

September 29, 2026

Kaitlin C. Bottock
Assistant Director
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: No-Action Request regarding Rules 14a-3(a), 14a-4(d)(2), 14a-4(d)(3), 14a-4(f), 14a-6(o), 14a-10, and 14a-12(a) in Connection with the Proposed Directed Shareholder Voting Program for Funds

Dear Ms. Bottock:

In connection with the proposed directed shareholder voting program (the “Directed Voting Program”) described below, MFDF¹ seeks confirmation that the staff of the Division of Investment Management (the “Staff”) will not recommend any enforcement action by the U.S. Securities and Exchange Commission (the “Commission”) against an investment company registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”), or that elects to be regulated as a business development company under the Investment Company Act (a “BDC”), or, as applicable, a separate series thereof (as the context requires, each, a “Fund” and collectively, the “Funds”) with respect to the Directed Voting Program as it relates to compliance with Rules 14a-3(a), 14a-4(d)(2), 14a-4(d)(3), 14a-4(f), 14a-6(o), 14a-10, and 14a-12(a) of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

“Retail Voting Programs” were the subject of two recent no-action letters issued by the staff of the Division of Corporation Finance (“CorpFin”) to Exxon Mobil Corporation and Davis Polk & Wardwell LLP (the “Exxon Letter”)² and Tesla, Inc. and Sullivan & Cromwell LLP (the “Tesla Letter”).³ In the Exxon Letter,

¹ MFDF is an independent association for independent directors of mutual funds, exchange-traded funds (ETFs), closed-end funds, and other registered investment companies. MFDF helps independent directors navigate an evolving regulatory environment and steward shareholders’ investments. MFDF provides tailored educational resources and facilitates peer-to-peer networking, with offerings that include webinars, white papers, and interactive conferences. As an independent association, MFDF’s membership includes a wide range of fund boards and represents a diverse community of directors. MFDF’s current membership includes over 1280 independent directors, representing 141 fund groups.

² Exxon Mobil Corporation, SEC Staff No-Action Letter (pub. avail. Sept. 15, 2025).

³ See Tesla, Inc., SEC Staff No-Action Letter (pub. avail. Sept. 29, 2026). We also note that on September 28, 2026, CorpFin issued a no-action position related to Rules 14a-3(a), 14a-4(f), and 14a-12(a) (in addition to

CorpFin issued a no-action position related to Rules 14a-4(d)(2) and 14a-4(d)(3) under the Exchange Act. The no-action position in the Tesla Letter related to Rules 14a-3(a), 14a-4(f), 14a-6(o), 14a-10, and 14a-12(a) under the Exchange Act (in addition to Rules 14a-4(d)(2) and 14a-4(d)(3) under the Exchange Act). MFDF is writing with respect to an issue not addressed by the Exxon Letter and the Tesla Letter: the application of a shareholder voting program to Funds and their shareholders.

I. Background

The existing proxy voting and solicitation process is both expensive and burdensome for Funds and their shareholders. These burdens are driven by a number of factors, including challenges in satisfying applicable quorum requirements and receiving necessary shareholder approvals.⁴ Funds often engage in lengthy proxy solicitation processes at great expense to obtain the necessary shareholder approval to enact important Fund changes, such as appointing new directors to the Fund's board of directors (the "Board") or amending a Fund's fundamental investment policies.⁵

The resulting costs of Fund proxy campaigns can be extraordinarily large, often leaving Fund investors to pay the bill. Recent conservative estimates place the total costs of Fund proxy campaigns since 2020 at between \$675 million to \$1.14 billion.⁶ These costs may be borne by the same shareholders who are saving for college, retirement, and other important life milestones.

Current voting patterns show that Fund shareholders regularly approve uncontested proxy proposals recommended by a Board at a rate of more than 80%.⁷ This is not surprising given that a Board, comprised primarily of directors who are not "interested persons" as defined under the Investment Company Act ("Independent Directors"),⁸ is fundamental to the protection of Fund shareholders.⁹ These voting patterns

Rules 14a-4(d)(2) and 14a-4(d)(3)) under the Exchange Act for a "Voting Instruction Program" in a letter to The Goldman Sachs Group, Inc. and Cravath, Swaine & Moore LLP. See The Goldman Sachs Group, Inc., SEC Staff No-Action Letter (pub. avail. Sept. 28, 2026).

⁴ See Paul Cellupica, et al., *Confronting the Growing Burden of Fund Proxy Campaigns: Analysis of Recent Fund Campaigns and Policy Solutions*, INV. CO. INST. 6-9 (Mar. 2026) [hereinafter ICI Report], <https://www.ici.org/system/files/2026-03/26-confronting-growing-burden-fund-proxy-campaigns.pdf>; SEC Inv. Advisory Comm., *Recommendations of the SEC Investor Advisory Committee Regarding Fund Proxy Voting* 1-3 (June 4, 2026), <https://www.sec.gov/files/approved-iac-fund-proxy-voting-recommendations-060426.pdf>.

⁵ See, e.g., Sections 13(a) and 16(a) of the Investment Company Act.

⁶ See ICI Report, *supra* note 4, at 1.

⁷ See Letter from Indep. Dirs. Council to the Honorable Paul S. Atkins, Chairman, U.S. Sec. and Exch. Comm'n 4 n.18 (June 30, 2026) (citing ICI Report, *supra* note 4, at 30), <https://www.idc.org/system/files/2026-07/26-cl-idc-fund-proxy-voting-modernization.pdf>. This assumes that applicable quorum thresholds have been met.

⁸ Section 2(a)(19) of the Investment Company Act.

⁹ See, e.g., *Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before a Subcomm. of the H. Comm. on Interstate and Foreign Com.*, 76th Cong. 109 (1940) (statement of David Schenker, Securities and Exchange Commission) (explaining that the role of Independent Directors is to "furnish an independent check upon

demonstrate, in our view, that shareholders place substantial trust in the Board and the Independent Directors.

Under the Investment Company Act and applicable Commission rules, Boards and particularly their Independent Directors regularly engage in a variety of oversight activities, including approving advisory and other service provider agreements and the corresponding fees, overseeing Fund performance, and nominating and/or approving Independent Director candidates.¹⁰ Independent Directors also carefully evaluate potential conflicts of interest, oversee compliance, and evaluate the Fund's Chief Compliance Officer, all to protect the interests of Fund shareholders.¹¹ MFDF believes that the broad oversight activities delegated to the Independent Directors under the Investment Company Act and the rules thereunder further evidence the special role played by Independent Directors in Fund governance.¹² MFDF posits, therefore, that permitting Funds to use a Directed Voting Program would both leverage the role of Independent Directors and alleviate the costs and delays of drawn-out proxy solicitations.

Further, MFDF members report that, for a given proxy proposal, a Board and its Independent Directors evaluate the specific proposal, including the anticipated costs, before a proxy statement is ever provided

the management" of a Fund); Interpretive Matters Concerning Independent Directors of Investment Companies, Investment Company Act Release No. 24,083, 64 Fed. Reg. 59,877, 59,877 (Oct. 14, 1999) ("Independent directors of registered investment companies . . . play a critical role in overseeing the funds' operations and protecting the interests of their shareholders.").

¹⁰ Independent Directors are regularly advised by counsel independent of the Fund's sponsor, including in connection with these oversight activities. *See Overview of Fund Governance Practices 1994-2024*, INDEP. DIRS. COUNCIL 2 (2025) ("The total percentage of complexes reporting that independent directors are represented either by dedicated counsel or by counsel separate from the adviser's has increased over the past decade, from 64 percent in 1998 to 95 percent at year-end 2024."), www.idc.org/system/files/2025-10/25-idc-overview-of-fund-governance-practices.pdf.

Although there is no requirement for Independent Directors to engage legal counsel, any such counsel that they do engage must be independent from the Fund's sponsor in order for the Board to satisfy the "fund governance standards" under Rule 0-1(a)(7) necessary for the corresponding Fund to rely on certain exemptive rules under the Investment Company Act. *See, e.g.*, Rules 12b-1(c), 17d-1(d)(7)(v), and 18f-3(e) under the Investment Company Act. Rule 0-1(a)(7)(iii), which addresses legal counsel to the Independent Directors, remains in effect following the 2006 vacatur by a federal court and the Commission's recent technical amendments to Rule 0-1(a)(7). *See Investment Company Governance Technical Amendments*, Investment Company Act Release No. 36,282, 91 Fed. Reg. 50,707, 50,707 (adopted Aug. 4, 2026) ("These technical amendments reflect the court's vacatur in the CFR by removing the 75% requirement and the chairman requirement, and reverting to the requirement of a simple majority of directors of the regulated fund be disinterested directors. The other provisions of rule 0-1(a)(7), which were not subject to the court's vacatur, remain unchanged.").

¹¹ *See Investment Company Governance*, Investment Company Act Release No. 26,520, 69 Fed. Reg. 46,377, 46,380 (adopted July 27, 2004) ("Fund independent directors play a central role in policing the conflicts of interest that advisers inevitably have with the funds they advise.").

¹² *See, e.g.*, *Burks v. Lasker*, 441 U.S. 471, 484-85 (1979) (quoting *Tannenbaum v. Zeller*, 552 F.2d 402, 406 (2d Cir. 1977)) (explaining that Independent Directors function as "independent watchdogs" for the interests of a Fund's shareholders).

to shareholders. The Independent Directors conduct substantial diligence and carefully assess potential conflicts of interest. Negotiation with the Board may lead to substantial modifications to the proposals before they reach shareholders. Given the important role of Boards and their Independent Directors for Fund proxy proposals, MFDF believes that MFDF and the Independent Director community are well placed to request this relief.

Accordingly, MFDF seeks the ability for Fund shareholders to participate in a Directed Voting Program. Under such a program, a Fund shareholder could give a revocable standing voting instruction whereby, on an ongoing basis, such shareholder's votes would be cast in favor of recommendations approved by the Fund's Board, including all of the Fund's Independent Directors. The Directed Voting Program would give shareholders a Board recommended policy choice while maintaining their important ability to participate in the proxy process.

In order to (1) promote voting and reduce the burden on shareholders by providing shareholders who wish to follow Board recommendations a convenient way to have their policy choice reflected in the vote on matters where there is low risk of self-dealing and management entrenchment, and (2) reduce costs associated with Fund shareholder meetings at which such matters are being considered (particularly those arising from the need for multiple solicitations to reach quorum), MFDF seeks no-action relief so that a Fund could implement a voluntary program, at no cost to investors, that would allow the Fund's shareholders to authorize the voting of their shares through a contractual arrangement between each participating shareholder and the Fund. The program would give those shareholders the ability to authorize a revocable standing voting instruction that requires the Fund to vote their shares based on the recommendation approved by the Fund's Board, including all of the Fund's Independent Directors, except in the case of contested director elections, changes to the Fund's investment advisory agreement with its primary investment adviser, and, at the option of each shareholder, certain other specified matters.¹³

II. Design of the Directed Voting Program

The Directed Voting Program would be (i) approved by the Fund's Board, including unanimously by the Fund's Independent Directors, prior to its implementation, and (ii) reexamined by the Fund's Board at least every three years and reapproved by the Fund's Board, including unanimously by the Fund's Independent Directors, at such time if they determine that the Directed Voting Program remains in the best interests of Fund shareholders. The Directed Voting Program would be available to all "retail" shareholders at no cost to that shareholder, and each investor would be offered the same opportunity to enroll in the Directed Voting Program. For purposes of this letter, a "retail" shareholder means any person¹⁴ that has, or is entitled to have, voting authority with respect to the shares of a Fund by virtue of owning beneficially and/or of record such shares, regardless of whether the person owns their shares via

¹³ At this time, MFDF is only seeking no-action relief with respect to voting by shareholders at duly called annual or special shareholder meetings and not with respect to any actions that are taken by written consent.

¹⁴ "Person" is as defined under Section 2(a)(28) of the Investment Company Act.

a bank, broker, or other financial intermediary.¹⁵ A shareholder's participation in the Directed Voting Program would be completely voluntary.

A. *Opt-In Process*

A Fund would communicate directly with registered owners and indirectly with non-objecting beneficial owners and objecting beneficial owners via their banks, brokers, or other financial intermediaries. The Directed Voting Program would not apply to: (i) contested director elections;¹⁶ and (ii) changes to the Fund's investment advisory agreement with its primary investment adviser that require a shareholder vote (today this includes, *e.g.*, material changes to the advisory agreement, approval of an advisory agreement with a new primary investment adviser, and approval of an increase in advisory fees) (collectively, the "Exclusions").¹⁷ Shareholders that choose to participate in the Directed Voting Program would have two choices for the kinds of matters to which their standing voting instruction would apply: (1) all matters, except the Exclusions; or (2) all matters, except (i) the Exclusions; (ii) Fund mergers¹⁸ that, under any of the Investment Company Act and its rules, applicable state law, the Fund's organizational documents, or applicable exchange listing standards, require approval of a Fund's shareholders; and (iii) adoption of, or changes to, a Fund's plan adopted pursuant to Rule 12b-1 under the Investment Company Act that result in an increase in 12b-1 fees for a Fund (Items (2)(ii) and (iii), together, the "Opt-Out Items"). Shareholders that opt in to the Directed Voting Program would not have the ability to customize these options further. For example, shareholders choosing option (1) would not be permitted to prevent their standing voting instruction from applying to the adoption of, or changes to, a Fund's plan adopted pursuant to Rule 12b-1 under the Investment Company Act that result in an increase in 12b-1 fees for a Fund. MFDF believes that these two choices provide shareholders with sufficient ability to tailor their voting decisions. Standing voting instructions under the Directed Voting Program would only apply to matters recommended by the Fund's Board and unanimously approved by the Fund's Independent Directors.

B. *Opt-Out Process, Reminders, and Vote Overrides*

Participating shareholders could opt out of the Directed Voting Program to cancel their standing voting instruction at any time and at no cost. Because votes for which a Fund has received a standing voting instruction would be cast on the same day that the Fund files a definitive proxy statement or definitive registration statement under the Securities Act of 1933, as amended, on Form N-14 ("N-14 Registration Statement") for an upcoming meeting, cancellation of the standing voting instruction would only apply to

¹⁵ MFDF is not seeking no-action relief in this letter under the Investment Advisers Act of 1940, as amended.

¹⁶ A "contested director election" means an election of directors in which the number of nominees for election to the Fund's Board in that election exceeds the number of directors to be elected.

¹⁷ For the avoidance of doubt, no item included in either the Exclusions or "Opt-Out Items" (as defined below) is intended to trigger a requirement for a shareholder vote where one is not otherwise required under, for example, the Investment Company Act and its rules, any applicable Staff no-action letter or Staff guidance, applicable state law, the Fund's organizational documents, or applicable exchange listing standards.

¹⁸ For purposes of this letter, a "merger" means the merger, consolidation, or purchase or sale of substantially all of the assets between a Fund and another company.

future meetings. The term “future meeting” for this purpose means meetings for which the Fund has not yet filed a definitive proxy statement or N-14 Registration Statement (either, as context requires, the “relevant proxy statement”).

Participating shareholders would receive annual reminders of their enrollment in the program and their standing voting instruction. This reminder would be received by such shareholders during the time period when the Fund is not soliciting votes for a shareholder meeting. The reminder would include explicit language informing the participating shareholder of their ability to opt out and thereby cancel their standing voting instruction with respect to future meetings. The reminder would also note that, to the extent permitted by applicable state law, the Fund’s organizational documents, and any applicable exchange listing standards, shareholders who do not opt out prior to the filing of a relevant proxy statement with the Commission in relation to a particular meeting will be deemed to be present at such meeting for purposes of establishing a quorum.¹⁹

Participating shareholders who selected to have their shares voted on “all matters, except the Exclusions” would receive an additional reminder prior to any meeting involving one or more Opt-Out Items. This would enable that group of participating shareholders to have another opportunity to decide to opt out of the program or override the standing voting instruction prior to meetings involving (i) Fund mergers that, under any of the Investment Company Act and its rules, applicable state law, the Fund’s organizational documents, or applicable exchange listing standards, require approval of a Fund’s shareholders; and/or (ii) the adoption of, or changes to, a Fund’s plan adopted pursuant to Rule 12b-1 under the Investment Company Act that result in an increase in 12b-1 fees for a Fund.

While participating shareholders could only opt out of the standing voting instruction for future meetings, they could always override the votes to be cast by the Fund through the standing voting instruction by voting using the proxy materials they received for that meeting. Vote overrides would apply to upcoming meetings for which a Fund has filed its relevant proxy statement. In every reminder communication and relevant proxy statement, participating shareholders would be informed that at any time, even after the Fund has filed its relevant proxy statement, they could override the standing voting instruction and cast their own votes with respect to any proposal at an upcoming meeting using the proxy materials they receive (identical to any other shareholder voting at that meeting).

C. *Voting Mechanics*

The actual voting of shares pursuant to the standing voting instruction and any other administrative actions related thereto would be facilitated by a Fund’s proxy solicitation agent, including

¹⁹ Whether participating shareholders may be deemed to be present at a shareholder meeting for purposes of establishing a quorum will ultimately depend upon a number of factors, such as the specific language of a Fund’s organizational documents, the application of the laws of the state where the Fund is domiciled, and any applicable exchange listing standards. For example, a Fund’s bylaws could include language (or similar language thereto) about persons “present in person or represented by proxy” being counted for quorum purposes. It is typically a state-law question whether a participating shareholder would be “represented by proxy” for purposes of such a quorum requirement.

communications between and among the Fund, banks, brokers, shareholders, and any back-end portal through which shareholders may choose to opt in or out of the Directed Voting Program. Information contained within the proxy solicitation agent's system stays within the agent's system and would never be disclosed to the Fund as part of the Directed Voting Program.

Shareholders participating in the Directed Voting Program would have their voting positions submitted after the Fund files its relevant proxy statement with the Commission, but prior to the distribution of its relevant proxy statement to shareholders. As noted above, a participating shareholder could always override the vote authorized by the standing voting instruction by voting using the proxy materials they received for that meeting. Such overrides would be reflected in any mirror voting for the given campaign, as standard practice is for final mirror votes to be tabulated after all other eligible votes have been cast and voting has concluded. As a result, enrollment in the program is a safeguard for those shareholders who want to ensure that their vote is actually cast in alignment with the Board's recommendation(s) in an efficient manner, but it does not interfere with their rights and ability to vote at shareholder meetings. The standing voting instruction is designed to facilitate the shareholder's choice to establish a streamlined and automated process, and the same shareholder could easily override that process by instead voting at an upcoming meeting using the proxy materials they receive (identical to any other shareholder voting at that meeting). In this respect, the Directed Voting Program does not limit or restrict shareholders from voting at any time or in any way using the proxy materials they received for the meeting.

In addition to program-related communications and reminders provided to participating shareholders, a Fund would prominently disclose the Directed Voting Program in its relevant proxy statement for each upcoming shareholder meeting, including the ability of participating shareholders to opt out of the program for future meetings or to override their standing voting instruction with respect to the specified proposals at an upcoming meeting at any time prior to the vote at that meeting. As noted above, banks, brokers, and other financial intermediaries would communicate with shareholders about the Directed Voting Program via their applicable agents for shareholder communication services.

III. Public Disclosure of the Directed Voting Program

At the initiation of the Directed Voting Program, a Fund would file with the Commission the relevant materials describing the Directed Voting Program under cover of Schedule 14A pursuant to Rule 14a-12 and would subsequently file any material changes to these materials in the same manner.²⁰

Furthermore, a Fund would make full disclosure on its website and prominently in its relevant proxy statement of the Directed Voting Program. And shareholders would, in connection with each shareholder

²⁰ MFDF is not seeking no-action relief in this letter regarding whether the Directed Voting Program involves the "solicitation" of proxies, as defined in Rule 14a-1(l) of Regulation 14A promulgated under the Exchange Act. To the extent communications related to the Directed Voting Program are considered "solicitations," the provision of such communications to beneficial owners of a Fund's shares by banks, brokers, and other nominees would be subject to Rule 14a-2(a)(1).

meeting, receive all proxy materials and would have the ability to opt out and cancel or override their standing voting instruction at any time, as described in detail above.

IV. State Law

Funds are subject to requirements imposed by state law and their organizational documents (and for some Funds, applicable exchange listing standards) with respect to shareholder voting requirements. A Fund would comply with applicable state law, its organizational documents, and any applicable exchange listing standards in connection with a shareholder granting a standing voting instruction pursuant to the Directed Voting Program.²¹

V. The Exchange Act Rules

Under Rule 14a-4(d)(2), “[n]o proxy shall confer authority [...] [t]o vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders.” Under a similar provision, Rule 14a-4(d)(3) provides that “[n]o proxy shall confer authority [...] [t]o vote with respect to more than one meeting (and any adjournment thereof)[...].”²² MFDF respectfully submits that the proposed Directed Voting Program should not be viewed as conflicting with Rules 14a-4(d)(2) and 14a-4(d)(3), given the reminders and easy opt-out and override abilities built into the program and the choices made by shareholders.

As noted above, shareholders that have opted in to the program would receive, during the time period when the Fund is not soliciting votes for a shareholder meeting, an annual reminder of their opt-in status and selection. This reminder would remind them: (1) of their ability to opt out and cancel their standing voting instruction with respect to subsequent meetings; and (2) that, to the extent permitted by applicable state law, the Fund’s organizational documents, and any applicable exchange listing standards, shareholders that do not opt out prior to the filing of a relevant proxy statement with the Commission in relation to a particular meeting will be deemed to be present at such meeting for purposes of establishing a quorum. Participating shareholders would have the easy ability, at no cost to them, and choice to leave in place the standing voting instruction or to opt out and cancel the standing voting instruction. More importantly in this context, even participating shareholders that choose not to opt out would exercise a choice by leaving the standing voting instruction in place. Furthermore, at the time of receiving their proxy materials, participating shareholders again have the easy ability, at no cost to them, and choice to leave the standing voting instruction in place or to opt out and cancel or override the standing voting instruction.

²¹ For example, state corporate law for Delaware, a common Fund corporate domicile, permits the giving of a standing voting instruction that does not expire so long as the instruction provides for such extended duration. *See* 8 *Del. Code* § 212(b) (2025) (providing that proxies are valid for up to three years, “unless the proxy provides for a longer period”).

²² Rule 14a-4 of Regulation 14A promulgated under the Exchange Act.

Accordingly, the choice made (in response to the annual reminder or the proxy materials) is in MFDF's view a reaffirmation or renewal of the standing voting instruction, which enables compliance with Rules 14a-4(d)(2) and 14a-4(d)(3).

MFDF respectfully submits that this position is consistent with the intent behind Rules 14a-4(d)(2) and 14a-4(d)(3). The Commission's commentary in connection with the adoption of Rule 14a-4(d)(2), for instance, notes that the purpose of Rule 14a-4(d)(2) was to avoid the premature solicitation of proxies.²³ The commentary in connection with the adoption of Rule 14a-4(d)(3) noted that the intent was to codify existing Commission interpretations of the proxy rules regarding the authority to vote proxies at more than one meeting.²⁴ MFDF believes that the Directed Voting Program is not inconsistent with this intent for the following reasons. First, subsequently adopted Rule 14a-12 explicitly permits the solicitation of proxies before a proxy statement is furnished to security holders, so long as the relevant materials are filed with the Commission pursuant to Rule 14a-12 and the proxy statement is distributed once available. Second, the Directed Voting Program does not "lock in" the proxy or the vote for a future meeting. Rather, the Directed Voting Program provides the ability for participating shareholders to opt out of the program at any time for future meetings and to override the standing voting instruction by voting at the upcoming meeting using the proxy materials they received for that meeting.

Although MFDF believes that the Directed Voting Program complies with Rules 14a-4(d)(2) and 14a-4(d)(3) (and the proxy rules generally), MFDF is nonetheless seeking confirmation that the Staff will not recommend any enforcement action by the Commission under Rules 14a-4(d)(2) and 14a-4(d)(3) with respect to a Fund's implementation of the Directed Voting Program.

In addition, the "Issuer Voluntary Retail Voting Programs" described in the Tesla Letter deal with additional provisions of the Exchange Act, specifically Rules 14a-3(a), 14a-4(f), 14a-6(o), 14a-10, and 14a-12(a). MFDF believes that the Directed Voting Program is similar in all relevant respects to the Issuer Voluntary Retail Voting Programs described in the Tesla Letter. Accordingly, for the reasons discussed herein and in the Tesla Letter, MFDF believes that the Directed Voting Program would operate in a manner consistent with these additional Rules under the Exchange Act. MFDF is nonetheless seeking confirmation that the Staff will not recommend any enforcement action by the Commission under Rules 14a-3(a), 14a-4(f), 14a-6(o), 14a-10, and 14a-12(a) (in addition to Rules 14a-4(d)(2) and 14a-4(d)(3)) under the Exchange Act with respect to a Fund's implementation of the Directed Voting Program.

²³ See Solicitation of Proxies, Exchange Act Release No. 4185, 13 Fed. Reg. 6,678, 6,679 (adopted Nov. 5, 1948) ("In order to prevent the premature solicitation of proxies at a time when material information has not yet become available, the amended rule provides that no proxy shall confer authority to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) which is to be held after the date on which the solicitation is made.").

²⁴ See Proxy Rules—Comprehensive Review, Securities Act Release No. 6,676, Exchange Act Release No. 23,789, Investment Company Act Release No. 15,403, 51 Fed. Reg. 42,048, 42,049 (adopted Nov. 10, 1986) ("As proposed, the Commission has added paragraph (d)(3) to Rule 14a-4 to codify current interpretations that a proxy may not confer authority to vote at more than one meeting or consent solicitation" (footnote omitted)).

VI. Investment Company Act Implications

The Investment Company Act and its rules subject Funds to shareholder voting requirements beyond those imposed by state law and Fund organizational documents (and for some Funds, applicable exchange listing standards).²⁵ Although MFDF is not requesting relief for the Directed Voting Program under the Investment Company Act or any of its rules, MFDF respectfully submits that the Directed Voting Program is not inconsistent with the requirements of the Investment Company Act and that it appropriately addresses the concerns underlying such Act.

MFDF notes that a Fund utilizing a Directed Voting Program would still require (i) a shareholder vote on those matters that require shareholder approval under the Investment Company Act and (ii) that such vote satisfy the Investment Company Act Majority vote standard set forth in Section 2(a)(42) of the Investment Company Act whenever such provision is applicable. The proposed Directed Voting Program would address *how* a retail shareholder may choose to cast its votes at Fund meetings by providing shareholders who wish to follow Board recommendations a convenient way to have their policy choice reflected in the vote. MFDF also notes that Section 2(a)(42) and the other relevant provisions of the Investment Company Act do not, by their terms, prevent a Fund shareholder from opting to cast its votes in this manner. Instead, any limitations on this particular method of voting are imposed by the Exchange Act rules discussed above, through Rule 20a-1 under the Investment Company Act, and by applicable state law, any relevant bylaw or charter provisions, and applicable exchange listing requirements.²⁶ In particular, MFDF notes that the determination of whether an investor is present for purposes of establishing a quorum is made under state law, even for purposes of matters that require an Investment Company Act Majority.²⁷

That said, MFDF acknowledges that certain concerns underlying the Investment Company Act are potentially implicated by the Directed Voting Program. In particular, concerns about informed consent, self-dealing, and management entrenchment undergird the Investment Company Act.²⁸ MFDF believes,

²⁵ Under the Investment Company Act, a “vote of a majority of the outstanding voting securities” of a Fund, as defined under Section 2(a)(42) of the Investment Company Act (an “Investment Company Act Majority”), is required to approve certain Investment Company Act-specified items. *See, e.g.*, Sections 13(a), 15(a) and 15(b) of the Investment Company Act and Rule 12b-1(b)(1) and Rule 17a-8 thereunder. Nothing in this letter is meant to alter the analysis of whether an Investment Company Act Majority is required to approve a given proposal.

²⁶ Rule 20a-1 under the Investment Company Act (“No person shall solicit or permit the use of his or her name to solicit any proxy, consent, or authorization with respect to any security issued by a registered fund, except upon compliance with Regulation 14A (§ 240.14a-1 of this chapter), Schedule 14A (§ 240.14a-101 of this chapter), and all other rules and regulations adopted pursuant to Section 14(a) of the [Exchange Act] that would be applicable to such solicitation if it were made in respect of a security registered pursuant to Section 12 of the [Exchange Act].”).

²⁷ *See* Item 21 of Schedule 14A under the Exchange Act (requiring filers to “[d]isclose the method by which votes will be counted, including the treatment and effect under applicable state law and registrant charter and bylaw provisions of abstentions, broker non-votes, and, to the extent applicable, a security holder’s withholding of authority to vote for a nominee in an election of directors”).

²⁸ Section 1(b) of the Investment Company Act.

however, that the Directed Voting Program, as modified from the Exxon Letter in the manner described herein, appropriately addresses these concerns underlying the Investment Company Act.

Regarding informed consent, MFDF notes that shareholders will continue to receive the same required information relating to shareholder meetings in the same manner as they do currently. Moreover, as discussed more fully above, shareholders will:

- (a) receive full disclosure of the Directed Voting Program prior to consenting to opt into it;
- (b) annually receive reminders of (i) their enrollment in the program and of their standing voting instruction, including of their ability to opt out of the program or override their vote, and (ii) that, to the extent permitted by applicable state law, the Fund's organizational documents, and any applicable exchange listing standards, shareholders that do not opt out prior to the filing of a relevant proxy statement with the Commission in relation to a particular meeting will be deemed to be present at such meeting for purposes of establishing a quorum;
- (c) if the shareholder selected to have his or her shares voted on "all matters, except the Exclusions," receive an additional such reminder prior to any meeting involving one or more Opt-Out Items; and
- (d) receive, in accordance with the Commission's proxy rules, a proxy statement for each meeting that prominently discloses the Directed Voting Program.

All of these factors help to ensure that the consent of a shareholder participating in the Directed Voting Program is fully informed.

One could argue that implementing a Directed Voting Program implicates concerns about self-dealing and management entrenchment by making it easier for investors that tend to agree with the Fund's Board and its adviser to vote as compared to others. However, all shares will have the same voting rights as they currently do, including the ability to vote for or against management proposals.

Moreover, MFDF notes that:

- (a) any shareholder participating in the Directed Voting Program will have decided to generally follow Board recommendations on an ongoing basis following full disclosure of the program, as discussed above;
- (b) a shareholder participating in the Directed Voting Program will have the right to opt out of the program for future meetings, if the shareholder decides that it no longer wishes to follow Board recommendations, and to override a vote for a current meeting, if the shareholder decides not to follow any particular Board recommendation (and will be reminded of such rights at least annually and at the time of the vote as described above);

- (c) the Directed Voting Program would be (i) approved by the Fund's Board, including unanimously by the Fund's Independent Directors, prior to its implementation, and (ii) reexamined by the Fund's Board at least every three years and reapproved by the Fund's Board, including unanimously by the Fund's Independent Directors, at such time if they determine that the Directed Voting Program remains in the best interests of Fund shareholders;
- (d) under the Directed Voting Program, shareholder votes would be cast in favor of the recommendation approved by the Fund's Board and unanimously approved by the Fund's Independent Directors; and
- (e) the Directed Voting Program would not apply to contested director elections and changes to the Fund's primary investment advisory agreement.

In addition, shareholders would have the right to further exclude all of the Opt-Out Items. These factors, including especially the unanimous approval of the Independent Directors and that the Directed Voting Program does not apply to contested director elections, changes to the Fund's investment advisory agreement with its primary investment adviser, and, at the option of the individual shareholder, certain other actions (see the Opt-Out Items), significantly reduce the possibility of self-dealing and management entrenchment.²⁹

²⁹ Of the matters for which shareholder votes are required under the Investment Company Act, MFDF believes that the matters addressed in the Exclusions, and to a lesser degree the Opt-Out Items, could be viewed as presenting the greatest potential to raise the concerns discussed in this letter regarding self-dealing and management entrenchment. MFDF believes that the other matters for which the Investment Company Act requires shareholder approval could be viewed as having less potential to raise such concerns as they generally do not impact corporate governance or confer meaningful benefits on the Fund's adviser or Board. These other matters include changes to fundamental investment policies, approval of sub-advisory agreements and underwriting agreements, issuance of securities below net asset value (for registered closed-end funds and BDCs), ratifications of appointments and terminations of employment of accountants, and certain other BDC-specific items. *See, e.g.*, Sections 13(a), 15(a), 15(b), 23(b), 32(a)(2) (and Rule 32a-4 under the Investment Company Act), 59, 61(a)(2)(D)(II) and (a)(4)(B), and 63(2)(A) of the Investment Company Act.

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MFDF is represented by Ropes & Gray LLP. Should you have any questions regarding this request or require additional information, please do not hesitate to contact Joanne Skerrett, MFDF's Associate General Counsel, at Joanne.Skerrett@mfdf.org or (771) 208-8416, Carolyn McPhillips, MFDF's President, at Carolyn.Mcphillips@mfdf.org or (202) 507-4493, Paulita Pike of Ropes & Gray LLP, at Paulita.Pike@ropesgray.com or (312) 845-1212, or Jessica Lees of Ropes & Gray LLP, at Jessica.Lees@ropesgray.com or (310) 975-3319. We appreciate your attention to this matter.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'JS' followed by a stylized flourish.

Joanne Skerrett
Associate General Counsel
MFDF