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BY E-MAIL

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Nuveen Real Asset Income and Growth Fund,
Nuveen Multi-Asset Income Fund, and
Nuveen Core Plus Impact Fund
Shareholder Proposal of Saba Capital Master Fund, Ltd. Under
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

We represent Saba Capital Master Fund, Ltd. ("Saba") in connection with the above-referenced matters and write in response to the letters submitted on behalf of each of Nuveen Real Asset Income and Growth Fund, Nuveen Multi-Asset Income Fund and Nuveen Core Plus Impact Fund (each, a "Nuveen Fund", and together, the "Nuveen Funds"), dated December 15, 2023 (the "Nuveen No-Action Requests"). In the Nuveen No-Action Requests, each of the Nuveen Funds assert that it intends to exclude from its proxy statement and form of proxy for its 2024 annual meetings of shareholders (collectively, the "Proxy Materials") the shareholder proposal submitted to it on December 1, 2023 by Saba (the "Subject Proposal") pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"). As the Subject Proposal, but for the name of the fund, is identical across the Nuveen Funds, and as the Nuveen No-Action Requests are substantially the same across all of the Nuveen Funds (except for the name of the fund), we address and respond to all of the Nuveen No-Action Requests collectively in this response letter for the convenience of the Staff.

Pursuant to Rule 14a-8, Saba submitted to each Nuveen Fund the Subject Proposal, which reads:

> RESOLVED, that the shareholders of [Nuveen Fund] (the "Fund") request that the Board of Directors of the Fund (the "Board") take all necessary steps in its power to declassify the Board so that all directors are elected on an annual basis starting at the next annual meeting of shareholders. Such declassification shall be completed in a manner that does not affect the unexpired terms of the previously elected directors.[1]

Saba respectfully submits that the Staff should decline to endorse the Nuveen Funds' effort to exclude the Subject Proposal from their respective Proxy Materials. As we explain below, inclusion of the Subject Proposal in their respective Proxy Materials would be consistent with the underlying purpose, as well as required by the substantive and procedural requirements, of Rule 14a-8.

The Staff's concurrence with this approach would be consistent with the requirements of Rule 14a-8 and necessary to preserve Rule 14a-8's continued vitality in the face of an existential threat to its core utility, purpose and function. As we explain below, the Nuveen Funds have no basis to exclude the Subject Proposal under Rule 14a-8(b), 14a-8(i)(1), 14a-8(i)(2), 14a-8(i)(3) or otherwise.

I. RULE 14A-8 IS AT AN EXISTENTIAL CROSSROADS AND WE BELIEVE THE STAFF MUST ACT TO ENSURE ITS CONTINUITY AS A MEANS OF SHAREHOLDER EXPRESSION AND INVESTOR PROTECTION MOVING FORWARD

While we respond to and rebut the legal arguments made by the Nuveen Funds as they relate to issues of state law and the Nuveen Funds' specific organizational documents below—which arguments, on their own, provide a sufficient basis for the Staff to reject Nuveen Funds' requests for relief—we believe it is important to begin by clarifying why the stakes in this matter are bigger than a one-off dispute between Saba and the Nuveen Funds over whether shareholders have the right to vote on a precatory board declassification proposal at a Massachusetts business trust registered under the Investment Company Act of 1940, as amended (the "1940 Act").

In fact, the stakes are so high that we believe, without a hint of hyperbole, that the very survival of Rule 14a-8 as a means of shareholder expression is at stake, and the Staff's response to the Nuveen No-Action Requests will either accelerate the demise of, or preserve, Rule 14a-8 as it was meant to function.

[1] See Exhibit A of each of the Nuveen No-Action Requests.

The fundamental "mission of the Securities and Exchange Commission is to protect investors."[2] As the Commission has noted, this "mission requires tireless commitment and unique expertise from our staff of dedicated public servants who care deeply about protecting the investing public and others who rely on our markets to secure their financial futures."[3] In pursuit of perfecting its mission, the Commission is constantly fine-tuning its protection strategies, including by tackling "the threshold question [of] whether our current rules are protective enough of retail investors" and "proposing reforms to modernize our rules and to strengthen protections for investors".[4]

Enter Rule 14a-8, which was enacted by the Commission for the purpose of preserving and protecting corporate democracy—namely, by giving shareholders an effective means of presenting their proposals to other shareholders.[5]

As the Staff more recently noted: "The [Rule 14a-8] shareholder proposal process has become a cornerstone of engagement between shareholders and company management. It provides an important mechanism for investors to express their views, provide feedback to companies, exercise oversight of management, and raise issues for their fellow shareholders' consideration."[6] Tracing the rule's historical trajectory, the widely-read and oft-cited "Shareholder Proposals Handbook" advises its company corporate counsel subscribership that "since its early releases in the 1940s, the SEC has made clear that [Rule 14a-8] is designed to prevent management from using discretionary voting authority to effectively shut out shareholders from being able to propose alternative courses of corporate action".[7]

In sum, the Commission, the courts, and commentators are crystal clear that Rule 14a-8 was enacted to protect shareholders and provide them with a federally-protected voice that management could not simply snuff out at its discretion.[8] Yet that is precisely what the Nuveen Funds seek to do.

The Nuveen Funds assert, incorrectly, that precatory 14a-8 proposals are not a proper subject under the Nuveen Funds' governing documents or Massachusetts state law and, further, that allowing shareholders to vote on precatory Rule 14a-8 proposals would result in the respective Boards violating both their fiduciary duties and state law. In fact, quite the opposite is

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[2] U.S. Securities and Exchange Commission, *2004 Performance and Accountability Highlights*, 2, 2004 (https://www.sec.gov/about/secpar/secparsumm04.pdf).

[3] U.S. Securities and Exchange Commission, *Mission* (Dec. 29, 2023) (https://www.sec.gov/about/mission).

[4] Commissioner Jaime Lizárraga, U.S. Securities and Exchange Commission, *Expanding Investor Protection* (Jul. 26, 2023) (https://www.sec.gov/news/statement/lizarraga-statement-predictive-data-analytics-072623).

[5] *See Roosevelt v. E.I. DuPont de Nemours & Co.*, 958 F.2d 416, 421-22 (D.C. Cir. 1992) (Ginsburg, J.).

[6] U.S. Securities and Exchange Commission, *Shareholder Proposals under Rule 14a-8: Proposed Rules* (https://www.sec.gov/files/34-95267-fact-sheet.pdf).

[7] Liz Dunshee & Emily Sacks-Wilner, TheCorporateCounsel.net, *Shareholder Proposals Handbook (Rule 14a-8)*, Section 1.02 (Jul. 2023).

[8] Saba acknowledges that shareholders do not hold an unfettered right to make any proposal pursuant to Rule 14a-8, and that the Commission, in adopting the current iteration of Rule 14a-8, has specifically proscribed certain matters that can, in the limited circumstances specified by the Commission in the Rule, permit a company to exclude a shareholder proposal.

true—permitting the Nuveen Funds to exclude the advisory Subject Proposal would be the equivalent of providing license to the Nuveen Funds to violate federal law, while inclusion of the Subject Proposal in the Proxy Materials would be wholly consistent with state law and the Trustees' exercise of their fiduciary duties.

The state law argument set forth by the Nuveen Funds, from which certain of their other primary arguments flow, is simply wrong. The issues at hand have nothing to do with state law, trust law or corporate law. In fact, there is no provision whatsoever in Massachusetts state law barring shareholder proposals, and the Nuveen Funds cite none.

The Nuveen Funds, armed with a conclusion in search of a rationale, highlight the uncontroversial points that the trusts are merely contracts between parties, that parties are free to contract with one another as they see fit, and that the Board is tasked with managing the affairs of the trusts. Saba does not dispute any of those assertions—parties are free to contract as they wish. But contracts cannot absolve parties of their obligations to abide by independent laws, rules, and regulations.

If the parties want to create a trust in Massachusetts that has access to the *public markets* and is *a registered investment company*, that trust must abide by the relevant federal laws—in this case, namely, the Securities Exchange Act of 1934 and the 1940 Act.

Similarly, if a Massachusetts trust wants to be listed on a public exchange, as the Nuveen Funds are, it must abide by the listing requirements of that public exchange. For example, the New York Stock Exchange ("NYSE") requires its listed companies, if they wish to remain listed on NYSE, to hold annual shareholder meetings every fiscal year.[9] Listed companies incorporated in states that do not have annual meeting requirements are not exempted from that requirement, nor can they evade it by prohibiting annual meetings in their charters. Put simply, if a company wants to be listed on NYSE, it must abide by NYSE's rules or face the consequences of violation, which may include delisting.

Companies cannot contract the NYSE regulations away by pointing to their charters and proclaiming that (i) they simply cannot abide by the rules, and (ii) if they are forced to abide by those rules, they would be violating state law because their charter, which is drafted under the umbrella of the state, provides that they are not required to hold annual meetings. Nor can companies reasonably argue that their boards of directors would violate their fiduciary duties by holding annual meetings. If companies do not want to be listed on NYSE, they can contract as they see fit; however, if they intend to avail themselves of the advantages that flow from listing on NYSE, they must accept and abide by NYSE's rules and regulations.

Nuveen Fund Advisors, LLC (the investment advisor to the Nuveen Funds, "Nuveen"), and in particular its outside counsel ("Nuveen Outside Counsel"), apparently disagree with these uncontroversial premises. Indeed, so that the Staff is aware, this is not the first time Nuveen

[9] New York Stock Exchange, *NYSE Listed Company Manual*, Section 302 (https://nyseguide.srorules.com/listed-company-manual/09013e2c8503fca9).

Outside Counsel and Nuveen have attempted to contract away a federally protected shareholder right. In October 2020, Nuveen adopted bylaws, across a number of publicly-traded close end funds it manages, that purported to strip the votes of shareholders who acquired greater than 10% of an applicable fund's stock, namely by stripping the voting rights of every share held above 10%.

It is relevant to pause here to note that those vote stripping bylaws were all adopted in Massachusetts business trusts (same as the Nuveen Funds). As such, following the logic in the Nuveen No-Action Letters—*i.e.*, that boards of directors in Massachusetts business trusts have carte blanche to do as they please due to their "full, absolute, and exclusive power, control and authority over….the…Trust"—Nuveen was well within its rights to strip the votes of its shareholders and the boards of directors did not breach their fiduciary duties by doing so.

Nuveen had one inconvenient problem, however. The Nuveen funds that adopted the vote stripping bylaws were registered under the 1940 Act, and in "contracting" away the voting rights of their shareholders, the Nuveen funds plainly violated federal law, namely 15 U.S.C. § 80a-18(i) of the Investment Company Act which requires that every share of common stock issued by a regulated fund be "voting stock" and "have equal voting rights" with other shares.

In response to this brazen attempt to entrench the incumbent boards of directors in office and strip shareholders of their fundamental rights in violation of federal law, Saba Capital Management, L.P. ("Saba Capital") sued Nuveen and the relevant fund trustees in the United States District Court for the Southern District of New York (the "SDNY") on January 14, 2021.

The SDNY squarely rejected Nuveen's arguments, granting summary judgment in favor of Saba Capital and invalidating the bylaws on February 17, 2022.[10] Nuveen Outside Counsel appealed to the U.S. Court of Appeals for the Second Circuit (the "Second Circuit"), which affirmed the SDNY's decision on November 30, 2023 (just two weeks before Nuveen Outside Counsel submitted the Nuveen No-Action Requests to the Staff on behalf of the Nuveen Funds). In affirming the SDNY's decision, the Second Circuit held that the Nuveen funds in question had violated the 1940 Act and that the vote stripping bylaw provisions were invalid and unenforceable.[11] It is worth reiterating that the SDNY invalidated the bylaw provisions (and the Second Circuit affirmed) as a matter of law at the summary judgment stage—it was crystal clear to them that Nuveen was violating federally protected shareholder rights through its attempted bylaw workarounds.

We provide this background for two reasons: (1) to illustrate the point that organizational documents, under the guise of "state law", cannot be weaponized as excuses to violate federal law and the shareholder rights endowed and protected thereunder and (2) to ensure that the Staff has appropriate context regarding the Nuveen / Nuveen Outside Counsel's playbook and their

[10] *Saba Capital CEF Opportunities 1, Ltd. v. Nuveen Floating Rate Income Fund*, 21-CV-327 (JPO), (S.D.N.Y. 2022) (https://casetext.com/case/saba-capital-cef-opportunities-1-ltd-v-nuveen-floating-rate-income-fund).

[11] *Saba Capital CEF Opportunities Ltd v. Nuveen Floating Rate Income Fund III*, (2nd Cir. 2023) (https://caselaw.findlaw.com/court/us-2nd-circuit/115569102.html).

recent history of attempting to contract away federally-protected shareholder rights through their organizational documents.

That said, we recognize that the Staff previously has concurred with the Nuveen Funds' advocated approach in certain prior no-action Staff response letters, including *First Trust Senior Floating Rate Income Fund II* (June 17, 2020), a Massachusetts business trust which the Nuveen No-Action Requests characterizes as "directly on point". However we note that there is a critical distinction in *First Trust*; the declaration of trust there did not expressly confer voting rights on matters "as may be required by law [or] the 1940 Act", as is provided in the Nuveen Declaration of Trust. Respectfully, we also believe these precedents were and are incorrect and urge the Staff to reconsider (in the Staff's words) the "informal views" provided therein, although rejecting the Nuveen Funds' request for relief in the Nuveen No-Action Requests does not require the Staff to do so.[12]

There is additional context we believe the Staff should consider in making its decision. The corporate governance and shareholder rights landscape has undergone a sea change in just the past few years, as companies, in advance of and in the wake of the Commission's implementation of Rule 14a-19, have been racing to amend their organizational documents to make it either impossible or as painful and as difficult as possible for shareholders to nominate directors and submit business proposals under their organizational documents. This is not just our opinion—it is backed by data, as evidenced by a recent analysis by one law firm which found that an unprecedented 200 companies in the S&P 500 had amended their "advance notice" bylaws between April 22, 2022 and June 1, 2023 to make it more difficult for shareholders to nominate and propose business.[13]

What used to be a once or twice in a lifecycle event—amending one's organizational documents—is now an everyday occurrence as companies rush to disenfranchise shareholders and make it easier to "throw out" nomination notices and business proposal submissions. We have even seen companies amend their bylaws multiple times in just a few month period, as defense counsel firms are constantly formulating new and creative ways to craft preclusions that build on and add to the prior updates.

One company's recent round of bylaw amendments went so far that they purported to require, among many other preclusive requirements, that investment fund shareholders seeking to nominate directors or submit business proposals disclose the identities of their limited partner investors and provide the company with extensive information about those limited partners (including other investment holdings). The board of directors of the company in question, Masimo Corporation ("Masimo"), signed off on these amendments knowing full well that "it is

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[12] U.S. Securities and Exchange Commission, Division of Corporation Finance: Informal Procedures Regarding Shareholder Proposals (Nov. 21, 2022) (https://www.sec.gov/corpfin/informal-procedures-regarding-shareholder-proposals).

[13] White & Case LLP, *Amending Bylaws and Charters to Address Universal Proxy, Shareholder Activism and Officer Exculpation*, 1 (Jun. 8, 2023) (https://www.whitecase.com/sites/default/files/2023-06/client-alert-amending-bylaws-and-charters-to-address-universal-proxy-shareholder-activism-and-officer-exculpation.PDF).

standard, valid practice for investment funds of all kinds to hold the identities of their investors in the strictest confidence" and that "limited partners opt for that status for many business and legal reasons and investment advisors have similar interests in protecting their investor lists." So draconian was this purported requirement that it prompted a corporate governance professor, writing for the Harvard Law School Forum on Corporate Governance, to remark that the move by Masimo resembled the governance and shareholder preclusion equivalent of the "nuclear option" and was "a case study in how rational governance devices can become unduly weaponized".[14] Similarly, a well-known commentator remarked that allowing the requirements to stand would have "catastrophic repercussions . . . on the institution of shareholder activism and the concept of corporate democracy" and would mean "the complete eradication of shareholder activism as we know it."[15]

On behalf of a client of our Firm, we sued Masimo in Delaware Chancery Court (the "Chancery Court") for adopting what were "perhaps the most preclusive advance notice bylaws in Delaware history," arguing, among other things, that the purported bylaw amendments represented an existential threat to the ability of shareholders to nominate directors and that "if the bylaw amendments are allowed to stand, the adverse effects on stockholders' franchise will be felt far beyond Masimo" as other companies would rush to adopt similar bylaws to preclude their shareholder bases from nominating directors and submitting business proposals.[16] Just two weeks before trial, and in the face of the Chancery Court's comments on the merits of our claims and denial of Masimo's partial motion to dismiss, Masimo's board of directors rescinded the amendments of its own accord. That result sent a clear signal to companies that similarly preclusive advance notice bylaws were unlikely to pass muster.

We believe the question the Staff is facing here, and the answer it provides, in connection with the Subject Proposal, will be similarly consequential. If the Nuveen Funds' position is allowed to stand, the adverse effects to Rule 14a-8, investor protection, and the shareholder franchise will be felt far beyond the Nuveen Funds. On the other hand, if the Staff refuses to bless the Nuveen Funds' position, it will send a clear signal to other funds that attempts to undermine Rule 14a-8 will be closely scrutinized.

At its core, the question the Staff is faced with is a simple one: Is it the Staff's position that companies can wholly proscribe Rule 14a-8 shareholder proposals in their organizational documents? Put differently, can companies eradicate the last bastion of shareholder democracy—the federal right of shareholder expression, the "cornerstone" of engagement

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[14] Lawrence A. Cunningham, Harvard Law School Forum on Corporate Governance, *The Hottest Front in the Takeover Battles: Advance Notice Bylaws* (Oct. 23, 2022) (https://corpgov.law.harvard.edu/2022/10/23/the-hottest-front-in-the-takeover-battles-advance-notice-bylaws/).

[15] Brief for Politan Capital Management LP, *Politan Capital Management LP, et al. v. Masimo Corporation, et al.*, C.A. No. 2022-0948-NAC., 4 (Oct. 11, 2023) (frankel-politanvmasimo--feerequest.pdf (thomsonreuters.com)).

[16] See Verified Complaint in *Politan Capital Management LP v. Joe E. Kiani, H. Michael Cohen, Adam P. Mikkelson, Craig B. Reynolds, Julie A. Shimer, Ph.D., and Masimo Corporation*, Compl. ¶ 18 (Oct. 21, 2022) (https://www.sec.gov/Archives/edgar/data/937556/000091412122004125/po58315551-ex99_4.htm).

between shareholders and the companies they own—with a circular argument that no shares are "entitled to vote" on a proposal and an impertinent argument about purported state law.

The Staff has previously considered, and rejected, similar attempts to undermine Rule 14a-8. For example, in previous matters, the Staff has declined to concur with a company's claim that a shareholder's proposal, which had been submitted in full compliance with Rule 14a-8, could nonetheless be excluded from the company's proxy statement for having failed to satisfy the notice procedures in the company's advance notice bylaws,[17] including one matter in which the advance notice bylaw was not satisfied on the grounds that the proposal was not a proper subject under state law.[18] While managements' arguments may have changed since these previous attempts, their goal of undoing Rule 14a-8 has not changed and we believe the Staff should thoroughly reject these attempts to end-run the rules.

With regards to the argument that no shares are "entitled to vote" on a Rule 14a-8 shareholder proposal, we are not aware of definitive Staff guidance that speaks to the original purpose of the "entitled to vote" prong of Rule 14a-8(b) and believe the Staff's intention was to ensure that voting classes of shareholders not be forced to vote on proposals put forth by other classes of shareholders who were not entitled to vote. For example, where a company has two classes of stock, one with voting rights and one without, Rule 14a-8(b) would say that a holder of non-voting stock cannot force a proposal on those holding voting stock.

We would be shocked if the Staff intended to permit companies to simply contract away (not to due to some non-existent state law imperative, but simply via the addition of preclusive language to organizational documents that has the goal of rendering Rule 14a-8 impotent) the rights of all of its shareholder to vote on virtually anything.

In fact, prior to the Staff's concurrence in *RAIT Financial Trust*, we believe this was the widely-held view of the meaning and purpose of Rule 14a-8(b). The Staff's pre-*RAIT* guidance and no-action precedent supported this view.

Indeed, in Staff Legal Bulletin No. 14 (July 13, 2001), the Staff, in providing an example of where "entitled to be voted" would apply, replied by citing an example of a company that has two classes of common stock with differentiated voting rights (screenshot reproduction from Staff Legal Bulletin No. 14 (July 13, 2001)).

[17] U.S. Securities and Exchange Commission, *Cleo Corporation* (Jan. 29, 2010) (Cleco Corporation; Rule 14a-8 no-action letter (sec.gov)).

[18] U.S. Securities and Exchange Commission, *Dollar Tree Stores, Inc.*, (Mar. 7, 2008) (Dollar Tree Stores, Inc.; March 7, 2008; Rule 14a-8 no-action letter (sec.gov)).

b. What type of security must a shareholder own to be eligible to submit a proposal?

A shareholder must own company securities entitled to be voted on the proposal at the meeting.

Example

A company receives a proposal relating to executive compensation from a shareholder who owns only shares of the company's class B common stock. The company's class B common stock is entitled to vote only on the election of directors. Does the shareholder's ownership of only class B stock provide a basis for the company to exclude the proposal?

Yes. This would provide a basis for the company to exclude the proposal because the shareholder does not own securities entitled to be voted on the proposal at the meeting.

This Staff approach to Rule 14a-8(b) is further supported by the Staff's pre-2017 (a.k.a. pre-*RAIT*) no-action precedents including, among others, *Scripps Networks Interactive, Inc.* (January 14, 2016) (where the Staff concurred that a proposal submitted by a Class B holder of stock upon which only Class A holders could vote was not permitted under Rule 14a-8(b)) and *The Washington Post Company* (December 24, 2004) (where the Staff concurred that the company, which had two classes of voting stock, could exclude a proposal by a Class B holder that did not have rights to vote on the proposal).

Putting aside the fact that, as we demonstrate below, shareholders would be entitled to vote on the Subject Proposal under the governing documents of the Nuveen Funds and Massachusetts law, the Nuveen Funds are also subject to the 1940 Act, which, as noted above, requires that every share of common stock be "voting stock" and "have equal voting rights," *see* 15 U.S.C. § 80a-18(i). As such, it is our view that Rule 14a-8(b) is not applicable to the Nuveen Funds other than with respect to requiring that a proponent own the (one) class of voting common stock issued by the Nuveen Funds and that there be no contravening state law statute that says shareholders are not entitled to vote on a specific matter (which is not the case here).

As was the case in *RAIT*, which started this all, the Nuveen Funds can cite to no Commission guidance, bulletin or release contemplating that the purpose of Rule 14a-8(b) is to provide companies with a weapon to exclude virtually all Rule 14a-8 proposals submitted by shareholders. The Nuveen Funds only cite *RAIT* and the few no-action descendants that followed the *RAIT* concurrence because there is no other guidance, pre or post *RAIT*, that supports their view.

While we respond to the point by point textual arguments of the fund below and believe strongly that, in reality, the Fund's governing documents *do* provide shareholders the right to vote on the Subject Proposal, and that the Subject Proposal is therefore a valid matter to be presented at the Nuveen Funds' annual meetings under all relevant law, we don't view such arguments as necessary in light of all of the above. Even if the Nuveen Declaration of Trust did not have an "as may be required by law" carveout (as discussed below) and instead explicitly stated that shareholders may never vote on any matter other than the election of directors, it would contravene Rule 14a-8 and would be invalid.

In light of the Commission's goal of evening the playing field and protecting investors from management by, among other things, ensuring they have a voice with which to express themselves, we ask the Staff to reconsider its prior decisions on this subject and to issue new guidance clearly stating that Rule 14a-8(b) cannot be weaponized in the way the Nuveen Funds seek to weaponize it.

We note, for the Staff's knowledge, that over the last few years we have seen an uptick in companies using language similar to the Nuveen Funds in a blatant attempt to not only preclude shareholders from submitting business proposals pursuant to the bylaws but also to wholesale bar them from submitting even precatory proposals under Rule 14a-8.

This cannot be allowed to stand and it is imperative for the Staff to step in before Rule 14a-8 becomes a relic of the past.

II. THE NUVEEN FUNDS HAVE FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE SUBJECT PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14A-8(B)

Rule 14a-8(b) states, in part, that a shareholder eligible to submit a Rule 14a-8 proposal will have continuously held for certain specified periods "the company's securities entitled to vote on the proposal."

The Nuveen Funds cite Rule 14a-8(b) and declare that "there is no statute under Massachusetts law providing specific voting rights to shareholders of a Massachusetts business trust, such as the Fund." That argument misses the point and in fact concedes that there is no statute under Massachusetts law that is relevant to the question of whether shareholders are entitled to vote on the Subject Proposal (or, for that matter, any Rule 14a-8 shareholder proposal).

Having established that there is no Massachusetts statute that would bar a shareholder from submitting a proposal pursuant to Rule 14a-8, the Nuveen Funds turn to the Nuveen Funds' Declaration of Trust (the "Nuveen Declaration of Trust") which they introduce as "clearly and unambiguously stat[ing] that shareholders of the Fund are permitted to vote only on specific matters." In so doing, they gloss over an important fact—among the "specific matters" therein listed, the Nuveen Declaration of Trust *clearly and unambiguously* states that shareholders have the power to vote "with respect to such additional matters relating to the Trust as may be required by law, the 1940 Act, this Declaration of Trust [or] the By-Laws of the Trust."

Which brings us to Rule 14a-8.

Rule 14a-8 is a federal securities *law* that requires companies that are subject to the federal proxy rules, as the Nuveen Funds are, to include shareholder proposals (along with corresponding supporting statements) in their proxy statements subject to certain procedural and substantive requirements, all of which the Subject Proposal complied with.

To set the record straight, and despite the Nuveen Funds' attempt to muddy the waters, the relevant facts at hand are actually quite simple and undisputed. Specifically:

1. There is no relevant Massachusetts statute that speaks to what a shareholder cannot vote on;

2. The Declaration of Trust broadly states that shareholders have the power to vote "with respect to [(...)] matters relating to the Trust as may be required by law"; and

3. Rule 14a-8 is a federal securities law that permits shareholders who "are entitled to vote" on a proposal to validly submit a proposal to companies for inclusion in their proxy statements.

Taken together, the import of these three facts is clear. Saba submitted a proposal—namely the Subject Proposal—that it and other shareholders are entitled to vote on. The "local" Massachusetts counsel (the "Nuveen Local Counsel") brought on by the Nuveen Funds and Nuveen Outside Counsel cites no Massachusetts statute or case law holding that the voting powers of shareholders of a trust are limited to those enumerated in the trust's declaration of trust and by-laws. Indeed, when it attempts to frame the issue, Nuveen Local Counsel glosses over the absence of relevant limitations on shareholder voting powers, presumably because it could not provide any published case law supporting its desired holding.

In fact, the Nuveen Declaration of Trust, organized under Massachusetts state law, clearly provides that shareholders have the power to vote on any matters relating to the Nuveen Funds that "may be required by law," which includes those matters submitted pursuant to the federally-mandated Rule 14a-8.

That the Nuveen Funds contort the same set of facts in an attempt to prove the opposite does not make their conclusions any less wrong.

It is telling that the Nuveen Funds in the Nuveen No-Action Requests argue that "a non-binding advisory proposal regarding the declassification of the Board is not among those ***enumerated*** matters that shareholders of the Fund are permitted to vote on" (emphasis added). First, that is incorrect—the Subject Proposal plainly falls under the "as may be required by law" catchall. Second, nowhere does the Nuveen Declaration of Trust say that shareholders lack the power to vote on such proposals.

In conclusion, the Subject Proposal was validly submitted pursuant to Rule 14a-8, including Rule 14a-8 (b), and the Nuveen Funds have no basis to exclude it under that rule.

III. THE NUVEEN FUNDS HAVE FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE SUBJECT PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14A-8(I)(1)

The Nuveen Funds falsely claim that they may exclude the Subject Proposal pursuant to Rule 14a-8(i)(1) "because the Proposal is not a proper subject for action by shareholders under state law." The Nuveen Funds attempt to prop up this faulty conclusion by reciting a litany of facts, none of which have any bearing on the matter at hand.

The Nuveen Funds point out that they are business trusts, not corporations. They further note that business trusts are formed by agreements, in this case the Nuveen Declaration of Trust. They then cite to the section of Nuveen Declaration of Trust stating that the Nuveen Funds' trustees have (i) full authority over the assets and affairs of the Nuveen Funds and (ii) full power and authority to execute contracts in connection with the management of the trust—indeed, they note that there is a general presumption in favor of the grant of power and authority to the Trustees.

Saba does not dispute any of those facts. But the conclusion the Nuveen Funds draw from them is puzzling, to say the least. In particular, the Nuveen No-Action Requests again state that the Subject Proposal is not "an enumerated subject for shareholder vote"—which, as we explained above, is incorrect—and that therefore, and because, the "Board has authority over the business and affairs of the Fund, including the decision of whether shareholders should vote on the [Subject] Proposal," the Subject Proposal "is not a proper subject for action by shareholders under the laws of the Commonwealth of Massachusetts."

In short, the Nuveen Funds are claiming that the Subject Proposal—which was submitted pursuant to Rule 14a-8 and in accordance with the Nuveen Declaration of Trust, which clearly states that shareholders "shall have power to vote….[on] matters relating to the Trust as may be required by law"—somehow violates Massachusetts law because the Nuveen Declaration of Trust, formed under Massachusetts law, says something about the trustees being powerful and having authority to manage the Nuveen Funds.

We fail to see how the Nuveen Funds' conclusion follows the facts they recite, and further note the same trust, formed under Massachusetts law, provides that shareholders have the right to vote on matters required by "law" and, important, further states that "proposals duly submitted in accordance with the requirements of Rule 14a-8 under the Exchange Act" must be included in the Nuveen Funds' proxy materials (*see* Section 2.6(a) of the Fund's By-Laws). Again, Nuveen Local Counsel cites no Massachusetts statute or case law that speaks to what a shareholder cannot vote on, let alone a statute or case law holding that the voting powers of shareholders of a trust are limited to those enumerated in the trust's declaration of trust and by-laws.

Further, the Subject Proposal does not in any way abrogate the power and authority of the Trustees. As with all proposals submitted pursuant to Rule 14a-8, the Subject Proposal is precatory in nature and simply requests the Board to consider taking action to provide for the annual election of directors. We note that the Staff, in evaluating precatory shareholder proposals, has stated "In our experience, most proposals that are cast as recommendations or

requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise."[19] The company here has certainly not demonstrated otherwise. Moreover, the express acknowledgement of voting rights on matters "as the Trustees may consider necessary or desirable" is clearly consistent with shareholders concurrently holding such rights and not a limitation on the Trustees' authority.

For these reasons, the Nuveen Funds are required to present the Subject Proposal to shareholders pursuant to both the black letter law and the underpinning policy of Rule 14a-8.

The Nuveen Funds should not be allowed to exclude the Subject Proposal under Rule 14a-8(i)(1).

IV. THE NUVEEN FUNDS HAVE FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE SUBJECT PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14A-8(I)(2)

The Nuveen Funds' arguments for exclusion under Rule 14a-8(i)(2) are substantially the same as the arguments they put forth under Rule 14a-8(i)(1), only with an additional level of credulity required.

Their argument is as follows: First, shareholders cannot submit virtually any Rule 14a-8 proposals under the Nuveen organizational documents (as noted above, we believe the organizational documents are clear that shareholder *can* submit Rule 14a-8 proposals). Second, if shareholders are allowed to vote on the Subject Proposal without the Board "having determined that it is necessary or desirable for shareholders of the [Nuveen] Fund[s] to vote on the [Saba] Proposal," the Board would be prevented from "exercising its fiduciary duties under Massachusetts law."

Again, this is a conclusion in search of a rationale. Shareholders have the right to submit Rule 14a-8 proposals under the Nuveen Funds' organizational documents and under federal law. There is no requirement under Massachusetts law for the Board to vet and approve such proposals—indeed, the Nuveen Funds' organizational documents, and therefore Massachusetts law, require that they be included.

The Staff should not be swayed by the Nuveen Local Counsel addendum, which is nothing more than a recitation of Nuveen Outside Counsel's arguments and which adds nothing of substance to them. Indeed, the Nuveen Local Counsel addendum actually *supports including* the Subject Proposal. The addendum confirms (i) that there is no provision in the relevant Massachusetts statute governing Massachusetts business trusts that speaks to shareholder voting and (ii) that Massachusetts case law, in turn, "provides that Massachusetts business trusts are governed by their declaration of trust and by-laws." As noted above, we agree, and this is

[19] *See* Note to Paragraph (l)(1) https://www.law.cornell.edu/cfr/text/17/240.14a-8#:~:text=In%20our%20experience%2C%20most%20proposals,unless%20the%20company%20demonstrates%20otherwise.

precisely why the Subject Proposal cannot be excluded, and in fact must be included, under Massachusetts law and the Nuveen Declaration of Trust and bylaws.

Sensing this, Nuveen Local Counsel then advances a number of claims that strain credulity. They state that "shareholders of a Massachusetts business trust exercising too much control over the trust could be treated as partners of a partnership, and therefore responsible for the partnership's liabilities." Stunningly, Nuveen Local Counsel is suggesting that the advisory Subject Proposal, which does nothing more than ask the Board, which would hold full decision-making power and can simply reject the request even if the proposal is approved by shareholders, to destagger itself, must be excluded for the *benefit* of Saba and its fellow shareholders, to *protect* them from "exercising too much control" over the Nuveen Funds', such that they would be responsible for partnership liabilities. Nuveen Local Counsel concludes that the purported limitations on shareholder voting rights in the Nuveen organizational documents are consistent with the "concern to maintain protection against shareholder liability." That is nonsensical.

Not finished, Nuveen Local Counsel adds that it has "not found any published case law in Massachusetts holding that shareholders of a Massachusetts business trust may possess voting powers in addition to those enumerated in the trust's declaration and by-laws." Nuveen Local Counsel cleverly limits its statement to "published case law in Massachusetts" for good reason—it does not want to admit that both the SDNY and the Second Circuit, with respect to Nuveen itself, recently issued "published case law", concluding that >10% shareholders were entitled to voting powers "in addition" to those enumerated in the relevant funds' bylaws.[20]

Again, we believe that the Subject Proposal is, in fact, an enumerated item for shareholders to vote on under the Nuveen Declaration of Trust and bylaws, but it need not be.

We will also briefly address Nuveen Local Counsel's "Public Policy in Massachusetts" argument. Nuveen Local Counsel notes to the Staff that they "raise the issue of the potential impact of public policy considerations because the Massachusetts Business Corporations Act, Chapter 156D of the Massachusetts General Laws mandates a staggered board of directors for public corporations organized in Massachusetts, with three classes of directors elected for three year terms, unless the corporation takes the statutorily required steps to opt out."

The problems here are manifold. First, Nuveen Local Counsel is now citing and analogizing to irrelevant Massachusetts Corporate Law statutes; this after the previous ~100 pages of the Nuveen Action Letters spilled copious amounts of ink proclaiming how unique Massachusetts trusts are and how they must be viewed through their own singular lens. Second, even were the comparison appropriate, Massachusetts corporations can take steps to opt out of any requirement for board classification, as Nuveen Local Counsel clearly notes.

Further, shareholders are entitled to submit advisory 14a-8 proposals at Massachusetts corporations registered under the Exchange Act, including to ask directors to take steps to declassify their boards (which boards of directors can do under Massachusetts law, as Nuveen Local Counsel concedes). Nuveen Local Counsel conveniently omits this fact, and, in light of these facts its "public policy" arguments frankly do nothing to further the argument for exclusion. In fact, as with their other arguments, we believe their public policy argument

[20] *See Id. at 7 and 8*

furthers the argument for inclusion. Indeed, the very case that Nuveen Local Counsel cites for its proposition—*Comstock v. Dewey*—is a decision where the court broadly interpreted the rights of shareholders to vote by proxy in favor of shareholders.[21] Recognizing the importance of voting in shareholder democracy under Massachusetts public policy, which happens to be consistent with the purpose of 14a-8, the court notes "[t]he voting of shares by a representative of the club was a practical method of giving the club a voice in the administration of the trust."

Moreover, Massachusetts public policy, as encapsulated by Section §8.06(c) of Chapter 156D of the MBCA, expressly allows for both the board of directors and shareholders of a Massachusetts corporation to decide whether director elections should be held annually. Nuveen Local Counsel conveniently glosses over this opt-out in the statute, likely because it mirrors exactly what the Subject Proposal seeks to accomplish.

In sum, the Nuveen Funds have no basis to exclude the Subject Proposal under Rule 14a-8(i)(2) and should not be allowed to do so.

V. THE NUVEEN FUNDS HAVE FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE SUBJECT PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14A-8(I)(3)

The Nuveen Funds misguidedly argue that the entire Subject Proposal and the respective supporting statements thereto (the "Supporting Statement") may be excluded from their Proxy Materials pursuant to Rule 14a-8(i)(3) under the Exchange Act because a number of statements (collectively, the "Contested Statements") in the Supporting Statement are purportedly "materially false or misleading statements" in violation of the proxy rules, including Rule 14a-9 under the Exchange Act. The Contested Statements are:

- *"The independent proxy advisory firms and many, if not the overwhelming majority of, large shareholders share this view."*
- *"Companies that care about good governance and the investment community's feedback have taken note in recent years . . ."*
- *". . . ~90% of the S&P 500 and ~73% of the S&P 1,500 now [hold] annual elections for all of their board members."*
- *"Nuveen LLC's parent, the Teachers Insurance and Annuity Association of America ("TIAA"), shares our view on the value of annually electing all directors."*

As we explain below, in their arguments concerning the Contested Statements, the Nuveen Funds consistently misrepresent Saba's positions and fail to address the propositions in question. For these reasons, and because the Contested Statements are not materially false, misleading or omissive, the Nuveen Funds are required to include the Subject Proposal and the Supporting Statement in their Proxy Materials in full. Therefore, we respectfully request the

[21] *Comstock v. Dewey*, 323 Mass. 583, 588, 83 N.E.2d 257, 259 (Mass. 1949).

Staff to confirm that it is unable to concur with the Nuveen Funds' interpretation of Rule 14a-8(i)(3) and to deny the relief sought by the Nuveen Funds in the Nuveen No-Action Requests.

Each of the Contested Statements is italicized below, with the Nuveen Funds' flawed arguments and our responses below:

- *"The independent proxy advisory firms and many, if not the overwhelming majority of, large shareholders share this view."*

  The Nuveen Funds' position, as provided in the Nuveen No-Action Requests, is that the above statement (the "First Statement") "misleads shareholders by asserting without basis that many, if not the overwhelming majority of, large Fund shareholders share Saba's view regarding the benefits of a declassified board." In making this claim, the Nuveen Funds misrepresent the First Statement, which includes no express or implied reference to the Nuveen Funds or their shareholders.

  What Saba conveys in this First Statement is the simple, but critical, observation that board declassification is favored among proxy advisory firms and large shareholders of listed companies generally. As the Nuveen Funds are undoubtedly aware, both Institutional Shareholder Services[22] and Glass Lewis,[23] which together represent over 90% of the estimated market share for proxy advisory services,[24] support proposals to repeal classified boards and to elect all directors annually. It is also widely known that the largest shareholders of publicly traded companies support declassification of corporate boards. In their respective proxy voting policies and guidelines, BlackRock,[25] Vanguard,[26] and State Street[27] express their support for board declassification proposals. Taken together, these three investment managers constitute the largest shareholder in an estimated 40% of all listed companies in the United States.[28] Moreover, support for board declassification extends beyond the

[22] ISS, *United States Proxy Voting Guidelines Benchmark Policy Recommendations*, 19 (Dec. 13., 2022) (US-Voting-Guidelines.pdf (issgovernance.com)).
[23] Glass Lewis, *2023 Policy Guidelines*, 39 (Dec. 15, 2022) (US-Voting-Guidelines-2023-GL.pdf (glasslewis.com)).
[24] Paul Rose, Harvard Law School Forum on Corporate Governance, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting*, Section I (May 27, 2021) (Proxy Advisors And Market Power: A Review of Institutional Investor Robovoting (harvard.edu)).
[25] BlackRock, *BlackRock Investment Stewardship Proxy voting guidelines for U.S. securities*, 5 (Jan. 2023) (blk-responsible-investment-guidelines-us.pdf (blackrock.com)).
[26] Vanguard, *Proxy voting policy for U.S. portfolio companies*, 16 (Feb. 1, 2023) (Proxy voting policy for U.S. portfolio companies (vanguard.com)).
[27] State Street Global Advisors, *Proxy Voting and Engagement Guidelines*, 3 (Mar. 2023) (proxy-voting-and-engagement-guidelines-us-canada.pdf (ssga.com)).
[28] Jan Fichtner, Eelke M. Heemskerk and Javiar Garcia-Bernardo, *Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk*, Section 3.2 (Apr. 25, 2017). (Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk† | Business and Politics | Cambridge Core).

"Big Three." Fidelity,[29] Goldman Sachs Asset Management,[30] Legal & General Investment Management[31] and Wellington Management,[32] which (together with BlackRock, Vanguard and State Street) represent seven of the ten largest investment managers by institutional assets under management, have all indicated through their respective proxy voting guidelines their support for the declassification of corporate boards.

As evident from its text, the First Statement does not purport to assert the views of the Nuveen Funds' large shareholders. Rather, it seeks to alert shareholders of policy preferences of key constituents in the broader marketplace. Because the First Statement is easily verified and is neither false, nor misleading, it should not be excluded from the Proxy Materials.

- *"Companies that care about good governance and the investment community's feedback have taken note in recent years . . ."*

The Nuveen Funds wrongfully claim that this statement (the "Second Statement") is "materially misleading because it baselessly asserts that the Board does not care about good governance, thereby impugning its character." Again, the Nuveen Funds attribute a false premise to Saba's statement. As is evident from a plain reading of the text, the Second Statement is simply an acknowledgement of a well-established factual phenomenon, which is that public companies have demonstrated a strong shift toward board declassification. For example, in the S&P 1500, an index which includes companies representing approximately 90% of the market capitalization of U.S. listed companies, the share of constituent companies with classified boards fell from 60% in the 1990s to 35% in 2017.[33]

The growing prevalence of board declassification has been driven by feedback from institutional investors who believe that annual elections of the full board heightens the accountability to shareholders, a hallmark of good governance. Notably, Blackrock has stated "We believe that directors should be re-elected annually and that

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[29] Fidelity Investments, *Proxy Voting Guidelines*, Section II(D), 3 (Feb. 2022) (Full-Proxy-Voting-Guidelines-for-Fidelity-Funds-Advised-by-FMRCo-and-SelectCo.pdf).

[30] Goldman Sachs Asset Management, Policy, *Procedures and Guidelines for Goldman Sachs Asset Management's Global Proxy Voting 2023 Edition*, 9 (Mar. 2023) (GSAM_Global_Proxy_Voting_Policy.pdf).

[31] Legal & General Investment Management, *2022 – North America corporate governance and responsible investment policy*, 11 (Apr. 2022) (North America corporate governance and responsible investment policy (lgim.com)).

[32] Wellington Management Company LLP, *Global Proxy Voting Guidelines 2022*, 3. (Global Proxy Voting Guidelines).

[33] Laura Field & Michelle Lowry, CLS Blue Sky Blog, *Why Do Companies Going Public Choose Controversial Governance Structures, and Why Do Investors Let Them?*, Introduction (Jun., 21, 2022) (Why Do Companies Going Public Choose Controversial Governance Structures, and Why Do Investors Let Them? | CLS Blue Sky Blog (columbia.edu)).

classification of the board dilutes shareholders' right to promptly evaluate a board's performance and limits shareholder selection of directors."[34] Proxy Adviser Glass Lewis' has expressed similar sentiment, noting that "staggered boards are less accountable to shareholders than boards that are elected annually" and that studies have associated staggered boards with share underperformance.[35]

With broad support among the institutional investor community, shareholder proposals for board classification have been extraordinarily successful. In recent years, proposals seeking board declassification have received the highest average level of support of all non-binding shareholder proposals, having received 84.7% of all votes cast in 2022, up from 73.8% of all votes cast in 2019.[36] Remarkably, shareholder proposals for board declassification received a 100% success rate in each of the 2019, 2020 and 2021 proxy seasons.[37]

Instead of interpreting the Second Statement as plainly written (and acknowledging the underlying facts as they are), the Nuveen Funds set up and knock down a strawman argument: that Saba is impugning the character of the Nuveen Funds' Boards. The Second Statement contains no reference to the Nuveen Funds or their Boards. Saba has neither asserted that the Boards are violating their fiduciary duties with respect to its classified board structure, nor that *all* companies that care about good governance adopt a declassified board. Saba is simply calling attention to a verifiable trend in corporate governance which it believes to be relevant for shareholders to consider when evaluating the Subject Proposal and explaining the motivating factors behind this change. For these reasons, we believe that the Nuveen Funds have no legitimate basis for excluding the Second Statement from the Proxy Materials.

- *". . . ~90% of the S&P 500 and ~73% of the S&P 1,500 now [hold] annual elections for all of their board members."*

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[34] Nick Dawson, Harvard Law School Forum on Corporate Governance, *A Touch of Class: Investors Can Take or Leave Classified Boards*, Section "Down for Whatever" (Feb. 14, 2019) (A Touch of Class: Investors Can Take or Leave Classified Boards (harvard.edu)).

[35] *Id.*

[36] Matteo Tonello, Harvard Law School Forum on Corporate Governance, *Voting Trends (2018-2022)*, Section "Resolutions demanding shareholders' right to call special meetings tripled in 2022. A few other proposals passed at smaller companies that have not yet endorsed widely accepted governance practices," (Nov. 5, 2022) (Shareholder Voting Trends (2018-2022) (harvard.edu)).

[37] Matteo Tonello & Paul Hodgson, Harvard Law School Forum on Corporate Governance, *Corporate Board Practices in the Russell 3000, S&P 500, and S&P Mid-Cap 400*, (Nov. 6, 2021) (Corporate Board Practices in the Russell 3000, S&P 500, and S&P Mid-Cap 400 (harvard.edu)).

The Nuveen Funds misrepresent the above statement (the "Third Statement") by claiming that it misleads shareholders by making an inapt comparison to the S&P 500 and S&P 1500. The Nuveen Funds' flawed reasoning is that these indices do not include investment companies and do not represent the Nuveen Funds' applicable benchmarks. According to the Nuveen Funds, it follows that the governance practices of these indices' constituent companies "have little, if any, bearing on those of the Fund, which differs from S&P 500 Index and S&P 1500 Index constituent companies in many respects, including that the Fund is subject to the regulatory regime of the 1940 Act."

Once more, the Nuveen Funds are directing their objections at arguments that have not been made by Saba. In the Supporting Statement, Saba neither expressly says nor implies that the S&P 500 and the S&P 1500 are the Nuveen Funds' relevant performance benchmarks or that the Nuveen Funds' would be eligible for inclusion in them. With these non-responsive claims, it seems as if the Nuveen Funds are distracting from the fundamental point: that declassified boards have become the norm in S&P 500 and S&P 1500 companies. These S&P indices, which are well-known to institutional and retail investors alike, provide fulsome samples for evaluating corporate governance practices among listed companies across various industries. We therefore believe that the prevalence of declassified boards at S&P 500 and S&P 1500 constituent companies is relevant for the Nuveen Funds' and their shareholders to consider when evaluating the Subject Proposal.

The Nuveen Funds attempt to support their claims by citing to a survey of closed-end funds showing that a majority of respondents have classified boards. In our view, this simply demonstrates that the Nuveen Funds' entire peer group is lagging with respect to corporate governance best practices. With the Subject Proposal, we believe that the Nuveen Funds have an opportunity to positively distinguish themselves from their peers by declassifying their Boards.

While the Nuveen Funds may not agree with the corporate governance practices of most S&P 500 and S&P 1500 companies, this merely represents a difference of opinion with the Supporting Statement. For this reason and because nothing in the Third Statement is materially false or misleading, it should not be excluded from the Proxy Materials.

- *"Nuveen LLC's parent, the Teachers Insurance and Annuity Association of America ("TIAA"), shares our view on the value of annually electing all directors."*

The Nuveen Funds inaccurately claim that the above statement (the "Fourth Statement") is a false assertion that TIAA, Nuveen LLC's parent, shares Saba's view

> on the value of annually electing fund directors. In its Policy Statement on Responsible Investing, TIAA states that "a publicly traded operating company's charter or bylaws should dictate that directors by elected annually by a majority of votes cast." This general policy statement is consistent with Saba's statement that TIAA "shares our view on the value of annually electing all directors."
>
> In its Supporting Statement, Saba immediately proceeds to expressly note that TIAA's statement above was made with respect to publicly traded operating companies, but that it sees no reason why this view should not also apply to the Nuveen Funds.
>
> As demonstrated in its text, the Fourth Statement is neither materially false nor misleading, and therefore should not be excluded from the Proxy Materials.

In sum, the Nuveen Funds fail to demonstrate that the Subject Proposal, the Supporting Statement, or any of the Contested Statements are excludable under Rule 14a-8(i)(3).[38]

* * *

For the reasons outlined above, Saba respectfully submits that the Nuveen Funds have failed to meet the burden of demonstrating that they may exclude the Subject Proposal from the Proxy Materials.

Sincerely,

Ele Klein

cc: Kevin T. Hardy, Skadden, Arps, Slate, Meagher & Flom LLP
Michael D'Angelo, Saba Capital Management, L.P.
Abraham Schwartz, Schulte Roth & Zabel LLP

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[38] The Nuveen Funds claim that total exclusion of the Subject Proposal and Supporting Statement is warranted by analogizing to precedent instances of exclusion where proposals and supporting statements were materially and demonstrably false, such as in *Ferro Corp.* (Mar. 17, 2015), where the proponent, in requesting the company change its state of incorporation from Ohio to Delaware, wholly misstated the Ohio statutes that it claimed were reason to support a reincorporation.

Unlike the precedents that the Nuveen Funds point to, where the proponents made materially and demonstrably false misstatements, the Contested Statements are true and based in fact, as explained above. The stretched comparisons made by the Nuveen Funds are therefore inapt and irrelevant. That said, should the Staff decide additional context or clarity would be conducive here, Saba would be willing to revise the Supporting Statement in a manner acceptable to the Staff.