the Company estimates that such repurchases added approximately $0.40 per common share to the Company's book value. Yet, the Proponent omits all of this material information and does not otherwise contextualize its statements. It goes without saying that, as discussed above, the Proponent also impugns the character of the Board and Mr. Tonkel without factual foundation, which also makes the Proponent's statements false and misleading. See **Section C** above, at page 7.

- The Proponent states: "Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance." The Proponent later states that "In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance."

This statement is false and misleading and is without factual foundation because, as noted in **Section C** above at page 7, the Proponent impugns the character of the Board without factual foundation by suggesting a failure by the Board to exercise its fiduciary duties.

- The Proponent states: "As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern."

This statement is false and misleading and is without factual foundation, and is particularly egregious because it purports to place a value of a liquidation of the Company. Note (a) to Rule 14a-9 states that material may be considered misleading, depending upon particular facts and circumstances, when it contains "[p]redictions as to specific future market values." The Commission has taken the position that statements of value in stockholder proxy proposals are inappropriate where no basis or support is given for such statement. See Exchange Act Release No. 16833 (May 23, 1980); see also ICN Pharmaceuticals, Inc. (Apr. 4, 2001). Here, the Proponent makes misleading statements predicting the market value of a hypothetical liquidation of the Company's portfolio, without any factual foundation. As discussed in **Section A** above, at page 3, liquidations of otherwise viable, operating public companies are exceedingly rare. One reason for this is that a liquidation is not a singular event that occurs at a point in time (such as a merger or other sale event) when an enterprise can be more easily valued. Simply stated, the Proponent is not in any position to predict the future value of the sale of the Company's assets nor how such a sale compares with the value created by the Company's current strategy. The misleading nature of the Proponent's statement is further highlighted by the fact that the Proponent equates the Company's book value per share with a liquidation value of the Company's assets. Yet, the Proponent fails to qualify its statement by other relevant facts, including that not all of the Company's assets and liabilities are recorded at fair value, and even if such assets and liabilities are recorded at fair value, such fair value under GAAP is not based on a liquidation value (which, under GAAP, would typically be less in the case of assets) nor would it include the cost of selling an asset (such as commissions and related fees). Finally, the Company's book value per share does not contemplate or otherwise reflect the cost associated with liquidating and winding down a public company, including for example the cost of breaking various contractual commitments.

Because the Supporting Statement contains false and misleading statements about the Board and predictions of future value, the Company believes that the Proposal and the related Supporting Statement may be excluded from its Proxy Statement pursuant to Rule 14a-8(i)(3).

E. Rule 14a-8(i)(10) – The Proposal may be excluded because it has already been substantially implemented.

Rule 14a-8(i)(10) allows a registrant to omit a proposal from its proxy materials if "the company has already substantially implemented the proposal." To the extent that the Staff does not believe there is some basis for exclusion on the other grounds the Proposal is excludable under Rule 14a-8(i)(10) because the recommended actions set forth in the Proposal would already be substantially implemented by the past and current actions of the Company's Board.

At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable under this provision only if it had been "'fully' effected" by the company. See Exchange Act Release No. 19135 at §II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff's narrow interpretation of the predecessor rule "may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process," in particular by enabling proponents to argue "successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal." Id. Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." See Exchange Act Release No. 20091, at §II.E.6. (Aug. 16, 1983) (the "***1983 Release***") (indicating that the Staff's "previous formalistic application of" the predecessor rule "defeated its purpose" because the interpretation allowed proponents to obtain a stockholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in the 1998 Release. Accordingly, the actions requested by a proposal need not be "fully effected" by the company to be excluded; rather, to be excluded, they need only have been "substantially implemented" by the company. Id. Thus, when a company has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the proposal has been "substantially implemented" and may be excluded. See Exelon Corp. (Feb. 26, 2010); see also Exxon Mobil Corp. (Mar. 23, 2009).

The Proposal's ultimate purpose is to have the Board initiate the liquidation of Company's asset portfolio. As discussed above, § 13.1-724 of the VSCA requires that liquidation "shall be initiated by adoption of a resolution by the board of directors authorizing the disposition." The Board would ultimately have to consider liquidation and, once the Board approved and recommended such liquidation to the Company's shareholders, submit the matter before shareholders for a vote. In exercising its fiduciary duties, the Board regularly considers a range of strategic alternatives, which from to time includes extraordinary transactions such as mergers, sales of assets and liquidation, among other possibilities. At this time, the Board has not determined that liquidation is in the best interests of the Company's shareholders. Rather, as publicly disclosed, the Company and the Board are committed to their current strategic plan of identifying and evaluating various investment strategies that complement the Company's historical focus of levered agency mortgage investing and leverage the Company's historic expertise in the mortgage, housing and structured products sectors. The Company believes the realization of this differentiated investment strategy has established a strong foundation for the Company's future growth, profitability and value creation for shareholders. Thus the Proposal has been substantially implemented because, in light of the Board's commitment to the Company's current strategic plan, the Board does not intend to submit a proposal to the Company's shareholders that the Company's assets be liquidated. Accordingly, the Company intends to omit the Proposal from its proxy materials pursuant to Rule 14a-8(i)(10).

F. <u>Rule 14a-8(i)(6) – The Proposal may be excluded because the Company lacks the authority to implement the Proposal</u>.

Rule 14a-8(i)(6) provides that a shareholder proposal may be excluded from a company's proxy materials "[i]f the company would lack the power or authority to implement the proposal." The Proposal may be excluded under Rule 14a-8(i)(6) because it is not possible to effect the Proposal under Virginia law. § 13.1-742 of the VSCA provides that the dissolution of a Virginia corporation can occur once the Board "recommend[s] dissolution to the shareholders unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation, in which case the board of directors shall inform the shareholders of the basis for that determination . . . ." As noted in **<u>Section E</u>**, above at page 11, because the Board has not determined that liquidation is in the best interests of the Company's shareholders, the Board does not intend to submit a proposal to the Company's shareholders that the Company's assets be liquidated. As explained more broadly in the Virginia Law Opinion, the Company therefore lacks the power or authority to implement the Proposal, and the Proposal may therefore be excluded.

III. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned to discuss any questions you may have regarding this matter.

Very truly yours,

Robert K Smith

Robert K. Smith
Hunton Andrews Kurth LLP

Enclosures

cc: J. Rock Tonkel, Jr., Arlington Asset Investment Corp.
Richard Konzmann, Arlington Asset Investment Corp.

Scott Parish, Arlington Asset Investment Corp.
Daniel E. Berce, Arlington Asset Investment Corp.
Alexander Snowdon, VA Property 1 LLC
Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz
Andrew J. Nussbaum, Wachtell, Lipton, Rosen & Katz
Brandon C. Price, Wachtell, Lipton, Rosen & Katz

<u>Exhibit A</u>

PROPOSALS FROM VA PROPERTY 1 LLC

Text of Resolution

RESOLVED − Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Nature of Proposal

VA Property 1 LLC recommends that the company's directors act to liquidate Arlington Asset's portfolio, and to wind up the business of the company. The proponent is submitting this proposal for consideration at the annual meeting so that the company's shareholders have an opportunity to express their opinions as to whether the company should continue its operations, or monetize the value of its assets.

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.

Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.

As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 5 – Received on 12/1/2021

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.

Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.

As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 4 – Received on 12/1/2021

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the “Board”) of Arlington Asset Investment Corp. (“Arlington Asset” or the “Company”) take all lawful, non-ordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the last five years alone, the Company’s book value has declined by over 50%, while the common stock has fallen even more precipitously.

Despite these results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has “earned” over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over that same period.

Fundamentally, we believe that management has proven incompetent in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company’s underperformance. To these ends, we believe shareholders would be best served by an orderly liquidation of the Company.

As of December 1st, 2021, the Company’s most recently reported book value per share exceeded the YTD average closing price by over 50%. Stated simply, Arlington Asset’s portfolio appears to offer far more value in a sale than in the control of its current managers. We believe a liquidation could offer shareholders both a large premium over any stock price observed since April of 2020, and valuable liquidity on otherwise stagnant capital.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset’s persistent underperformance. In the interest of reclaiming the fair value of the Company’s assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 3 – Received on 10/8/21

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful actions necessary to effectuate the orderly liquidation of the Company's investment portfolio and the distribution of net proceeds to shareholders.

Supporting Statement

After a decade of persistent underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the last five years alone, the Company's book value has declined by over 50%. The common stock has fallen even more precipitously.

Despite this consistently abysmal performance, management has been richly compensated at the expense of shareholders. In the twenty months preceding this October 2021 writing, CEO Rock Tonkel has "earned" over $3 million in personal compensation. This is an impressive figure by any measure, but particularly when compared to the $0.00 distributed to common shareholders over the same period.

On the topic of not returning capital, buybacks of deeply discounted stock might have enhanced shareholder value meaningfully since March 2020. Yet despite this widely available opportunity, management has failed to employ the great majority of its repurchase authorization. We find this choice, among others, intensely concerning.

Fundamentally, we believe these decisions reflect an inability to act in the Company's best interest, and a level of mismanagement that shareholders can no longer afford.

As of October 5th, 2021, the Company's most recently reported book value per share exceeded the YTD average closing price by approximately 50%. Stated simply, Arlington Asset's portfolio appears to offer far more value in a sale than in the control of its current managers. We believe a liquidation could offer shareholders both a large premium over any stock price observed since April 2020, and valuable liquidity on otherwise stagnant capital.

In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent decline. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 2 – Received on 9/24/21

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors take all lawful actions necessary to effectuate the orderly liquidation of the company's investment portfolio and the distribution of net proceeds to shareholders.

Supporting Statement

DISCLAIMER: With the exception of references to numerical figures, the contents of this supporting statement should be viewed exclusively as the subjective opinions of the proponent, and should not be interpreted as any citation of facts.

Over many years, Arlington Asset's management team has shown a remarkable tendency to destroy shareholder value.

After cutting book value roughly in half over the last five years, management achieved an even more dubious distinction recently, passing seven consecutive quarters without declaring a common stock dividend.

Notably, while the company distributed exactly $0.00 to common shareholders during this period, CEO Rock Tonkel still "earned" roughly $3.5 million in personal compensation. While Mr. Tonkel deserves congratulations for a rare feat − making money through AAIC − this imbalance in distributions raises certain questions as to who is working for whom.

Adding insult to injury, while management has enjoyed rich compensation to the detriment of shareholders, their penchant for underperformance may have contributed significantly to the stock's deep and persistent discount to book value.

Worst of all, while repurchasing deeply discounted stock might have created enormous shareholder value over the last two years, management has declined to employ the great majority of its repurchase authorization. Though such an inexplicable decision is unsurprising given their track record, it reflects a level of mismanagement that shareholders can no longer afford.

If Arlington Asset's management is fundamentally incapable of acting in the best interest of shareholders, it is now incumbent on shareholders to act for ourselves.

As of September 15th, 2021, the company's most recently reported book value per share exceeded the YTD average closing price by approximately 50%. Stated simply, AAIC's portfolio would appear to offer far more value in a liquidation than in the control of its current management. A sale of these assets could offer shareholders both a large premium over any share price observed since April of 2020, and valuable liquidity on otherwise stagnant capital.

In the interest of reclaiming the fair value of our assets, I would urge my fellow shareholders to vote in favor of this proposal.

Exhibit A-1

Version 1 – Received on 8/4/21

Proposed Resolution

RESOLVED – The board of directors should consider the liquidation of the company's investment portfolio and the distribution of net proceeds to shareholders. If such action is deemed advisable by the board of directors, and approved by shareholders upon the board's recommendation, the board should then take any actions necessary to effectuate such liquidation and distribution.

Supporting Statement

Over many years, and under some extremely favorable macroeconomic conditions, Arlington Asset's management team has shown a remarkable ability to destroy shareholder value.

Not content with cutting book value in half over the last five years, management achieved an even more dubious distinction recently, when the company became the first agency mortgage REIT in history to go 20 months without a dividend.

Notably, while common shareholders received exactly $0.00 in distributions during this period, CEO Rock Tonkel still "earned" in excess of $3 million in personal compensation. While Mr. Tonkel deserves congratulations for achieving the seemingly impossible − making money in connection with AAIC − this imbalance in distributions raises certain questions as to who is working for whom.

Adding insult to injury, management's penchant for underperformance has earned the stock a persistent and staggering discount to book value, which regrettably shows few signs of reversal.

Worst of all, while repurchasing deeply discounted stock could have created enormous shareholder value over the last two years, management has failed to pursue accretive buybacks at a scale even remotely commensurate with the available opportunity. In an apparent coup de grâce to already suffering shareholders, these intellectuals have explained this choice by citing their preference for mortgage investments − seeming to ignore that those assets reached historically high prices over the last two years, while their own stock remained dirt cheap. Though such an inexplicable decision is unsurprising given their track record, it constitutes a level of mismanagement that shareholders can no longer afford.

Recognizing that Arlington Asset's management is either unwilling or unable to act in the best interest of shareholders, it is now incumbent on shareholders to act for ourselves.

As of this writing in August 2021, the company's book value per share exceeds the YTD average share price by approximately 49%. Stated simply, AAIC's portfolio is worth far more in a liquidation than in the control of its current management. A sale of the company's assets would offer shareholders both an enormous premium over any share price observed since March 2020, and valuable liquidity on otherwise stagnant capital.

In the interest of reclaiming the fair value of our assets, I would urge my fellow shareholders to vote in favor of this proposal.

Exhibit B

VIRGINIA LAW OPINION

HUNTON
ANDREWS KURTH

January 14, 2022

Arlington Asset Investment Corp.
6862 Elm Street, Suite 320
McLean, VA 22101

Re: Arlington Asset Investment Corp. — Omission of the Shareholder Proposal Submitted by VA Property 1 LLC

Ladies and Gentlemen:

We are Virginia counsel to Arlington Asset Investment Corp., a Virginia corporation (the "Company"), in connection with certain matters of Virginia law arising out of a shareholder proposal (the "Proposal") submitted by VA Property 1 LLC for inclusion in the Company's proxy materials for the 2022 Annual Meeting of Stockholders. We have been asked to consider whether (1) the Proposal is a proper subject for action by shareholders under Virginia law and (2) the Company lacks the power and authority to implement the Proposal. In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined the amended and restated articles of incorporation, as amended (the "Charter"), of the Company, the Proposal and such matters of law as we have deemed necessary or appropriate to issue this opinion.

The Proposal reads, in full, as follows:

Proposed Resolution

RESOLVED – Shareholders recommend that the Board of Directors (the "Board") of Arlington Asset Investment Corp. ("Arlington Asset" or the "Company") take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company.

Supporting Statement

After many years of underperformance, we believe Arlington Asset should be liquidated for the benefit of its shareholders.

In the five years preceding this writing (dated December 1st, 2021), the Company's book value has declined by over 50%, while the common stock has fallen even more precipitously.

> Despite these abysmal results, management has nonetheless been richly compensated at the expense of shareholders. Since January of 2020, CEO Rock Tonkel has "earned" over $3.5 million in personal compensation. This is an impressive figure by virtually any measure, but particularly compared to the $0.00 in common dividends that the Board has declared over the same period.
>
> Fundamentally, we believe that management has proven incapable in its stewardship of the investment portfolio, and that the Board has failed to take the extraordinary actions warranted by the Company's chronic underperformance. To these ends, we believe that shareholders would be best served by an orderly liquidation of the Company.
>
> As of December 1st, 2021, Arlington Asset's most recently reported book value per share exceeded its YTD average share price by over 50%, and its current share price by over 60%. Stated simply, the Company would appear to offer far more value through a liquidation than it has generated as a going concern.
>
> In our view, the time has come for the Board to fulfill its fiduciary duty to shareholders, and to end Arlington Asset's persistent underperformance. In the interest of reclaiming the fair value of the Company's assets, we would urge our fellow shareholders to vote in favor of this proposal.

I. The Proposal is not a proper subject for action by shareholders under Virginia law.

The Proposal is not a proper subject for action by shareholders under the Virginia Stock Corporation Act, as amended (the "VSCA"), because it would request shareholder approval for the liquidation of a corporation's assets in a manner inconsistent with the approval process set forth in VSCA § 13.1-742.

All corporate powers of a corporation shall be exercised by or under the authority of the board of directors.[4] For a corporation's most fundamental decisions, the board of directors must first approve the transaction and then it must be submitted to the shareholders for their

[4] *See* VSCA Section 13.1-673B.

approval.[5] Specifically, under the VSCA, the following corporate acts are subject to the dual approval process: an amendment of the articles of incorporation, a merger, a statutory share exchange, a domestication, a conversion, a sale of assets that would leave the corporation without a significant continuing business activity, and the dissolution of the corporation.

Liquidation of assets and distribution of the net proceeds to shareholders is considered a dissolution under the VSCA, requiring the approval process set forth in VSCA § 13.1-742. VSCA § 13.1-742 provides that before a corporation can liquidate its assets, the board of directors must first adopt a resolution authorizing the dissolution. When determining whether to adopt such resolution, directors of a Virginia corporation are required to act in accordance with their "good faith business judgment of the best interests of the corporation."[6] Under § 13.1-742B1 of the VSCA, the board of directors must then recommend dissolution to the shareholders unless the board of directors determines because of a conflict of interest or other special circumstances not to make a recommendation. Except in certain cases in which there is unanimous shareholder approval, in order to lawfully seek the liquidation of a corporation's assets, as in other transactions requiring shareholder approval, board approval and recommendation of the liquidation *must precede* seeking shareholder approval.[7] The board of directors can set conditions for shareholder approval or for the effectiveness of the dissolution.[8] The notice of the shareholders meeting must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation. Next, the shareholders must approve the dissolution with the affirmative vote of more than two-thirds of the outstanding voting shares, though the articles of incorporation may provide for a greater or lesser vote threshold so long as the vote provided for is not less than a majority.[9] Only after the board of directors has authorized dissolution and the shareholders approved it, can the officers begin the liquidation process. If the Board or management of the Company sold all or substantially all of the assets without an authorization obtained in accordance with the VSCA, this would be a violation of Virginia law.[10]

As noted above, in order to carry out a liquidation as contemplated by the Proposal, the Company's board of directors (the "Board") must initiate the dissolution process by adopting a resolution authorizing the dissolution and recommending dissolution to the

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5 *See Barris Industries, Inc. v. Bryan*, 686 F. Supp. 125, 129-30 (E.D. Va. 1988); *Willard ex rel. Moneta Bldg. Supply, Inc. v. Moneta Bldg. Supply, Inc.*, 258 Va. 140, 155, 515 S.E.2d 277, 288-89 (1999); *WBM, LLC v. Wildwoods Holding Corp.*, 270 Va. 156, 161, 613 S.E.2d 402, 405 (2005).

6 *See* VSCA Section 13.1-690.

7 *See* VSCA Section 13.1-724B; Allen C. Goolsby & Steven M. Haas, *Goolsby & Haas on Virginia Corporations*, §16.2 (6th ed. 2017).

8 *See* VSCA Section 13.1-742C.

9 *See* VSCA Section 13.1-742E.

10 *See* VSCA Section 13.1-724 (requiring shareholder approval if the corporation sells assets that leave the corporation without a continuing business activity).

shareholders at an annual or special meeting *prior to* a vote of shareholders to approve the dissolution. If implemented, the Proposal would usurp the Board's statutory right to initiate the dissolution procedures of the Company after making the determination discussed above and is therefore not a proper subject for shareholder action under Virginia law.

II. **<u>The Company lacks the power or authority to implement the Proposal</u>.**

Approval of the Proposal by the Company's shareholders would not constitute the necessary shareholder approval of the dissolution of the Company required by the VSCA. The VSCA only provides for shareholder approval of a dissolution after the board of directors has authorized the resolution in accordance with the directors' "good faith business judgment of the best interests of the corporation." Because the Proposal requests shareholder approval without following the required approval process mandated by the VSCA and the Charter, the Proposal is not a proper subject for action by shareholders under Virginia law.

Under the VSCA, it is impermissible for the Board to liquidate the Company without following the required approval process discussed above. Because the implementation of the Proposal would cause the Company to violate Virginia law, the Company lacks the power and authority to implement the Proposal and any attempt to do so would be voidable under Virginia law.[11]

III. **<u>Conclusion</u>.**

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth herein, it is our opinion that (1) the Proposal is not a proper subject for action by shareholders under the laws of the Commonwealth of Virginia and (2) the Company lacks the power and authority to implement the Proposal.

The foregoing opinion is limited to the VSCA, and judicial interpretations thereof, in effect on the date hereof and we do not express any opinion herein concerning any law other than the VSCA. Furthermore, the foregoing opinion is limited to the matters specifically set forth therein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any provision of the VSCA, or any judicial interpretation of any provision of the VSCA, changes after the date hereof.

The opinion presented in this letter is solely for your use in connection with the Proposal and may not be relied upon by any other person or entity, or by you for any other

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[11] *See* VSCA Section 13.1-627A; *Princess Anne Hills Civic League, Inc. v. Susan Constant Real Estate Trust*, 243 Va. 53, 413 S.E.2d 599 (1992); *see also* Allen C. Goolsby & Steven M. Haas, *Goolsby & Haas on Virginia Corporations*, §13.2 n.11B (6th ed. 2017).

purpose, without our prior written consent. However, we consent to inclusion of this opinion with a request by you to the Securities and Exchange Commission (the "Commission") for concurrence by the Commission with your decision to exclude the Proposal from the proxy materials for your next annual meeting of shareholders.

Very truly yours,

Hunton Andrews Kurth LLP

HUNTON
ANDREWS KURTH

February 4, 2022

<u>VIA ELECTRONIC MAIL</u>

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Re: **<u>Stockholder Proposal to Arlington Asset Investment Corp. from VA Property 1 LLC</u>**

Ladies and Gentlemen:

We are writing on behalf of our client, Arlington Asset Investment Corp. (the "***Company***"), to respond to correspondence from Olshan Frome Wolosky LLP on behalf of VA Property 1 LLC (the "***Proponent***") dated January 21, 2022 (the "***Reply Letter***"), in response to the Company's January 14, 2022 correspondence (the "***Original No-Action Letter***"). This letter supplements the Original No-Action Letter (this "***Supplement***"), which requested that the staff (the "***Staff***") of the Division of Corporation Finance confirm that it will not recommend enforcement action to the Securities and Exchange Commission (the "***Commission***") if the Company excludes the Proposal (as defined in the Original No-Action Letter) from the Company's Proxy Materials (as defined in the Original No-Action Letter). The Company continues to believe, both for the reasons set forth below in this Supplement and the reasons provided in the Original No-Action Letter, that the Proposal is excludable from the Company's Proxy Materials. This Supplement is being provided simultaneously to the Proponent and its counsel.

I. Grounds for Exclusion

In addition to the grounds provided in the Original No-Action Letter, the Company wishes to address certain assertions made by the Proponent in the Reply Letter, as well as correct certain factual statements made by the Proponent. The Company continues to assert all of its original positions in the Original No-Action Letter, and the absence of the Company addressing any matter in this Supplement that is discussed by the Proponent in its Reply Letter should not be construed as conceding any matter asserted by the Proponent or otherwise diluting the Company's statements in the Original No-Action Letter.[1]

A. Rule 14a-8(i)(7) – The Proposal may be excluded because it deals with a matter relating to the ordinary business operations of the Company.

The Company continues to believe that the Proposal is excludable pursuant to Rule 14a-8(i)(7). The Proposal is clearly analogous to the consideration of a strategic alternative seeking to maximize shareholder value, as there is no practical difference between the liquidation sought by the Proponent in its Proposal and other strategic alternatives that seek to dispose of a company's assets. There is precedent for the exclusion of such proposals pursuant to Rule 14a-8(i)(7). We respectively refer the Staff to **Section II.A** at page 4 of the Original No-Action Letter.

In addition, as discussed in **Section II.A** of the Original No Action Letter, the Proposal relates to both an extraordinary and non-extraordinary transaction. The liquidation of a public company is not a singular event, but rather the result of a process involving numerous sales of core and non-core assets involving transactions both within and outside the ordinary course of business, the determination of priority and the settling of multiple liabilities and, ultimately, the Company's dissolution. As discussed in the Original No-Action Letter, the Proposal is analogous to the proposal in Guaranty Bancorp (Mar. 4, 2009), where the proponent requested that the board of directors develop a strategy to enhance shareholder value and explicitly mentioned liquidation as a strategic alternative. The assertion in that case was that the proposal, as a practical matter, "implicate[d] both extraordinary and non-extraordinary transactions" and that the proposal should be excluded "because non-extraordinary transactions are ordinary business matters." The Staff has frequently permitted exclusion of proposals that implicate both extraordinary and non-extraordinary transactions. See Bank of America Corporation (Feb. 26, 2019); see also HomeTrust Bancshares, Inc. (Aug. 31, 2015); Analysts International Corporation (Mar. 11, 2013); O.A.K. Financial Corporation (Feb. 2, 2009). While the Proponent argues that the Proposal is dissimilar from Guaranty Bancorp, none of the examples cited to by the Proponent include a proposal mentioning liquidation or any other multi-faceted transaction. For the reasons discussed herein and in the Original No-Action Letter, the Company believes the Proposal is excludable under Rule 14a-8(i)(7).

[1] For the avoidance of doubt, the Company continues to believe that the Proposal is excludable pursuant to the following sections of Rule 14(a)-8: (i)(7); (i)(1); (i)(8); (i)(3); (i)(10); or (i)(6).

B. <u>Rule 14a-8(i)(8) – The Proposal may be excluded because it improperly questions the competence, business judgment, or character of one or more of the directors.</u>

In the Reply Letter, the Proponent argues that the Proposal is not excludable under Rule 14a-8(i)(8), and denies that the Proponent's assertions question the competence, business judgment or character of any of the Company's directors, nor does it relate to the election of director candidates at the 2022 Annual Meeting.

As noted in the Original No-Action Letter, the Company continues to strongly assert that the Proposal violates Rule 14a-8(i)(8)(iii), as it overtly and directly questions the competence and business judgment of the entire Board of Directors of the Company (the "***Board***") (including Mr. Tonkel, and it is irrelevant that Mr. Tonkel also happens to be the Company's President and Chief Executive Officer), all of whom will be director nominees at the Company's 2022 annual meeting of shareholders. In this respect, the Company refers the Staff to **<u>Section II.C</u>** at page 7 of the Original No-Action Letter. The Company believes that the Proponent cannot now conveniently suggest that its unsubstantiated attacks on the Board (and Mr. Tonkel's compensation) is merely support for the Proposal, particularly as such statements appear to have no relation to the Proposal itself.

The Proponent also states that the Proposal has, and its intentions have, nothing to do with the election of directors. In its Reply Letter, the Proponent states that "it is not seeking to nominate a competing slate of director candidates and in any event, AAIC directors are elected by a plurality vote so it is nearly guaranteed they will be elected at the 2022 Annual Meeting irrespective of whether the Proposal appears in the Proxy Materials." First, this is a false statement. Pursuant to Section 1.10 of the Amended and Restated Bylaws of the Company (as amended by Amendment No. 2 to the Amended and Restated Bylaws of the Company), AAIC board members are elected by the affirmative vote of a majority of the total votes cast for and against the nominee, not a plurality. Second, the Proponent's conduct and statements outside of the Proposal suggest that there is, indeed, linkage to the election of directors. As discussed in **<u>Section II</u>** below, the Company is prepared, should the Staff request, to provide additional information in this regard on a supplemental basis.

C. <u>Rule 14a-8(i)(3) – The Proposal may be excluded because it violates proxy rules and is materially false and misleading contrary to Rule 14a-9.</u>

In addressing the Company's arguments relating to Rule 14a-8(i)(3) and Rule 14a-9, the Proponent invokes the Staff's intent in Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("***SLB 14B***") and asserts that none of the statements contained in the Proposal include any material that the Staff would find objectionable. In SLB 14B, the Commission clarified its view regarding the application of Rule 14a-8(i)(3), including, as the Proponent noted in the Reply Letter, situations where it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal. However, the Proponent conveniently fails to address the single most relevant situation specified in SLB 14B where the Staff stated that exclusion is appropriate: Statements that directly or indirectly impugn character, integrity, or personal reputation. See SLB Section B.4.

As discussed, the Proponent has gone out of its way to impugn the character of Mr. Tonkel by stating that he has been wrongly compensated and misleadingly stating that the members of the Board have breached their fiduciary duties. Further, as previously noted by the Company in the Original No-Action Letter, the Proponent misleadingly suggests that a shareholder would receive book value per common share in a liquidation of the Company. While the Proponent goes to great length to explain its intentions with respect to this statement in the Reply Letter, it doesn't change the clear implication of the language included in the supporting statement: By linking the Company's book value side-by-side with an assertion related to the Company's liquidation value, the Company believes this is a clear false and misleading statement. In this respect, we refer the Staff to **Section II.D** at page 9 of the Original No-Action Letter.

D. Rule 14a-8(i)(10) – The Proposal may be excluded because it has already been substantially implemented.

The Proponent claims in the Reply Letter that the ultimate intended effect of the Proposal would be to make it "incumbent upon the Board to seriously consider shareholders' wishes and reconsider a liquidation of the Company at that time." As discussed in the Original No-Action Letter, when a company has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the proposal has been "substantially implemented" and may be excluded. See Exelon Corp. (Feb. 26, 2010); see also Exxon Mobil Corp. (Mar. 23, 2009). The Board has frequently considered, and of course will continue to consider, strategic alternatives to the Company's current business plan in the exercise of applicable fiduciary duties. These alternatives include, but are not limited to, the liquidation of the Company as a potential strategy to achieve maximum shareholder value.

Additionally, as discussed in **Section II.B** and **Section II.E** of the Original No-Action Letter, the Virginia Stock Corporation Act requires that the first step of any potential liquidation be that the board of directors approve and recommend a liquidation plan. See Va. Code Ann. § 13.1-742. In order to "take all lawful, extraordinary actions necessary to effectuate the liquidation of the Company" as stated in the Proposal, the first step is inevitably that the Board consider a plan of liquidation as a strategic alternative to maximize shareholder value. The Board has already considered the merits of a liquidation of the Company's assets, and has determined to maintain the Company's current business plan. As any further steps towards liquidation require the Board's recommendation of liquidation, there is no further lawful action the Board can take. For this reason, the Proposal has been substantially implemented, and the Proposal is excludable under Rule 14a-8(i)(10).

II. Conduct of the Company.

The Proponent accuses the Company of acting in bad faith in Section IV of the Reply Letter, and otherwise suggests throughout its Reply Letter that the Company has distorted facts or attempted to evade shareholder communications. The Company believes it is important to set the record straight as to its conduct.

As a threshold matter, the Company believes that the Proponent has made it very difficult to engage constructively, and the Proponent's statements and conduct outside of the Proposal and Reply Letter diverge greatly from how the Proponent attempts to portray itself. Beginning in the summer of 2021, the Proponent has submitted a number of hostile communications to the Company, and otherwise has acted in a way that caused the Company to be reluctant to engage with it.[2] The Company is prepared, should the Staff request, to provide such communications and a related timeline to the Commission on a supplemental basis. Thus, even though the Company did initially attempt to engage with the Proponent directly, the Company and the Board ultimately decided that in light of the Proponent's conduct, any additional conversations would not be constructive.

In short, despite the Proponent's unfounded allegations, the Company believes that it has acted in good faith throughout this process, and should the Staff have any questions in this regard, it should feel free to contact the undersigned.

III. Conclusion

Based upon the foregoing analysis, as well as the analysis initially provided in the Original No-Action Letter, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position.

Please contact the undersigned to discuss any questions you may have regarding this matter.

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[2] For example, in June 2021, the Proponent's managing member showed up unannounced at the Company's headquarters, ushered himself in and demanded personal information for the Company's officers and directors.

HUNTON
ANDREWS KURTH

Very truly yours,

Robert K Smith

Robert K. Smith
Hunton Andrews Kurth LLP

Enclosures

cc: J. Rock Tonkel, Jr., Arlington Asset Investment Corp.
Richard Konzmann, Arlington Asset Investment Corp.
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