February 5, 2021

VIA ELECTRONIC MAIL

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Re: **Stockholder Proposal to Arlington Asset Investment Corp. from Scott D. Widener**

Ladies and Gentlemen:

This letter is submitted on behalf of Arlington Asset Investment Corp. (the "***Company***") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Company has received a stockholder proposal and related supporting statement, attached hereto as Exhibit A (the "***Proposal***"), from Scott D. Widener (the "***Proponent***") for inclusion in the Company's proxy statement for its 2021 annual meeting of stockholders. The Company hereby advises the staff (the "***Staff***") of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2021 annual meeting (the "***Proxy Materials***"). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "***Commission***") if the Company excludes the Proposal on the following grounds:

(i) pursuant to Rule 14a-8(i)(1), as the Proposal is not a proper subject for action by stockholders under the laws of the jurisdiction of the Company's organization;

(ii) pursuant to Rule 14a-8(i)(2), as the Proposal would, if implemented, cause the Company to violate state law to which it is subject;

(iii) pursuant to rule 14a-8(i)(6), as the Company lacks the power and authority to implement the Proposal; and

(iv) pursuant to Rule 14a-8(i)(7), as the Proposal relates to the ordinary business operations of the Company.

By copy of this letter, we are advising the Proponent of the Company's intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal, and (ii) the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

I. The Stockholder Proposal

The Proposal submitted for inclusion in the Proxy Materials requests that:

> "The officers of the company will liquidate the company's entire investment portfolio in an orderly manner by 1 July 2021, and thereafter promptly distribute the net proceeds of such liquidation to shareholders."

II. Grounds for Exclusion

The Company intends to exclude this Proposal from its Proxy Materials and respectfully requests that the Staff concur that the Company may exclude the Proposal on the following grounds.

A. Rule 14a-8(i)(1) – The Proposal may be excluded because the Proposal is not a proper subject for action by stockholders under Virginia law.

Rule 14a-8(i)(1) permits a company to exclude a stockholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." Most stockholder proposals cast as recommendations or requests are proper under state law; however, mandatory proposals that purport to be binding on a company if approved by stockholders may not be considered proper under state law. *See* Rule 14a-8(i)(1) (note). The Commission has explained that the purpose of Rule 14a-8(i)(1) is to prevent stockholders from proposing stockholder action on matters that are not proper subjects for a stockholder vote, and that proposals that "mandate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority." Exchange Act Release No. 12999 (Nov. 22, 1976). The Staff has stated "that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under rule 14a-8(i)(1)." *See* Staff Legal Bulletin No. 14 (Jul. 13, 2001). The Staff has consistently permitted the exclusion of stockholder proposals mandating or directing a company's board of directors to take action inconsistent with the discretionary authority provided to the board of directors under state law. *See, e.g.*, *Bank of America Corp.* (avail. Feb. 24, 2010), *MGM Mirage* (avail. Feb. 6, 2008) and *Phelps Dodge Corp.* (avail. Jan. 7, 2004).

As explained more broadly in the supporting opinion of Hunton Andrews Kurth LLP with respect to matters of Virginia law attached hereto as Exhibit B (the "***Virginia Law Opinion***"), the Proposal is not a proper subject for action by stockholders under Virginia law because it mandates the Company's officers ("***Management***") to take an action that is exclusively reserved to the discretionary authority of the Board of Directors of the Company (the "***Board***") pursuant to Virginia law. Under Virginia law, Management does not have the power to unilaterally

liquidate the Company. The Company is incorporated under the laws of the Commonwealth of Virginia and is governed by the Virginia Stock Corporation Act (the "***VSCA***"). The VSCA grants broad discretionary power to the Board to manage all of the business and affairs of the Company, and under Virginia law, the stockholders do not have the power to direct Management or the Board to take specific actions upon which the Board retains discretionary authority.

The Proposal is not drafted as a request of, or as a recommendation to, the Board, but rather mandates that Management liquidate the entire Company by a certain date and distribute all proceeds to the stockholders. Under Virginia law, dissolution, which includes a sale of all of the assets of the Company, may only be initiated by the Board. Only after the Board has declared such action advisable may the stockholders consider and vote on this matter. Stockholders cannot require Management or the Board to deem a dissolution, including the sale of all of the assets of the Company, advisable under Virginia law. Rather, the duties of directors under Virginia law require directors of a Virginia corporation to carefully consider such action and only deem it advisable if the directors believe in their good faith business judgment that a dissolution is in the best interests of the corporation. If implemented, the Proposal would usurp the Board's statutory right to initiate the liquidation and dissolution procedures of the Company and would require Management to take these actions regardless of whether the Board determined that such actions are in the best interests of the Company. Accordingly, the Proposal is not a proper subject for stockholder action under Virginia law and it may be properly excluded pursuant to Rule 14a-8(i)(1).

B. Rule 14a-8(i)(2) – The Proposal may be excluded because, if implemented, it would cause the Company to violate Virginia law.

Rule 14a-8(i)(2) permits a company to omit a stockholder proposal that would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject. The Staff has determined that a company may properly exclude a stockholder proposal recommending that the board of directors take an action that would result in the company violating state law. In *The Adams Express Co.* (avail. Jan. 26, 2011) (the "***Adams Letter***"), the staff of the Division of Investment Management (the "***Investment Management Staff***") concurred with a Maryland corporation's (the "***Fund***") view that a stockholder proposal requesting that the board of directors liquidate the Fund was excludable under Rule 14a-8(i)(2) and (i)(6) because under Maryland law, the board of directors lacked authority to take such action without stockholder approval. The Investment Management Staff noted that, "in the opinion of the Fund's counsel, the [board of directors] lacks authority to liquidate . . . the Fund and the implementation of these aspects of the [p]roposal would violate state law." *See also Northrop Grumman Corp.* (avail. Feb. 29, 2008) (concurring with the exclusion pursuant to Rule 14a-8(i)(2) of a proposal requesting that the board of directors of a company adopt cumulative voting – an action requiring both board and stockholder approval – because the proposal would violate state law). In *Highlands REIT, Inc.* (avail. Feb. 7, 2020) (the "***Highlands Letter***"), the Staff noted that they would not recommend enforcement action against a Maryland corporation (the "MD Corporation") if the MD Corporation omitted a stockholder proposal requesting that the board of directors implement a proposal to liquidate the MD Corporation. The Staff noted in the Highlands Letter that the stockholder proposal was excludable under Rule 14a-8(i)(2) and (i)(6). The stockholder proposal that is the subject of the Highlands Letter is substantially identical to the Proposal received by the Company. The Proposal mandates that

Management take the same action as requested of the board of directors by the stockholder in the Adams Letter and the Highlands Letter and is excludable under Rule 14a-8(i)(2) because, if implemented, it would violate Virginia law. Although the Adams Letter and the Highlands Letter are governed by Maryland law, the VSCA provisions governing Board authority to recommend liquidation of the Company to shareholders are substantially similar and therefore directly analogous to the Maryland law provisions referenced in the Adams Letter and Highlands Letter.

As explained more broadly in the Virginia Law Opinion, the implementation of the Proposal would cause the Company to violate Virginia law because neither Management nor the Board can liquidate the Company without the proposal being recommended by the Board and approved by stockholders. The liquidation of the Company would necessarily involve the sale of all the Company's assets and/or the dissolution of the Company. In order for the Company to effect a dissolution, including a sale of the Company's assets, under Virginia law, the Board must approve the proposed action, declare it advisable and then submit it to the stockholders for consideration at an annual or special meeting, and then the stockholders must approve the action by two-thirds of the votes entitled to be cast on the matter. Virginia law does not permit the liquidation action described in the Proposal without a stockholder vote. Were the Proposal approved by the Company's stockholders, it would not constitute the necessary stockholder approval of the dissolution of the Company required under Virginia law because the approval of a liquidation by stockholders under Virginia law may only occur after the Board declares such action advisable. If the Proposal were to be implemented in accordance with its terms, the Board and the Company would violate state law by not following the procedures and approvals required by Virginia law. Accordingly, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(2).

C. <u>Rule 14a-8(i)(6) – The Proposal may be excluded because the Company lacks the power and authority to implement the Proposal</u>.

Under Rule 14a-8(i)(6), a company may exclude a stockholder proposal "if the company would lack the power or authority to implement the proposal." The Staff has consistently allowed stockholder proposals to be excluded under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) when the implementation of the proposal would violate state corporate law and, accordingly, the company would lack the authority to implement the proposal. *See* the Adams Letter and Highlands Letter discussed above; *see also The Boeing Co.* (avail. Feb. 20, 2008) (concurring with the exclusion of a proposal requesting that the board of directors adopt cumulative voting pursuant to Rule 14a-8(i)(2) and Rule 14a-8(i)(6) because the opinion of the company's counsel stated that implementing the proposal would cause the company to violate state law); *Northrop*, *supra* (concurring with the exclusion of the proposal pursuant to Rule 14a-8(i)(6) because it was not within the power of the company or the board to adopt cumulative voting without a stockholder vote).

As explained more broadly in the Virginia Law Opinion, the Company does not possess the power or authority to implement the Proposal because the Proposal conflicts with Virginia law. As discussed above in Part II.B, under Virginia law and the Charter, it is impermissible for the Company to liquidate its assets by unilateral Management or Board action. Because the implementation of the Proposal would cause the Company to violate Virginia law and its

Charter, the Company lacks the power and authority to implement the Proposal and it may be properly excluded pursuant to Rule 14a-8(i)(1).

D. <u>Rule 14a-8(i)(7) – The Proposal may be excluded because it deals with a matter relating to the ordinary business operations of the Company</u>.

i. Rule 14a-8(i)(7) Background.

Under Rule 14a-8(i)(7), a company may exclude a stockholder proposal from its proxy materials "[i]f the proposal deals with a matter relating to the company's ordinary business operations." The Commission has stated that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to "tasks that are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"; and
- second, whether a "proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

Exchange Act Release No. 34-40018 (May 21, 1998) ("***1998 Release***").

With respect to the second consideration, the Staff will determine that a proposal seeks to micromanage a company when it specifies "intricate detail, ***or seeks to impose specific time-frames*** or methods for implementing complex policies" that would cause the demands of the Proposal to displace the judgment of a company's board of directors and/or management. *Id.* (emphasis added). The Staff recently reiterated that, when considering arguments for exclusion based on micromanagement, it looks "to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("***SLB 14K***"). The Staff's analysis of micromanagement arguments is based on "the manner in which a proposal seeks to address an issue" regardless of whether that issue concerns a subject matter that is appropriate for stockholders to vote on. Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("***SLB 14J***"). As a result, a proposal that seeks to micromanage the company may be excluded under Rule 14a-8(i)(7) even if the proposal is not excludable under the first consideration discussed above. *Id.*

The Staff has determined that proposals which seek to micromanage a company are excludable because they do not afford a company, its board of directors or its management sufficient flexibility or discretion in addressing complex matters or making decisions regarding the day-to-day business of the company. SLB 14K. Following a stockholder vote on a proposal, it is the job of the board of directors and management to determine how to implement the proposal. "If the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company." *Id.*

As explained in SLB 14J, a proposal may be properly excluded under Rule 14a-8(i)(7) for micromanaging even if the proposal alludes to extraordinary actions to be taken by the Company. This is because the Staff analyzes these proposals based on the manner in which they are presented, rather than the subject matter of the proposal. Although a plan of liquidation and distribution would be considered an extraordinary action, it has no bearing on the fact that the Proposal seeks to micromanage the manner in which the Company should pursue such an extraordinary transaction (i.e., immediately and no later than a specific date, July 1, 2021). Therefore, even though the Proposal may not be afforded exclusion based on the first consideration under Rule 14a-8(i)(7) (i.e., that it relates to "tasks that are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"), it may nonetheless be properly excluded under the "micromanagement" consideration.

Where a proposal makes specific demands regarding how or when the proposal should be implemented, the Staff has granted no-action relief under Rule 14a-8(i)(7) because such proposals seek to micromanage the company. *See, e.g.*, *Exxon Mobil Corp.* (avail. Apr. 2, 2019)(concurring with the exclusion of a proposal demanding that the company disclose "short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement" because requiring the company to adopt such time-bound targets seeks "to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors"); *Devon Energy Corp.* (avail. Mar. 4, 2019) (same); and *Duke Energy Corp.* (avail. Feb. 16, 2001) (concurring with the exclusion of a proposal requesting that the company reduce its nitrogen oxide emissions to a precise numerical target using a specific methodology by the year 2007). In *Apple, Inc.* (avail. Dec. 5, 2016), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company generate a plan to reach net-zero greenhouse emissions by the year 2030. In SLB 14J, the Staff explained that the *Apple* proposal, "which sought to impose specific timeframes or methods for implementing complex policies, was excludable on the basis of micromanagement." By contrast, in *Anadarko Petroleum Corp.* (avail. Mar. 4, 2019), the Staff denied exclusion of a proposal requesting a report describing the company's plans to reduce its total contribution to climate change and align its operations and investments with the Paris Agreement's goals. In SLB 14K, the Staff explained that the *Anadarko* proposal was not properly excludable under Rule 14a-8(i)(7) because the proposal "deferred to management's discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions." SLB 14K.

ii. <u>The Proposal seeks to micromanage the Company because it imposes a specific deadline by which the Proposal must be implemented</u>.

The Proposal requires the Company to immediately implement a plan to liquidate its properties and distribute the proceeds to stockholders no later than July 1, 2021. As discussed in further detail below, because the Proposal imposes a specific deadline by which the liquidation plan must be implemented, it seeks to micromanage the Company and may therefore be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

As noted above, the Staff states in the 1998 Release, SLB 14J and SLB 14K that proposals demanding a specific timeframe or timeline can be interpreted as an attempt to micromanage the company by unduly limiting the ability of the board of directors or management to manage complex matters with the flexibility necessary to fulfill their fiduciary duties. Here, in direct opposition to the Staff's guidance, the Proposal sets a specific deadline of July 1, 2021 for the liquidation of the Company, and provides neither the Board nor management with any flexibility in executing on this complex task. The Proposal's efforts to micromanage the Company are further evident by the Proponent's demands for Management to "liquidate the company's entire investment portfolio in an orderly manner by 1 July 2021" and, as stated in the supporting statement, "***promptly*** distribute the net proceeds of such liquidation to shareholders" (emphases added). Here, by imposing a specific deadline by which the Company must liquidate, the Proposal micromanages the Company in the manner deemed impermissible by the 1998 Release, SLB 14J and SLB 14K. If the Company's stockholders approved the Proposal, the Board and Management would be required to liquidate the Company by July 1, 2021, only sixteen days after the Company's 2021 annual meeting held on June 15, 2021. Management's and the Board's judgment and discretion in terms of how to best liquidate the Company would be limited by this strict deadline. Under ordinary circumstances, the Company's Board and Management would have flexibility to consider different options, weigh the benefits and drawbacks of each, and determine the best course of action to maximize value for stockholders. The Proposal, by imposing a strict and arbitrary deadline, strips the Board and Management of the discretion and judgment required to accomplish the requested task and limits the Company's opportunities to maximize stockholder value. As presented, the Proposal makes it nearly impossible for the Board and Management to fulfill their fiduciary duties to stockholders. In this way, the Proposal seeks to micromanage the Company and may therefore be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

The Proposal is analogous to the proposal presented in *Apple*, which required the company to generate a plan to reach net-zero greenhouse emissions by the year 2030, and the proposal presented in *Duke Energy*, which required the company to reduce its nitrogen oxide emissions by the year 2007. In both cases, the Staff agreed that the proposals could properly be excluded because they sought to micromanage the companies by demanding actions by a specific date. Here, as in both *Apple* and *Duke Energy*, the imposition of a specific deadline would unduly limit the discretion of the Board and Management in carrying out their duties. The Proposal is distinguishable from the proposal in *Anadarko* because it does not provide the Company sufficient discretion to implement a plan of liquidation on the timeline it sees fit. In addition, similar to the deadline specified in *Apple*, the deadline specified in the Proposal is completely arbitrary – the Proponent does not include a rationale or analysis for the choice of this deadline. The Board has a duty to maximize value for stockholders. Forcing the Company to meet an arbitrary timeline places undue constraints on the Board's ability to act in the best interest of its stockholders. Thus, because the Proposal seeks to micromanage the Company by unduly limiting the ability of the Board and Management to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to stockholders, the Proposal may be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

III. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned to discuss any questions you may have regarding this matter.

Very truly yours,

Robert K Smith

Robert K. Smith
of Hunton Andrews Kurth LLP

Enclosures

cc: J. Rock Tonkel, Jr. Arlington Asset Investment Corp.
Richard Konzmann, Arlington Asset Investment Corp.
Scott Parish, Arlington Asset Investment Corp.
Scott D. Widener

Exhibit A

PROPOSAL FROM SCOTT D. WIDENER

Proposed Resolution:

RESOLVED – that the officers of the company will liquidate the company's entire investment portfolio in an orderly manner by 1 July 2021, and thereafter promptly distribute the net proceeds of such liquidation to shareholders.

Proposal Summary

It is proposed that AAIC's officers liquidate the company's entire investment portfolio in an orderly manner, but in no event later than 1 July 2021, and distribute the net proceeds of such liquidation to the company's shareholders promptly thereafter.

The reasoning for this proposal is as follows:

1. Whereas nearly all mREIT common stocks trade between 85% and 105% of their book values as of December 2020, AAIC has persistently traded at less than 50% of its book value during the past year. This reflects the market's distrust of management and its disagreement with the company's recent and unprecedented strategy pivot.
2. Management's recent move from the leveraged acquisition of agency RMBS to the minimally leveraged acquisition of non-agency RMBS and MSRs demonstrates a fundamentally poor understanding of RMBS investment. The recent steepening of the yield curve has made agency RMBS more attractive than it has been in over a decade, as NIMs have widened substantially from 2019. Remarkably, management has instead elected to shift away from this increasingly profitable trade into assets that: (a) present credit risk during a historic economic downturn, and (b) do not benefit from the remarkably inexpensive financing available on agency assets. For an illustration of this shift's impact on profitability, shareholders might compare AAIC's 2020 earnings trajectory against that of a more highly leveraged, agency-focused peer like AGNC or NLY.
3. Given management's expressed disinterest in leveraging even the most conservative pieces of its portfolio, and the currently tight spreads on non-agency RMBS, the company's prospects of growing book value are extremely dim.
4. If book value is unlikely to grow meaningfully, then shareholders' principal source of value lies in a convergence of the share price with the existing book value. However, there is no reason that shareholders should wait for this to occur when they could unlock this value immediately through a liquidation of the company's assets.

AAIC's shareholders have endured years of value destruction, with any hope of recovery dashed by this recent strategy shift. The company's anomalous and persistent discount to book value clearly signals that its assets are far more valuable in an exchange for cash than in the hands of

its current management team. I would urge shareholders to vote in favor of this liquidation proposal in order to recover the capital they are rightly owed.

Exhibit B

VIRGINIA LAW OPINION

February 5, 2021

Arlington Asset Investment Corp.
6862 Elm Street, Suite 320
McLean, VA 22101

Re: Arlington Asset Investment Corp. — Omission of the Shareholder Proposal Submitted by Scott D. Widener

Ladies and Gentlemen:

We are Virginia counsel to Arlington Asset Investment Corp., a Virginia corporation (the "Company"), in connection with certain matters of Virginia law arising out of a shareholder proposal (the "Proposal") submitted by Scott D. Widener for inclusion in the Company's proxy materials for the 2021 Annual Meeting of Stockholders. We have been asked to consider whether (1) the Proposal is a proper subject for action by shareholders under Virginia law; (2) the Proposal, if implemented, would cause the Company to violate Virginia law; and (3) the Company lacks the power and authority to implement the Proposal. In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined the amended and restated articles of incorporation, as amended, (the "Charter") of the Company, the Proposal and such matters of law as we have deemed necessary or appropriate to issue this opinion.

The Proposal reads, in full, as follows:

RESOLVED: "The officers of the company will liquidate the company's entire investment portfolio in an orderly manner by 1 July 2021, and thereafter promptly distribute the net proceeds of such liquidation to shareholders."

Supporting Statement

It is proposed that AAIC's officers liquidate the company's entire investment portfolio in an orderly manner, but in no event later than 1 July 2021, and distribute the net proceeds of such liquidation to the company's shareholders promptly thereafter.

The reasoning for this proposal is as follows:

1. Whereas nearly all mREIT common stocks trade between 85% and 105% of their book values as of December 2020, AAIC has persistently traded

at less than 50% of its book value during the past year. This reflects the market's distrust of management and its disagreement with the company's recent and unprecedented strategy pivot.

2. Management's recent move from the leveraged acquisition of agency RMBS to the minimally leveraged acquisition of non-agency RMBS and MSRs demonstrates a fundamentally poor understanding of RMBS investment. The recent steepening of the yield curve has made agency RMBS more attractive than it has been in over a decade, as NIMs have widened substantially from 2019. Remarkably, management has instead elected to shift away from this increasingly profitable trade into assets that: (a) present credit risk during a historic economic downturn, and (b) do not benefit from the remarkably inexpensive financing available on agency assets. For an illustration of this shift's impact on profitability, shareholders might compare AAIC's 2020 earnings trajectory against that of a more highly leveraged, agency-focused peer like AGNC or NLY.

3. Given management's expressed disinterest in leveraging even the most conservative pieces of its portfolio, and the currently tight spreads on non-agency RMBS, the company's prospects of growing book value are extremely dim.

4. If book value is unlikely to grow meaningfully, then shareholders' principal source of value lies in a convergence of the share price with the existing book value. However, there is no reason that shareholders should wait for this to occur when they could unlock this value immediately through a liquidation of the company's assets.

AAIC's shareholders have endured years of value destruction, with any hope of recovery dashed by this recent strategy shift. The company's anomalous and persistent discount to book value clearly signals that its assets are far more valuable in an exchange for cash than in the hands of its current management team. I would urge shareholders to vote in favor of this liquidation proposal in order to recover the capital they are rightly owed.

I. The Proposal is not a proper subject for action by shareholders under Virginia law.

The Proposal is not a proper subject for action by shareholders under the Virginia Stock Corporation Act (the "VSCA") because it mandates the management ("Management")

of the Company to take an action that is exclusively reserved to the discretionary authority of the board of directors (the "Board") pursuant to the VSCA. Like corporate codes in other jurisdictions, the VSCA has an underlying theme of recognizing and providing for one of the principal benefits of the corporate form of organization – the ability to separate control of the entity from ownership of the entity. For example, for most corporate decisions, the VSCA provides the Board of Directors with the sole authority and responsibility for those decisions. Section 13.1-673 of the VSCA, often referred to as the "bedrock" of the VSCA, [1] states that "all corporate powers shall be exercised by or under the authority of, and the business affairs of, the corporation managed under the direction of its board of directors."

For a corporation's most fundamental decisions, the board of directors must first approve the transaction, and then it must be submitted to the owner shareholders for their approval. Specifically, under the VSCA the following corporate acts are subject to the dual approval process: an amendment of the articles of incorporation, a merger, a statutory share exchange, a redomestication, a conversion, a sale of substantially all of the assets, and the dissolution of the corporation.

The Proposal to liquidate the assets and distribute the net proceeds to shareholders is considered a dissolution under the VSCA, with the approval process set forth in VSCA § 13.1-742. VSCA § 13.1-742 provides that before a corporation can liquidate its assets, the board of directors must determine that dissolution is in the best interest of the corporation and its shareholders and adopt a resolution authorizing the dissolution. Under § 13.1-742B1 of the VSCA, the board of directors must recommend dissolution to the shareholders unless it determines because of a conflict of interest or other special circumstances not to make a recommendation. The board of directors can set conditions for shareholder approval or for the effectiveness of the dissolution.[2] Next, the shareholders must approve the dissolution with the affirmative vote of more than two-thirds of the outstanding voting shares.[3] Only after the board of directors has authorized dissolution and the shareholders approved it, can the officers begin the liquidation process.

As noted above, in order to carry out the liquidation contemplated by the Proposal, the Board must initiate the dissolution process by adopting a resolution authorizing the dissolution and recommending dissolution to the shareholders at an annual or special meeting and the shareholders must subsequently approve the dissolution at such meeting. If implemented, the Proposal would usurp the Board's statutory right to initiate the dissolution

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[1] Allen C. Goolsby & Steven M. Haas, Goolsby and Haas on Virginia Corporations, 6th ed., §9.1 (2017).

[2] *See* VSCA Section 13.1-742C.

[3] *See* VSCA Section 13.1-742E.

procedures of the Company after making the determination discussed in the following paragraph and is therefore not a proper subject for shareholder action under Virginia law.

When determining whether to recommend a dissolution of the company to shareholders, directors of a Virginia corporation are required to act in accordance with their "good faith business judgment of the best interests of the corporation."[4] The Proposal would require Management to take actions regardless of whether the Board approved the dissolution or determined that it was in the best interests of the Company. Virginia law does not permit shareholders to substitute their judgment for the judgment of the board of directors.[5]

II. The Proposal, if implemented, would cause the Company to violate Virginia law.

The Proposal requires that Management liquidate all of the Company's investment portfolio and distribute the net proceeds to the shareholders of the Company. The Proposal provides that Management alone has the authority to take these actions. As more fully discussed above, in order for the Company to effect a dissolution, including a sale of all of the assets of the Company, the Board must approve the proposed action, declare it advisable and then submit it to the shareholders for consideration at an annual or special meeting, and then the shareholders must approve the action. In view of the board approval and shareholder voting requirements of the VSCA, Management or the Board may not unilaterally liquidate the investment portfolio of the Company and distribute the net proceeds to the shareholders. If Management or the Board were to unilaterally approve and carry out the Proposal, the Company would violate the VSCA.

The vote required under the VSCA for shareholders to approve a dissolution is the affirmative vote of shareholders more than two-thirds of the votes entitled to be cast on the matter.[6] Although the VSCA permits a Virginia corporation to provide in its charter for the approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter, or a greater percentage, the Charter does not provide for approval of this matter by a lesser percentage. [7] While the VSCA allows flexibility on the percentage of votes required to approve a matter, the VSCA does not permit the liquidation action described in the Proposal without a shareholder vote.

Approval of the Proposal by the Company's shareholders would not constitute the necessary shareholder approval of the dissolution of the Company required by the VSCA.

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[4] *See* VSCA Section 13.1-690.

[5] Under Virginia law, the power of shareholders over the board of directors is exercised by the shareholders' right to elect and remove directors. *See* VSCA Section 13.1-675 and Section 13.1-680.

[6] *See* VSCA Section 13.1-742.

[7] *See* VSCA Section 13.1-742.

The VSCA only provides for shareholder approval of a dissolution after the board of directors declares such action advisable. Moreover, unlike the Proposal itself, which can be approved by a majority of votes cast at a meeting of shareholders at which a quorum is present, the actions ultimately contemplated by the Proposal require a vote of more than two-thirds of the votes entitled to be cast on the matter. Because the Proposal requests that Management carry out a dissolution without following the required approval process mandated by the VSCA and the Charter, the Proposal would cause the Company to violate Virginia law if implemented as proposed.

III. The Company lacks the power or authority to implement the Proposal.

As set forth above, the Proposal, if implemented, would violate Virginia law. Under the VSCA, it is impermissible for Management or the Board to liquidate the Company through unilateral action. Because the implementation of the Proposal would cause the Company to violate Virginia law, the Company lacks the power and authority to implement the Proposal and any attempt to do so would be voidable under Virginia law[8].

IV. Conclusion.

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth herein, it is our opinion that (1) the Proposal is not a proper subject for action by shareholders under the laws of the Commonwealth of Virginia; (2) the Proposal would, if implemented, cause the Company to violate Virginia law and (3) the Company lacks the power and authority to implement the Proposal.

The foregoing opinion is limited to the VSCA, and judicial interpretations thereof, in effect on the date hereof and we do not express any opinion herein concerning any law other than the VSCA. Furthermore, the foregoing opinion is limited to the matters specifically set forth therein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any provision of the VSCA, or any judicial interpretation of any provision of the VSCA, changes after the date hereof.

The opinion presented in this letter is solely for your use in connection with the Proposal and may not be relied upon by any other person or entity, or by you for any other purpose, without our prior written consent. However, we consent to inclusion of this opinion with a request by you to the Securities and Exchange Commission (the "Commission") for

[8] *See* VSCA Section 13.1-629; *Princess Anne Hills Civic League, Inc. v. Susan Constant Real Estate Trust*, 243 Va. 53, 413 S.E.2d 599 (1992) and Allen C. Goolsby & Steven M. Haas, Goolsby and Haas on Virginia Corporations, 6th ed., §9.1 (2017) at page 50.

concurrence by the Commission with your decision to exclude the Proposal from the proxy materials for your next annual meeting of shareholders.

Very truly yours,

Hunton Andrews Kurth LLP