

Phillip Goldstein

March 2, 2020

Pamela M. Krill
Godfrey Kahn
One East Main Street
Suite 500
Madison, Wisconsin 53701-2719

Shareholder Proposal of Alison Pampinella for Dividend and Income Fund (DNI)

Dear Ms. Krill,

I am writing on Alison Pampinella's behalf to respond to the enclosed letter from you dated January 30, 2020 to her in which you state that DNI intends to omit her Rule 14a-8 proposal from its proxy materials.¹ In addition, I will respond below to the enclosed letter dated February 24, 2020 from Skadden, Arps to DNI which concluded that shareholders are not entitled to vote on her proposal. (Alison told me she does not have the request that the Skadden letter mentions from DNI dated February 21, 2020 to the staff of the SEC asking that it concur with DNI's position so I cannot respond to it.)

As a preliminary matter, Alison is my daughter and I have long managed her stock brokerage account at StockCross Financial Services, a self-clearing broker and DTC participant. StockCross recently merged with Muriel Siebert & Co., Inc. and the merged entity took the latter name. See <https://www.siebertnet.com/company/siebert-stockcross-acquisition>. You stated in a footnote that Siebert was not a DTC participant on December 31, 2019 but if you contact Scott Halverson of Siebert (f/k/a StockCross), which I presume is now listed as a DTC participant, at 1-800-993-2002, he can provide any additional details you feel you need. In sum, this is just a matter of a name change of a DTC participant that apparently occurred after December 31, 2019.

Secondly, you allege that Alison impugned DNI's integrity by labeling the bylaw in question as a "rigged election" bylaw.² However, she provided a factual basis for that appellation in her supporting statement, i.e., that the bylaw makes it virtually impossible for anyone other than a continuing trustee to be elected. Although you cited several statements that are based upon that

¹ Alison told me she does not know the date she received your letter.

² That presumes DNI has a good reputation to begin with, a presumption that is subject to debate.

premise and claimed they are false and misleading, you did not give any reason to support that assertion.

Lastly, you contend that Alison is part of a 13D group and that it is a violation of Rule 14a-9 to fail to disclose that. Alison is not a member of any “group,” i.e., she has no agreement with any other person to buy, sell, vote, or hold her shares. She merely submitted her proposal (with my assistance in navigating the requirements of the applicable rules). The mere fact that she is my daughter is not material information to any shareholder considering how to vote on her proposal.

As I understand the argument in the Skadden letter, it is that if (1) an SEC-registered issuer’s organizing documents prohibit securityholders from voting on proposals other than those submitted by the board, and (2) there is no state statute to the contrary, then the issuer can omit any securityholder proposal from its proxy materials.³ If so, the inability of a shareholder of DNI to avail herself of Rule 14a-8 is material information that would have had to be fully disclosed (but was not) when the trustees asked shareholders to approve converting DNI from a Maryland corporation to a Delaware statutory trust. Since the Commission’s position has long been that “we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise,”⁴ it will have to determine if it buys into Skadden’s novel and aggressive argument which would permit issuers to effectively exempt themselves from compliance with Rule 14a-8.

Sincerely yours,



Phillip Goldstein

cc: Russel Kamerman

³ Notably, the Skadden letter does not discuss whether management of such an issuer has a good faith or fiduciary duty under state or federal law to include a non-binding proposal on a non-routine matter in its proxy materials. Nor does it expressly conclude that Alison’s proposal is excludable based upon Rule 14a-8(i)(1), possibly because it does not want to alienate the Commission.

⁴ Note to paragraph ((i)(1) of Rule 14a-8