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NEUBERGER | BERMAN

July 30, 2024

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Notice of Filing of Proposed Rule Change Proposes to Amend Section 302.00 of the NYSE Listed Company Manual to Exempt Closed-End Funds from the Requirement to Hold Annual Shareholder Meeting (Release No. 34-100460; **File No. SR-NYSE-2024-35**)

Dear Ms. Countryman:

This letter is submitted on behalf of Neuberger Berman in support of the New York Stock Exchange's ("NYSE") proposed amendments to Section 302.00 of the NYSE Listed Company Manual (the "Manual") that would exempt closed-end funds ("CEFs") listed on the NYSE from holding an annual meeting (the "NYSE Proposal"). Founded in 1939, Neuberger Berman is a global, independent, employee-owned investment manager. The firm manages approximately $481 billion across a range of strategies – including equity, fixed income, private equity, real estate and hedge funds – on behalf of institutions, financial advisors, and individual investors globally. This includes serving as the adviser to five CEFs listed on the NYSE or NYSE American representing approximately $2.4 billion in common stockholder assets.[1]

The NYSE Proposal seeks to correct a self-acknowledged mistake and we commend and support the NYSE's efforts to ensure that CEFs are treated, with respect to certain regulatory requirements designed to protect retail investors, like other investment companies, such as ETFs, mutual funds and unlisted CEFs and not like operating companies such as Coca Cola or General Motors. Congress never intended investment companies to be subject to the same governance requirements as public operating companies.

As demonstrated by the data contained in the Investment Company Institute's letter in the comment file for SR-NYSE-2024-35 (the "ICI Letter"), the annual meeting requirement is being abused by certain hedge funds that seek to greenmail CEFs and their boards by employing an arbitrage investment strategy and subverting the very protections the Investment Company Act of 1940, as amended (the "1940 Act") is intended to provide. One such hedge fund manager has taken this strategy a step further and begun exploiting the annual meeting requirement to take over management of CEFs. In doing so, that fund manager has exposed the CEFs' investors to riskier

[1] As of June 30, 2024.

investments, unresolvable material conflicts of interest and substantially higher fees and expenses, all of which can harm the retail investors that the 1940 Act seeks to protect[2].

While the five listed CEFs that Neuberger Berman advises represent a very modest amount of our firm assets under management ("AUM") and less than 5% of our 1940 Act registered funds' AUM, we are very concerned that the current requirement for CEFs to hold annual meetings is being exploited to the detriment of retail investors, often retirees, and threatens the future of CEFs as a viable investment option for these very investors. Unfortunately, the reality of a product largely held by retail investors is that participation in shareholder meetings is rather limited. As a result, a few larger investors, such as hedge funds that seek gains through greenmail, are often able to determine the outcome of shareholder meetings and drown out the voice of the retail investors that, when they do vote, often support the boards, management teams and investment strategies of their chosen CEF.

The annual meeting requirement has resulted in a story of the "few" being allowed to harming the "many." The difference in treatment of retail shareholders of CEFs from other investment companies allows for hedge fund greenmailers to saddle investors with millions of dollars in unnecessary expenses that dilute shareholder investments. The hedge funds pursuing this greenmail strategy use their influence over the CEF to force actions such as tender offers that tend to inequitably benefit the hedge funds and leave CEFs smaller, more expensive and materially impaired in their pursuit of their stated investment objectives. As noted above, in other instances, the hedge fund greenmailers are able to install their hand-picked board and actually take over management of the CEF, an outcome clearly not consistent Congressional intent in developing the 1940 Act. In the two recent instances noted above, this has resulted in alarming changes to the CEFs' investment strategy to focus on more risky and self-serving investments, including the use of the CEF's assets in furtherance of the hedge fund's greenmail strategy against other CEFs and other self-serving endeavors.

One fundamental difference between regulation of investment companies and operating companies is the matters that require shareholder approval. To ensure retail investors are protected, Congress included specific voting requirements in the 1940 Act, including the election of directors. Specifically, Section 16(a) of the 1940 Act requires a fund to hold a shareholder meeting in two instances: (1) to elect the initial board of directors; and (2) to fill all existing vacancies on the board if shareholders have elected less than a majority of the board. Further, shareholders must fill any director vacancies if shareholders have elected less than two-thirds of the directors holding office. Additionally, Section 18 of the 1940 Act provides for specific instances in which shareholders must

[2] On June 4, 2021, Saba Capital Management, L.P. ("Saba") took over as the manager of Voya Prime Rate Trust ("PPR"), renaming it Saba Capital Income & Opportunities Fund ("BRW"). PPR sought to provide investors with as high a level of current income as is consistent with preservation of capital and pursued this objective by investing at least 80% of its net assets in floating rate senior secured loans. Under Saba's management of BRW, approximately 22% of the fund's net assets are invested in a combination of hedge funds and crypto vehicles with another 30.69% in CEFs, as of April 30, 2024. On January 1, 2024, Saba assumed management of Templeton Global Income Fund ("GIM"), renaming it Saba Capital Income & Opportunities Fund II ("SABA"). GIM sought to provide investors with high current income with a secondary objective of capital appreciation and pursued this objective by investing in a portfolio of debt securities, primarily government debt securities. Under Saba's management of GIM, approximately 10.45% of the fund's assets are invested in a single hedge fund and 17.85% are in other CEFs, while 23.64% remains in money market funds as of April 30, 2024.

be entitled to elect a majority of directors to the fund's board. Those 1940 Act requirements protect investors by ensuring that control over a board of directors, and therefore the fund itself, is not transferred without proper notice and an opportunity to vote on such action. This ensures that oversight of the fund is in the hands of a truly independent board, including those independent from a controlling minority investor, whose interests may not be aligned with the interests of other stockholders.

As discussed in the ICI Letter, those were the very harms Congress sought to address by removing the annual shareholder meeting requirement from the initial draft of the 1940 Act. As stated in the Congressional Record, the harm that a controlling shareholder could cause by electing different trustees, who in turn could change the investment management contract or the fund's investment policies, was thought to be too great to retail shareholders, who generally invested based on a fund's investment strategy, relied on continuity of the fund's management and who were statistically less likely to participate in annual meetings.[3] Congress sought to balance the need for continuity of oversight and management and ensuring that fund boards and advisers worked in the best interests of all shareholders while also safe guarding against the harms that a minority controlling party could impose on other investors. Congress recognized the proper mechanism for doing so was not annual meetings and instead mandated the very specific requirements discussed above when fund investors would select their board and gave shareholders the right to terminate the advisory contract by a vote of a majority of the outstanding voting securities of such company.

We believe it is critical that the SEC restore the true shareholder protections envisioned by Congress. Accordingly, we urge the SEC to adopt the NYSE's proposed rule change to end the annual meeting requirement for listed CEFs.

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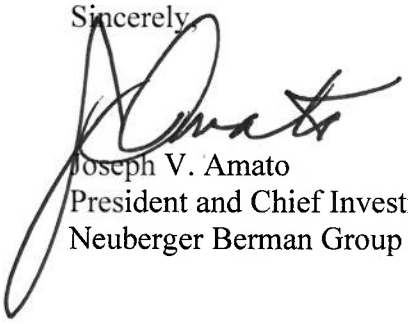
[3] 76th Congress, 3rd Session, Hearings Before a Subcommittee of the Committee on Banking and Currency on S. 3580 – A Bill to Provide for the Registration and Regulation of Investment Companies and Investment Advisers, and For Other Purposes, Statement of Merrill Griswold, Chairman, Massachusetts Investors Trust of Boston at 504 (April 17, 1940) ("[A] change in management is a major matter vitally affecting the interests of those shareholders who bought into the trust in reliance on that kind of a management. A change in management under such circumstances should not be lightly treated, as it would be, for example, if only the majority of a quorum were necessary—which would only be 26 percent if a bare majority attending a meeting. Matters that are major in the case of corporations, such as the sale of all of the company's assets, or a change in the general character of the business, or an increase or change in the capitalization, usually require the affirmative vote of a majority or of two-thirds of all of the outstanding shares, in order that the rights of minority shareholders, who went into the corporation on a certain basis, shall not be lightly overruled.").

We appreciate the opportunity to comment and urge the SEC to approve the proposed amendment. If you have any questions, please contact the below signatories.

Sincerely,



Joseph V. Amato
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Neuberger Berman Group LLC