

January 3, 2019

**VIA E-MAIL (IMshareholderproposals@sec.gov)**

U.S. Securities and Exchange Commission  
Division of Investment Management  
Office of Disclosure and Review  
100 F Street N.E.  
Washington, DC 20549

Re: First Trust High Income Long/Short Fund – Omission of Shareholder Proposal Submitted by Donald T. Netter on behalf of Dolphin Limited Partnership I, L.P.; Response to Dolphin Limited Partnership I, L.P. Submission Dated December 21, 2018

Ladies and Gentlemen:

This letter is in response to the letter submitted on behalf of Dolphin Limited Partnership I, L.P. (“*Dolphin*” or the “*Proponent*”) to the Staff (the “*Staff*”) of the Securities and Exchange Commission (the “*Commission*”) on December 21, 2018 (the “*Dolphin Response Letter*”). The Dolphin Response Letter was in response to our December 14, 2018 submission (the “*FSD No Action Request*”) on behalf of the First Trust High Income Long/Short Fund, a Massachusetts business trust registered under the Investment Company Act of 1940, as amended (the “*1940 Act*”), as a closed-end management investment company (the “*Fund*”), which sought the Staff’s assurance that it would not recommend enforcement action pursuant to Rule 14a-8 promulgated under the Securities and Exchange Act of 1934, as amended (the “*Exchange Act*”), if the Fund omitted from its proxy materials (the “*Proxy Materials*”) for its 2019 Annual Meeting of Shareholders (the “*2019 Annual Meeting*”) the shareholder proposals received on November 15, 2018 (the “*Original Proposal*”) and the proposal received December 7, 2018 (the “*Revised Proposal*”, and, collectively the “*Proposals*”). We have reviewed the Dolphin Response Letter and are responding to: i) reiterate the position that the Proposals may be properly omitted from the Fund’s Proxy Materials; and ii) correct misleading assertions in the Dolphin Response Letter.

**I. Raising only the Procedural Defects was Neither Contradictory nor Misleading.**

The Dolphin Response Letter accuses the FSD No Action Request of being highly contradictory and misleading more than once. The Dolphin Response Letter essentially accuses the Fund of changing the rules and acting in a “disingenuous” manner. By doing so, the Dolphin Response Letter is incorrect and is itself misleading.

As required by Rule 14a-8(f), in a letter sent to Dolphin on November 27, 2018 (the “*Notice of Defect*”), the Fund informed Dolphin of two procedural and eligibility defects, namely that Rule 14a-8(b) (shareholder ownership) and Rule 14a-8(c) (no more than one proposal) had not been satisfied. Rule 14a-8 does not require a company notify a shareholder of substantive defects so that those defects may be given an opportunity to be cured. Further, the Notice of Defect reserved the right to seek to exclude the Original Proposal for any substantive violations of Rule 14a-8.<sup>1</sup> Therefore, by alerting Dolphin to the procedural defects of the Original Proposal, the Fund was satisfying its obligations under Rule 14a-8. Not asserting a substantive defect at that stage was in no way a waiver of the ability to do so when seeking a no action request from the Staff, and the Proponent is on notice of this fact both by the function of Rule 14a-8, and by the specific reservation of all rights to challenge the Original Proposal language that was included in the Notice of Defect. By later challenging substantive failures of the Proposals, the Fund is acting completely within the bounds of its authority under Rule 14a-8 by demanding compliance with its substantive restrictions. The issuer is under no obligation to advise a proponent as to how to comply with the requirements of Rule 14a-8; rather they are obligated to notify them of procedural and eligibility defects under the rule, which the Fund did in its Notice of Defect. In no way is this disingenuous or outside the scope of Rule 14a-8, and assertions to the contrary are misleading.

## II. The Original Broker Communications Were Procedurally Insufficient.

Dolphin takes further issue with its defect under Rule 14a-8(b) regarding the proof of the required ownership. Rule 14a-8(b)(1) requires that to be eligible to submit a proposal the shareholder “must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal.” Further, as explained to Dolphin in the Notice of Defect, Rule 14a-8(b)(2)(i) provides “[t]he first way is to submit to the company a written statement from the ‘record’ holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you *continuously* held the securities for at least one year” (emphasis added). *Staff Legal Bulletin* No. 14F, Item C addresses ways to avoid errors in submitting proof of ownership to companies. Item C provides “many proof of ownership letters do not satisfy [Rule 14a-8(b)’s] requirement because they do not verify the shareholder’s beneficial ownership for the entire one-year period, preceding and including the date the proposal is submitted” and “many letters fail to confirm continuous ownership of the securities.” The Staff then goes on to recommend an easy-to-follow format to comply with the particular requirements of Rule 14a-8, specifically “[a]s of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].” Our Notice of Defect directed the Proponent to this section for guidance and “suggested language for confirming the continuous nature of the ownership over the requisite period.”

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<sup>1</sup> The Notice of Defect further stated that “[n]othing herein shall be deemed or considered to waive or alter any rights, claims, obligations and causes of action of the Fund, any shareholder or the current Trustees of the Fund, including but not limited to any rights under either Massachusetts or Federal law or the Fund’s governing documents. All such rights, claims and causes of action are expressly reserved, including all rights or obligations the Fund or any such party may have under the Fund’s governing documents or the Exchange Act.”

In the Proponent’s November 14, 2018 letter submitting the Original Proposal, Dolphin itself attempted to confirm the continuous nature of ownership of the securities, but its broker (Jefferies) did not.<sup>2</sup> Jefferies did not provide the specific date on which it was confirming ownership, nor did the letter contain any language that confirmed continuous ownership from the date of the submission of the Original Proposal over the past calendar year as required by Rule 14a-8(b). In the Dolphin Response Letter, the Proponent asserts “while use of the term ‘continuous’ might have been preferable, it is not mandated language.” While the word “continuous” may not specifically be required by the rule, proving continuous ownership is required and the original broker letter failed to prove continuous ownership as required by Rule 14a-8(b). Dolphin’s response to the Notice of Defect was dated December 5, 2018 and received by the Fund on December 7, 2018. However, the broker’s letter was not received until December 9, 2018. This second letter had been changed to comply with the requirements of Rule 14a-8(b), and the Fund takes no issue with its current substance, only its separate December 9, 2018 arrival, beyond the applicable timeliness.

### **III. The Procedural Change Caused a Substantive Change Rendering the Revised Proposal Untimely.**

Dolphin’s Original Proposal contained two distinct requests, which they were notified of in the Notice of Defect. Part of the Original Proposal requested to maintain the current distribution rate, which is a substantive violation of Rule 14a-8(i)(13) by requesting the payment of a specific amount of distributions. The Fund did not need to alert Dolphin of this substantive defect in its Notice of Defect. In fact, at that point the Fund could have submitted to the Staff a no-action request as to the Original Proposal in its entirety as it included the requested specific distribution and therefore was incurably defective. However, the Fund did alert Dolphin to the procedural defect of having multiple proposals. Dolphin attempted to cure the procedural violation but doing so resulted in a substantive change to the Original Proposal by deleting the requested specified distribution. By removing the request for maintaining the distribution, the Proponent altered the substance of the Original Proposal, and under the Staff’s guidance this is considered a new proposal subject to the timing requirements of Rule 14a-8. *Staff Legal Bulletin* No. 14F, Item D.2 provides that if a revised proposal is received after the company’s deadline for receiving proposals, the company may exclude the revised proposal, relying on Rule 14a-8(e), and would then need to submit reasons for excluding the initial proposal. The situation directly applies here. The Revised Proposal was received after the Fund’s November 15, 2018 deadline and can be excluded in reliance on Rule 14a-8(e). Further, pursuant to Exchange Act Release No. 34-12999, the Revised Proposal is substantively a new proposal and can be excluded under Rule 14a-8(e). Dolphin attempts to claim that the purpose of the Original Proposal and Revised Proposal are the same in an effort to discredit the Proposals being substantively different.

Dolphin’s Response Letter also asserts that the Fund “demanded” this modification as a condition of acceptance. This is inaccurate. The Fund highlighted the procedural defect of the Original Proposal under Rule 14a-8 as having two separate and distinct elements, which Dolphin

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<sup>2</sup> The broker is the operative party here as the record holder of the securities. Therefore, it is the broker that must confirm the continuous nature for at least one year under the Rule for Dolphin, not Dolphin itself.

labelled as (i) and (ii). The Fund did not require a specific alteration be made in order for it to accept the Original Proposal for inclusion with the Proxy Materials. If instead the Staff were to consider the Original Proposal as a single proposal, it would be otherwise excludable as requesting a specified distribution amount. This Revised Proposal was received after the Fund's November 15, 2018 deadline, and since it is substantively a new proposal, it is therefore untimely and excludable. Not only does Exchange Act Release No. 34-12999 endorse this view, but as discussed above so does *Staff Legal Bulletin* No. 14F, and the Fund therefore is not required to accept the Revised Proposal. The Fund complied with *Staff Legal Bulletin* No. 14F, and submitted reasons to exclude both the Revised Proposal and the Original Proposal.

#### IV. Request

The Dolphin Response Letter provides no substantive legal analysis nor cites any applicable authority as to why the Proposal should not be excluded, it just claims the FSD No Action Request is contradictory and misleading. We reiterate our position based on the analysis and authority cited in the FSD No Action Request and in the foregoing. We hereby request that the Staff confirm that it will not recommend enforcement action pursuant to Rule 14a-8 if the Fund omits the Proposals from its Proxy Materials because the Notice of Defect was neither misleading, inaccurate nor disingenuous, the original broker communications were in fact procedurally insufficient and the Revised Proposal constituted a substantively new proposal and was therefore untimely and excludable. If you have any questions or require any additional information, please do not hesitate to contact the undersigned at 312-845-2978 or William C. Hermann at 312-845-3895. If the Staff is unable to agree with our conclusion without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

CHAPMAN AND CUTLER LLP

/s/ Jonathan A. Koff

By: Jonathan A. Koff, Esq.

Enclosures

cc: W. Scott Jardine  
Donald T. Netter  
Martin Sklar