O L S H A N

1325 AVENUE OF THE AMERICAS ▪ NEW YORK, NEW YORK 10019
TELEPHONE: 212.451.2300 ▪ FACSIMILE: 212.451.2222

EMAIL: AFINERMAN@OLSHANLAW.COM
DIRECT DIAL: 212.451.2289

June 2, 2020

BY EMAIL AND OVERNIGHT MAIL

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 Senior Floating Rate Income Fund II – Omission of Shareholder Proposal Submitted by Saba Capital Management, L.P. on behalf of Saba Capital Master Fund, Ltd.

Ladies and Gentlemen:

We are writing on behalf of our client, Saba Capital Management, L.P. ("Saba"), regarding the letter, dated May 15, 2020 (the "No Action Request"), in which counsel to First Trust Senior Floating Rate Income Fund II (the "Fund") requested confirmation that the Staff of the Division of Investment Management (the "Staff") will 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 omits from its proxy materials for its 2020 Annual Meeting of Shareholders the non-binding proposal and supporting statement delivered by Saba and received by the Fund on April 10, 2020 (the "Proposal").

We have reviewed the No Action Request with Saba and are providing the following statement to the Staff on its behalf to address each of the Fund's arguments and purported reasons for omission of the Proposal from its proxy materials. Saba believes that its Proposal is valid and is required to be included in the Fund's proxy materials, and accordingly that the No Action Request should not be granted. Saba respectfully requests that the Staff reject the Fund's view that the Proposal may be excluded from its proxy materials for the reasons stated below.

1. **The Fund may exclude the Proposal pursuant to Rule 14a-8(b)(1) because Saba does not hold securities entitled to vote on the Proposal as determined under the Fund's organizational documents.**

The Proposal submitted by Saba is just the type of proposal contemplated to be permitted by Rule 14a-8: a non-binding, precatory proposal that seeks to provide shareholders with the opportunity to make their views known to the Fund's board of directors (the "Board") on a matter of general and significant importance. It does not "usurp" the authority of the Board, require a breach of a director's fiduciary duties (unless the Fund is taking the position that considering shareholder views would breach a director's fiduciary duties) or require any action not consistent

with the Fund's bylaws or other governing documents. Rather, in this case, it is a benign proposal requesting that the Board take the necessary steps to declassify the Board. Shareholders are not seeking to amend the Fund's bylaws or take any action other than to make their preference known. The Board retains all of its power and authority, which is in no way being usurped or otherwise taken away. The Board of course would be free to reject or accept this Proposal if passed, or to consider any alternatives. Putting aside the fact that this Proposal is consistent with widely accepted good governance standards, it is perplexing why the Board would even object to such a straightforward and common Proposal. In fact, this is just the type of Proposal that Rule 14a-8 was designed to permit shareholders to submit, and to attempt to block the Proposal based on tortured and incorrect interpretations of the law would block the basic intent and purpose of Rule 14a-8. Whether shareholders have the ability to include a proposal under Rule 14a-8 is a question of federal law and the protection of the provisions of Rule 14a-8, and is not subject to state law interpretation of the Fund's Declaration of Trust.

Saba believes the Fund has presented a flawed and improper interpretation of Rule 14a-8 by suggesting that, because shareholders of the Fund can "vote *only* on specific matters that are enumerated in the Declaration of Trust," a shareholder is effectively blocked from submitting a proposal under Rule 14a-8. Under this unreasonably narrow interpretation of Rule 14a-8, it would effectively be impossible for <u>any</u> shareholder of a Massachusetts business trust to submit a valid shareholder proposal under Rule 14a-8 for inclusion in the trust's proxy materials if its shareholders are not also expressly permitted to vote on the exact subject matter of such proposal by the trust's governing documents, even if the shareholder otherwise satisfies the eligibility requirements set forth in Rule 14a-8(b)(1) (that a shareholder must have held at least $2,000 in market value, or 1%, of a fund's securities entitled to be voted on the proposal at the meeting for at least one year by the date such shareholder submits its proposal). The Fund has only one class of voting shares, and Saba owns well in excess of the minimum amount required by the regulations.

The statutory purpose of Rule 14a-8 is to give shareholders a basic right to submit proposals to be included in a company's or fund's proxy statement, separate from state law (other than very specific provisions set forth in the statute) or company specific anti-shareholder or other shareholder unfriendly blocking restrictions. The Fund is trying to make an "end-run" around Rule 14a-8 to block shareholder access, the very item Rule 14a-8 is designed to protect and preserve. To grant the Fund's request would result in an unjust outcome that disenfranchises shareholders and goes against the underlying purpose of Rule 14a-8 by placing shareholder-unfriendly voting restrictions contained in a fund's governing documents ahead of shareholder rights guaranteed by the Exchange Act.

Notwithstanding the Fund's reliance on Section 6.6 of Article VI of the Fund's Declaration of Trust, which "*clearly and unambiguously limits shareholders of the Fund to vote only on specific matters that are enumerated in the Declaration of Trust*," the ability for shareholders to submit and vote on a proposal submitted under Rule 14a-8 is not waivable by the Fund, nor can it opt out of Rule 14a-8 based on the Fund's and its counsels' subjective application of state law. Saba believes that the clear purpose behind the adoption Rule 14a-8 was to give shareholders a voice to communicate with other shareholders by mandating the inclusion of a proposal in an issuer's proxy materials. To allow an issuer such as the Fund to silence shareholders through a restriction on their voting rights would amount to an end-run around Rule 14a-8 and thereby deprive shareholders of the very essence of its purpose.

The No Action Request states that "*a Massachusetts business trust is given the flexibility to craft the terms of the relationship with its shareholders,*" but this "flexibility" cannot function as a mechanism to preempt the Fund's requirement to comply with Rule 14a-8. Saba notes that the Fund's proxy statement, filed with the Securities and Exchange Commission (the "SEC") on August 5, 2019, did not make mention of any such requirements or qualifications in describing the procedures and deadline for a shareholder to submit a Rule 14a-8 proposal to the Fund for inclusion in its proxy materials. The Fund's proxy statement provides, in relevant part, that:

> "*To be considered for presentation at the 2020 annual meeting of shareholders of a Fund and included in the Fund's proxy statement relating to such meeting, a shareholder proposal must be submitted pursuant to Rule 14a-8 under the 1934 Act ("Rule 14a-8") and must be received at the principal executive offices of the applicable Fund not later than April 13, 2020. Such a proposal will be included in a Fund's proxy statement if it meets the requirements of Rule 14a-8. Timely submission of a proposal does not mean that such proposal will be included in a Fund's proxy statement*."

The Fund made no mention whatsoever in its proxy statement of any requirement that shareholders must be entitled to vote on the subject matter of a proposal submitted pursuant to Rule 14a-8, because there is no such ability for the Fund to lawfully limit the rights of shareholders on this basis. The Fund therefore should not be permitted to exclude the Proposal on the basis of its company specific voting rights. It appears clear to Saba that the Fund has employed this argument disingenuously as part of a scheme designed to silence shareholders and deprive Saba of its fundamental rights. If this were a genuinely held position by the Fund, then its most recent definitive proxy statement would be materially false and misleading to shareholders, because it fails to disclose that all Rule 14a-8 proposals are effectively prohibited from inclusion in its proxy materials unless they fall into a few very narrow permitted categories for voting.

In the No Action Request, the Fund's counsel cited several "no action" letters issued by the Staff to support its view: *Government Properties Income Trust* (February 20, 2018),[1] *Senior Housing Properties Trust* (February 20, 2018)[2] and *RAIT Financial Trust* (March 10, 2017)[3], stating that the Staff has historically taken the position that a proposal is excludable under Rule 14a-8(b)(1) if a shareholder is not entitled to vote on a proposal. If the Staff considers these no-action letters to be acceptable rationale for exclusion of the Proposal from the Fund's proxy materials, it will be condoning the continued misuse of a troubling and dangerous precedent that has a chilling effect on shareholders' ability to exercise their fundamental right to utilize Rule 14a-8 to communicate and vote on proposals with other shareholders invested in a particular issuer.

Importantly, Saba believes that its Proposal is factually distinguishable from the precedent no-action letters cited by the Fund's counsel in the No Action Request based on materially different, and outcome determinative, language contained in the Fund's bylaws. In particular, Section 3(b)(vi) of Article III of the Fund's bylaws provides, in pertinent part, that:

---

[1] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/unitehere022018-14a8.pdf
[2] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/unitehereseniorhousing022018-14a8.pdf
[3] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/edwardfriedman031017-14a8.pdf

> "Notwithstanding anything to the contrary in this Section 3(b) or otherwise in these By-Laws, ***unless required by federal law***, no matter shall be considered at or brought before any annual of special meeting unless such matter has been deemed a proper matter for Shareholders action by at least sixty-six and two-thirds percent (66' %) of the Trustees." (Emphasis added).

In fact, it is required by federal law, namely Rule 14a-8 of the Exchange Act, that the Fund must include in its proxy materials a valid shareholder proposal that is duly submitted pursuant to Rule 14a-8. As a result, the Fund cannot persuasively claim that, on the one hand, it may exclude the Proposal based on its own self-serving interpretation of shareholder-unfriendly provisions of Massachusetts state law, while on the other hand ignoring its obligations to include it in its proxy materials under the Exchange Act. The Fund's purported basis for exclusion of the Proposal under state law is therefore preempted by the mandate of Rule 14a-8 and is contradicted by the Fund's own governing document.

Further, Saba believes that both the plain meaning of, and the intent behind, Rule 14a-8(b)(1), which states that securities must be "*entitled to be voted on the proposal* at the meeting," is that a shareholder must hold a *class* of securities entitled to cast a vote on *any* matter of business that is properly brought before a meeting of shareholders, including any proposal validly submitted pursuant to Rule 14a-8. This does not impose a separate requirement that the shareholder submitting the proposal must also be granted the power to vote on the exact subject matter of the proposal at the meeting under the issuer's governing documents, because doing so would create a massive carve out to Rule 14a-8 for issuers to exploit and eviscerate any meaningful exercise of Rule 14a-8 by shareholders, thereby rendering the provision toothless.

2. The Fund may exclude the Proposal pursuant to Rule 14a-8(b)(1) as Saba does not hold securities entitled to vote on the Proposal as it is in violation of Section 12(d)(1) under the 1940 Act, and should be ineligible to vote its shares at the 2020 Annual Meeting.

Saba expressly and categorically denies holding any securities of the Fund in violation of Section 12(d)(1) of the Investment Company Act of 1940, as amended (the "1940 Act"). The Fund's claims are as nonsensical as they are frivolous. Had the Fund closely reviewed the Proposal, it would have been apparent to the Fund that Saba's ownership of Fund securities is spread across multiple Saba entities, and not wholly owned by Saba Capital Master Fund, Ltd. ("Master Fund"). The following is a relevant excerpt from the cover letter accompanying the Proposal that Saba delivered to the Fund:

> "**Saba Capital Management, L.P.** ("Saba"), as investment advisor to and on behalf of Saba Capital Master Fund, Ltd.…, the owner of 1,979,611 shares of First Trust Senior Floating Rate Income Fund II ("FCT"), hereby submits the enclosed resolution and supporting statement…."
>
> "As of the date hereof, **Saba** is the beneficial owner of 1,979,611 shares of common stock of FCT and has full power and authority to submit the Proposal on the Fund's behalf." (Emphasis added).

At no point did Saba ever indicate, publicly or privately, that Master Fund directly or solely held all of the shares of the Fund beneficially owned by Saba. Saba believes that the Fund's attempt to weaponize Section 12(d)(1) of the 1940 Act amounts to nothing more than an ad hominem attack made in bad faith and designed to stir up baseless controversy to distract the Staff from the Fund's shareholder unfriendly efforts to silence its shareholders. Saba trusts that the Staff will see through this unfortunate tactic for what it is.

3. The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders at the 2020 Annual Meeting under state law.

The Fund's argument seems to be 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. Saba believes that the Proposal is, in fact, a "proper subject for action" under state law and that it is both improper and invalid for the Fund to use its counsels' self-serving, subjective interpretation and application of state law as a basis for exclusion of the Proposal from its proxy materials. For the reasons set forth in the foregoing sections, the Fund cannot reasonably contend that the Proposal is an improper subject for action by shareholders solely on the basis that the Fund has only granted shareholders with limited power to vote on certain enumerated matters. Such a conclusion would open the flood gates to allow every public issuer to restrict the voting rights of its shareholders so that all proposals submitted under Rule 14a-8 would be deemed invalid and excludable from proxy materials.

Accepting the Fund's position that the Board must pre-approve "as necessary or desirable, the submission of any action to the shareholders for their consideration" will result in shareholders being left powerless to challenge an ineffective or combative board. The Fund's contention that "prior approval of the Board" is required simply ignores the reality that Rule 14a-8 proposals are generally, if not mostly, submitted to issuers under contentious circumstances and opposed by the boards of the issuers that receive them. Would all such Rule 14a-8 proposals then be excludable on the basis of no board pre-approval?

4. The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(2) because the Proposal, if included in the Proxy Materials, would prevent the Board from properly exercising its fiduciary duties and thereby cause members of the Board to violate state law.

Saba questions how its submission of the Proposal could possibly be viewed as preventing Board members "from properly exercising their fiduciary duties in in violation of Massachusetts common law's standard of conduct." How could the inclusion of a non-binding proposal in the Fund's proxy materials prevent the exercise of the Board's fiduciary duties when the Proposal itself is a precatory request? The fact that the Board disagrees with the subject matter of the proposal is not in itself a proper justification for it to claim unilateral authority and discretion to deem it improper for a shareholder vote. In no way does the Proposal "usurp the authority of the Board" as claimed in the No Action Request. Rather, the Proposal is precatory and *requests* that the Board take the necessary steps to declassify itself. A non-binding request is not the same as a proposal that seeks to directly amend the Fund's governing documents to effect declassification.

Saba respectfully requests that the Staff reject the Fund's argument that a non-binding request for the Board to take action should be considered the same as seeking such an action directly.

Rule 14a-8(i)(2) states that a proposal can be excluded "if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." No law would be violated here by the inclusion of the Proposal in the Fund's proxy materials. The Fund's claim that the proper exercise of the Board's fiduciary duties would somehow be inhibited by including the Proposal in the proxy materials lacks any basis in law or precedent, which is likely why the No Action Request does not cite any such basis. Saba believes the Fund is attempting to use the Board members' "proper exercise" of their fiduciary duties as a pretext to try to bypass the Fund's clear obligation to include in its proxy materials a validly submitted proposal under Rule 14a-8. Requiring Board preapproval for the inclusion of the Proposal in the Fund's proxy materials would subvert the purpose of Rule 14a-8 and contravene the very reason for Saba submitting such a proposal.

5. The Fund may exclude the Proposal pursuant to Rule 14a-8(i)(3) because the Proposal contains materially false and misleading statements contrary to Rule 14a-9.

Saba does not believe the Proposal contains any materially false and misleading statements contrary to Rule 14a-9. In fact, the "two statements…that the Fund believes violate Rule 14a-9 by misleading shareholders" have been used by Saba in nearly identical form in Saba's recent 14a-8 proposal submissions at other closed-end funds and in its recent definitive proxy statement filed with the SEC on March 18, 2020 for Eaton Vance Floating-Rate Income Plus Fund. The Staff did not advise Saba that these statements were materially false and misleading in violation of Rule 14a-9 when providing Saba with comments on that definitive proxy statement. Notwithstanding the foregoing, Saba provides the following support for its assertions: All of the five largest U.S. mutual funds, the Council of Institutional Investors, the largest public pension funds, and the leading proxy advisory firms (ISS and Glass Lewis) have adopted policies that support the annual election of directors and oppose board classification. See page 3 of Fidelity's Proxy Voting Guidelines (2020), page 16 of Vanguard's Proxy Voting Guidelines For U.S. Portfolio Companies (2019), page 2 of The American Funds Capital Research and Management Company Proxy Voting Guidelines, page 5 of Franklin Mutual Advisers, LLC Proxy Voting Policies & Procedures (2019), and page 6 of T. Rowe Price Proxy Voting Guidelines; page 5 of the Council of Institutional Investors, Corporate Governance Policies (2016); page 19 of CalPERS, Global Principles of Accountable Corporate Governance (2011); page 17 of Institutional Shareholder Services, U.S. Proxy Voting Summary Guidelines (2019), and page 23 of Glass Lewis & Co., Proxy Paper Guidelines (2020). That being said, if the Staff were to conclude that statement one was a violation of Rule 14a-9, Saba would be willing to revise the statement in a manner acceptable to the Staff

Saba further notes that the No Action Request misquotes the first statement in the Proposal by incorrectly reproducing its text and attempting to pass it off as a direct quote. To clarify, the No Action Request erroneously omits the word "best" from the following sentence: "This view is shared by most shareholders and institutional investors, who believe it to be the standard for corporate governance **best** practices." (Emphasis added). This misleading omission drastically alters the meaning of Saba's statement and distorts its intent.

Saba does not believe that the second statement is in any way a violation of Rule 14a-9. It is characterized as a belief, the basis for the belief is included in the sentence, and it is a reasonable conclusion. There is no risk that a shareholder would be confused by the statement, or infer other misdeeds. That being said, if the Staff were to conclude that statement two was a violation of Rule 14a-9, Saba would be willing to revise the statement in a manner acceptable to the Staff.

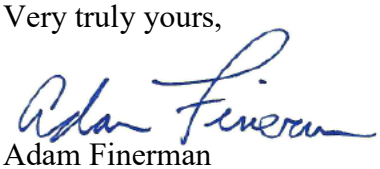
Also, for the reasons stated above in response to the Fund's second reason for exclusion, Saba has not omitted any Section 12(d)(1) violations from the Proposal because there are no such violations of Section 12(d)(1) to report. The Fund is factually mistaken and has presented the Staff with an inaccurate mischaracterization of Saba's holdings, further evidenced by the Fund counsel's use of the word "apparent" in describing its unsubstantiated innuendo.

* * * * *

The Staff is invited to contact the undersigned with any additional comments or questions it may have. We would appreciate your prompt advice as to whether the Staff has any further comments. Thank you for your assistance.

Please do not hesitate to contact me should you have any questions.

Very truly yours,



Adam Finerman

cc: Michael D'Angelo, Saba Capital Management, L.P.