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December 19, 2008

Rule 14a-8

BY OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

RECEIVED
2008 DEC 22 PM 3:04
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

Re: Stockholder Proposal Submitted by John C. Harrington

Ladies and Gentlemen:

Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), we request confirmation that the staff of the Division of Corporation Finance (the "Division") will not recommend enforcement action if the Corporation omits from its proxy materials for the Corporation's 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") the proposal described below for the reasons set forth herein. The statements of fact included herein represent our understanding of such facts.

GENERAL

The Corporation received a proposal and supporting statement dated October 30, 2008 (the "Proposal") from John C. Harrington (the "Proponent") for inclusion in the proxy materials for the 2009 Annual Meeting. The Proposal is attached hereto as **Exhibit A**. The 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Exchange Act, enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that

it may exclude the Proposal;

2. Six copies of the Proposal; and

3. Six copies of the opinion of Richards, Layton & Finger, P.A., Delaware counsel.

A copy of this letter is also being sent to the Proponent as notice of the Corporation's intent to omit the Proposal from the Corporation's proxy materials for the 2009 Annual Meeting.

THE PROPOSAL

The Proposal mandates that the Corporation "amend the corporate bylaws by inserting in Article IV of the Bylaws the following new section:

> Section 8. Board Committee on US Economic Security. There is established a Board Committee on US Economic Security. The Board Committee shall review whether our Company's policies, beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders. The Board Committee may issue reports to the Board and the shareholders at reasonable expense and omitting confidential information on the impacts of bank policy on US Economic Security. For purposes of this bylaw, "US Economic Security" impacted by bank policy may include, among other things 1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and 4) the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies.
>
> The Chairman of the Board of Directors is authorized consistent with these regulations and applicable law, to appoint the members of the Board Committee on US Economic Security. Nothing herein shall restrict the power of the Board of Directors to manage the business and affairs of the company or its authority under the corporate articles of incorporation, bylaws, and applicable law. Notwithstanding the language of this section, the Board Committee on US Economic Security shall

not incur any costs to the company except as authorized consistent with these bylaws.

REASONS FOR EXCLUSION OF PROPOSAL

The Corporation believes that the Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(i)(2), (i)(6), (i)(7) and (i)(3). The Proposal may be excluded pursuant to Rule 14a-8(i)(2) because, if implemented, it would cause the Corporation to violate Delaware law. The Proposal may also be excluded pursuant to Rule 14a-8(i)(6) because the Corporation lacks the power to implement the Proposal. The Proposal may also be excluded pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the ordinary business of the Corporation. Finally, the Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it is vague and indefinite, in violation of Rules 14a-9 and 14a-5.

1. The Corporation may omit the Proposal pursuant to Rule 14a-8(i)(2) because implementation of the Proposal would require the Corporation to violate Delaware law.

Rule 14a-8(i)(2) permits a company to exclude a stockholder proposal if implementation of the proposal would cause it to violate any state, federal or foreign law to which it is subject. *See Baker Hughes, Inc.* (March 4, 2008) and *Time Warner, Inc.* (February 26, 2008). The Corporation is incorporated under the laws of the State of Delaware. For the reasons set forth below and in the legal opinion regarding Delaware law from Richards, Layton & Finger, P.A., attached hereto as **Exhibit B** (the "RLF Opinion"), the Corporation believes that the Proposal is excludable under Rule 14a-8(i)(2) because, if implemented, the Proposal would cause the Corporation to violate the General Corporation Law of the State of Delaware (the "DGCL").

As a general matter, the stockholders of a Delaware corporation have the power to amend the corporation's bylaws. *See* 8 Del. C. § 109(a). This power, however, is subject to the limitation that the bylaws may not contain any provision inconsistent with law or with the certificate of incorporation. *See* 8 Del. C. § 109(b). As discussed in greater detail in the RLF Opinion, Section 141(c)(2) of the DGCL addresses committees of the board of directors of a Delaware corporation and provides that the "***board of directors*** may designate 1 or more committees" of the directors of the corporation and that the "***board*** may designate 1 or more directors as alternate members of any committee." (emphasis added) Generally, any such committee "shall have and may exercise ***all the powers and authority of the board of directors in the management of the business and affairs of the corporation***." 8 Del. C. § 141(c)(2). (emphasis added) Furthermore, Section 141(c)(2) contemplates **only one means** by which a committee of the board of directors may be formed—by act of the board of directors. As noted in the RLF Opinion, "the specificity of the procedures set

forth in Section 141(c)(2) is that a bylaw purporting to implement the procedure outlined in Section 141(c)(2) 'probably should not deviate from the procedure authorized.' 1 R. Franklin Balotti & Jesse A. Finkelstein, The Delaware Law of Corporations & Business Organizations, § 4.10[B] at 4-33 (2008 Supp.)." Because only the board of directors of a Delaware corporation has the power to constitute a committee of the board under Section 141(c)(2), a bylaw that would enable ***one individual director*** (i.e., the Chairman of the Board of Directors) to appoint the members of the Board Committee on US Economic Security would be inconsistent with Delaware law.

In addition, Section 141(a) of the DGCL provides in pertinent part:

> The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of ***a board of directors***, except as may be otherwise provided in this chapter or in its certificate of incorporation.

8 Del. C. § 141(a). (emphasis added) Accordingly, "absent any provision in the Certificate of Incorporation to the contrary, implicit in the management of the business and affairs of the Company is that the Board, not one individual director, would direct the decision-making process regarding, among other things, the appointment of members of a committee of the Board." RLF Opinion. Furthermore, it is clear from the legislative history to Section 141(c) of the DGCL that the board of directors has the power to designate a board committee, not any one director.

Finally, the "savings clause" that states that the Chairman of the Board of Director's power to appoint members to the Board Committee on US Economic Security is "authorized consistent with . . . applicable law" is a nullity. The "savings clause" does not resolve the conflict between the bylaw provision that permits one individual director to appoint the committee members and the dictates of the DGCL. Section 141(c)(2) of the DGCL, by its plain terms, does not permit one individual director to appoint committee members to a committee of the board of directors. Section 141(c)(2) grants only the board of directors (as a body) the power to constitute a committee of the board. Accordingly, there is no extent to which the Chairman of the Board can act "consistent with applicable law" to appoint the members of the proposed Board Committee on US Economic Security. The "savings clause" does not provide any means by which the Proposal could be implemented without violating Delaware law.

While all proposals should be drafted clearly, this is particularly important for mandatory proposals that seek to amend a company's governing documents. The Division has stated that proposals should be drafted with precision. *See* Staff Legal Bulletin 14 and *Teleconference: Shareholder Proposals: What to Except in the 2002 Proxy Season* (November 26, 2001). In a November 26,

2001 teleconference, "*Shareholder Proposals. What to Expect in the 2002 Proxy Season,*" the Associate Director (Legal) of the Division (the "Associate Director") emphasized the importance of precision in drafting a proposal, citing Staff Legal Bulletin 14 ("SLB 14"). The Associate Director stated, "you really need to read the ***exact wording*** of the proposal . . . . We really wanted to explain that to folks, and we took a lot of time to make it very, very clear in [SLB 14]." (emphasis added) Question B.6 of Staff Legal Bulletin 14 states that the Division's determination of no-action requests under Rule 14a-8 of the Exchange Act is based on, among other things, "the way in which a proposal is drafted." As an experienced shareholder proponent, the Proponent should be expected to know the rules regarding precision in drafting proposals and should not be afforded any concessions due to imprecise wording of the Proposal. The Proponent has proposed a mandatory bylaw that will cause the Corporation to violate Delaware law.

As the RLF Opinion notes, the "Proposal, if implemented, would enable a single director, the Chairman of the Board, to 'appoint the members of the Board Committee on US Economic Security.' Because the power to constitute a committee of the Board is a power specifically conferred upon the whole Board by Section 141(c)(2) of the DGCL, a bylaw that purports to confer upon the Chairman of the Board the authority to appoint the members of a board committee would violate the [DGCL]." Accordingly, for the reasons set forth above and as supported by the RLF Opinion, the Corporation believes the Proposal is excludable pursuant to Rule 14a-8(i)(2) because implementation of the Proposal would cause the Corporation to violate applicable state law.

2. The Corporation may omit the Proposal pursuant to Rule 14a-8(i)(6) because it lacks the power and authority to implement the Proposal.

Rule 14a-8(i)(6) provides that a company may omit a proposal "if the company would lack the power or authority to implement the proposal." The discussion set forth in section 1 above is incorporated herein. As noted above, the Proposal cannot be implemented without violating Delaware law and, accordingly, the Corporation lacks the power and authority to implement the Proposal. The Division has consistently permitted the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(6) if a proposal would require a company to violate the law. *See Xerox Corporation* (February 23, 2004) and *SBC Communications Inc.* (January 11, 2004).

In addition, the Proposal requires that the proposed Board Committee review how the Corporation's policies "are shaped to support," among other things, the "levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US." As discussed below, the Proponent's intent is not entirely clear. However, to the extent the proposed Board Committee is expected to shape corporate policy to impact or influence the behavior of third parties (i.e., companies incorporated or headquartered in the United States, or the control of such

companies by "foreign" entities), both the Board Committee and the Corporation lack any authority or any power to implement such a policy or impose such influence. Exclusion of the Proposal is consistent with the long-standing Division position permitting the exclusion of proposals that require third party action for their implementation. *See American Home Products Corp.* (February 3, 1997) (proposal requested the company provide certain warnings on its contraceptive products that were subject to government oversight and regulatory approval) and *American Electric Power Company, Inc.* (February 5, 1985) (proposal requested the completion of a nuclear plant that was jointly owned by two unaffiliated parties).

Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Proposal, and, thus, the Proposal may be excluded under Rule 14a-8(i)(6).

3. The Corporation may omit the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Corporation's ordinary business operations.

Rule 14a-8(i)(7) permits the omission of a stockholder proposal that deals with a matter relating to the ordinary business of a company. The core basis for an exclusion under Rule 14a-8(i)(7) is to protect the authority of a company's board of directors to manage the business and affairs of the company. In the adopting release to the amended shareholder proposal rules, the Commission stated that the "general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Exchange Act Release No. 34-40018* (May 21, 1998). In addition, a proposal that is styled as a request for a report does not change its ordinary business nature. Pursuant to Commission directive in 1983, the Division has long evaluated proposals requesting a report by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See Exchange Act Release No. 34-20091* (August 16, 1983).

Recently, the Division found a substantially similar proposal from the Proponent excludable under Rule 14a-8 because it related to the Corporation's ordinary business matters. *See Bank of America* (January 11, 2007) ("*Bank of America*"). In *Bank of America*, the proponent proposed a bylaw amendment to create "Vice President for US Economy and Security to review whether management and board policies adequately defend and uphold the economy and security of the United States of America." Further, the supporting statement in *Bank of America* displayed similar concerns to that of the Proposal as both proposals highlighted concerns with the extent to which a company invests in foreign institutions. Whether the proposal is to create a board committee to oversee the Corporation's policies with respect to "US Economic Security" (as the Proposal does) or to create a new officer position to oversee the Corporation's policies with respect to the "US Economy and

Security" (as the *Bank of America* proposal did), the underlying subject matter—the US Economic Security—is the exactly the same. Consistent with the Division's previous determination that matters relating to "US Economic Security" are matters of ordinary business, the Proposal, which relates to "US Economy and Security," is also a matter of ordinary business. Merely adding window dressing to the wording of the proposal in *Bank of America* does not change the underlying ordinary business nature of the Proposal.

Furthermore, the Proposal relates to general conduct of a legal compliance program, notwithstanding the gratuitous savings language "beyond those required by law." The supporting statement of the Proposal indicates a concern of corporate misconduct when it refers to "irresponsible lending and business practices across the US economy, including speculative derivatives trading and a general lack of management and board oversight." In addition, in light of the Trouble Asset Relief Program of the U.S. Treasury and because the Corporation operates in a highly regulated business with multiple regulators, both domestically and abroad, any review of the Corporation's policies relating to (i) "levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and [(ii)] the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies" necessarily requires the evaluation of the legal environment and legal compliance by the Corporation.

The Division has long permitted the exclusion of proposals that relate to such matters. *See Monsanto Company* (November 3, 2005) (excluding a proposal to establish an ethics oversight committee to "insure compliance with the Monsanto's Code of Conduct, the Monsanto Pledge, and applicable laws, rules and regulations of federal, state, provincial, and local governments, including the Foreign Corrupt Practices Act" because it related to the general conduct of a legal compliance program); *General Electric Company* (January 4, 2005) (excluding a proposal regarding whether NBC's broadcast television stations activities met their public interest obligations because it related to the general conduct of a legal compliance program); and *Hudson United Bancorp* (January 24, 2003) (excluding a proposal to establish a committee to investigate possible corporate misconduct because it related to the general conduct of a legal compliance program). *See also*, *Bank of America* discussed above. In *Bank of America*, the proposal required the creation of a new position charged with reviewing whether the Corporation had "adequately defend[ed] and uph[e]ld the economy and security of the Unites States of America consistent with [its] responsibilities to the shareholders." The Proposal requires the creation of a Board Committee charged with reviewing whether the Corporation's policies are "shaped to support the US economic security, while meeting the Board's responsibility to the shareholders." While not entirely clear how the Proposal would be implemented, the Corporation believes that it is related to the general conduct of a legal compliance program and thus, may be excluded under Rule 14a-8(i)(7).

The Proposal is also similar to proposals relating to the evaluation of various risks facing a company that the Division has stated relate to ordinary business operations and may be excluded under Rule 14a-8(i)(7). *See General Electric Company* (January 9, 2008) and *International Business Machines* (January 9, 2008) (each proposing a board committee report on the potential for damage to the company resulting from the sourcing of products and services from outside the United States); *American International Group, Inc.* (February 19, 2004) (permitting exclusion of a proposal requesting the board review and report to shareholders on the economic effects of the HIV/AIDS, tuberculosis and malaria pandemics on the company's business strategy); and *Newmont Mining Corporation* (February 4, 2004) (permitting exclusion of a proposal requesting that the board to publish a comprehensive report on the risks to the company's operations, profitability and reputation arising from social and environmental liabilities). In the foregoing no-action letters, the Division found that the proposals required an evaluation of risk and benefits that are related to ordinary business operations. The Proposal also relates to the evaluation of risk and reciprocal benefits to the Corporation and its stockholders resulting from its ordinary business operations; thus, the Proposal is excludable under Rule 14a-8(i)(7).

In addition, the Corporation recognizes that certain proposals (such as those dealing with human rights or the environment) could transcend day-to-day business matters and raise policy issues so significant that they could be appropriate for a stockholder vote. However, as established by prior Division precedent, the matters raised by the Proposal, a review of the Corporation's policies to determine their impact in the "US Economic Security" do not raise any significant policy issues as contemplated by Rule 14a-8(i)(7) and prior precedent. The Proposal merely relates to the day-to-day management of the Corporation's business. The Proponent seeks to involve itself in the micro-management of the Corporation's business without raising issues of significant policy. Consistent with the foregoing, the Corporation believes that the Proposal should be excluded pursuant to Rule 14a-8(i)(7).

4. The Corporation may omit the Proposal pursuant to Rule 14a-8(i)(3) because it is vague and indefinite, in violation of Rules 14a-9 and 14a-5.

The Division has recognized that a proposal may be excluded under Rule 14a-8(i)(3) if it is so inherently vague and indefinite that neither shareholders voting on the proposal nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. *See Staff Legal Bulletin No. 14B (CF)* (September 15, 2004) ("*SLAB 14B*"); *Wendy's International. Inc.* (February 24, 2006) ("*Wendy's*"); *The Ryland Group, Inc.* (January 19, 2005) ("*Ryland*"); *Philadelphia Electric Co.* (July 30, 1992); and *IDACORP, Inc.* (January 9, 2001). Rule 14a-8(i)(3) allows the exclusion of a proposal if it or

its supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9, which prohibits the making of false or misleading statements in proxy soliciting materials or the omission of any material fact necessary to make statements contained therein not false or misleading and Rule 14a-5, which requires that information in a proxy statement be "clearly presented."

The Division has clearly stated that a Proposal should be drafted with precision. *See* Staff Legal Bulletin 14 and *Teleconference: Shareholder Proposals: What to Except in the 2002 Proxy Season* (November 26, 2001). In a November 26, 2001 teleconference, "*Shareholder Proposals. What to Expect in the 2002 Proxy Season,*" the Associate Director (Legal) of the Division (the "Associate Director") emphasized the importance of precision in drafting a proposal, citing Staff Legal Bulletin 14 ("SLB 14"). The Associate Director stated, "you really need to read the ***exact wording*** of the proposal . . . . We really wanted to explain that to folks, and we took a lot of time to make it very, very clear in [SLB 14]." (emphasis added) Question B.6 of Staff Legal Bulletin 14 states that the Division's determination of no-action requests under Rule 14a-8 of the Exchange Act is based on, among other things, the "way in which a proposal is drafted." As a professional shareholder proponent, the Proponent should be expected to know the rules regarding precision in drafting proposals and should not be afforded any concessions due to imprecise wording of the Proposal.

The Proposal is vague and indefinite[1] and does not include enough information for the stockholders of the Corporation to make an informed decision on the matter being presented. The Proposal does not provide sufficient guidance to enable the Corporation to implement it without making numerous and significant assumptions regarding what the Proponent is actually contemplating. The Proposal calls for a new Board Committee to "review whether our Company's polices, beyond those required by law, are shaped to support the US economic security." The Proposal attempts to cure this vague obligation of the proposed Board Committee by defining "US Economic Security" as follows:

> For purposes of this bylaw, "US Economic Security" impacted by bank policy may include, among other things 1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies

[1] While the literal creation of the "Board Committee on US Economic Security" set forth in the Proposal is reasonably clear, the substance and implementation of the Proposal is not. The specific actions required to be undertaken by the new Board Committee are not clear. The Corporation believes that the Board should not be required to create a new committee without clarity on the specific actions that committee would undertake to fulfill its obligations.

> incorporated or headquartered in the US and 4) the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies.

The very brief supporting statement offers little specific interpretive assistance. The supporting includes generic statements such as the need for shareholders to understand "our company's role in the long-term US economic security" and that the "investment by the US taxpayers brings reciprocal benefit to US economic security." The majority of the supporting statement deals generally with recent events.

Oddly, the definition of "US Economic Security" is defined primarily with vague and indefinite terms and phrases. The proposed Board Committee is charged with oversight on how the Corporation's policies impact " the long term health of the economy of the US." The Proposal does not define "economy of the US." Does economy refer to an economic measure, such a gross domestic product or inflation? Should the Corporation be analyzing the Proposal in terms of macro- or micro-economic indicators? Should regional or global economies be factored into the analysis? Do the stock markets or the Corporation's stock price factor into the economic analysis? Should the Corporation focus on the trade deficit or measures that may balance the federal budget? The proposal leaves numerous unanswered questions for the proposed Board Committee, the Corporation and its stockholders.

The Proposal's definition of "US Economic Security" also requires the proposed Board Committee to consider the "economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership." While the proposed Board Committee can review these macro-economic items, it is unclear what the actions they are expected to take to shape corporate policy to support these economic indicators.

Further, the definition of "US Economic Security" also requires the proposed Board Committee to consider the "levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US." As discussed above, to the extent the proposed Board Committee is expected to shape corporate policy to impact or influence the behavior of third parties (i.e., companies incorporated or headquartered in the United States, or the control of such companies by "foreign" entities), both the Board Committee and the Corporation lack any authority or power to implement such a policy or impose such influence. The Corporation does not believe that it is appropriate to request that its stockholders vote on a matter that is beyond the Corporation's power to implement. To do so, would be misleading.

The Division, in numerous no-action letters, has permitted the exclusion of shareholder proposals "involving vague and indefinite determinations . . . that neither the shareholders voting on the proposal nor the company would be able to determine with reasonable certainty what measures the company would take if the proposal was approved." *See Wendy's* (excluding a proposal requesting a report on the progress made toward "accelerating development of controlled-atmosphere killing"); *Ryland* (excluding a proposal seeking a report based on the Global Reporting Initiative's sustainability guidelines); *Peoples Energy Corporation* (November 23, 2004) (excluding a proposal to amend the governance documents to prohibit indemnification for acts of "reckless neglect"); *Alcoa Inc.* (December 24, 2002) (excluding a proposal requesting the company to commit itself to "full implementation of these human rights standards"); *Occidental Petroleum Corporation* (March 8, 2002) (excluding a proposal to adopt the "Voluntary Principles on Security and Human Rights"); and *Puget Energy, Inc.* (March 7, 2002) (excluding a proposal requesting the implementation of a "policy of improved corporate governance"). All of these previous proposals were so inherently vague and indefinite that neither the shareholders voting on the proposal, nor the subject company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal required. In addition these proposals were misleading because any action ultimately taken by the subject company upon implementation of the proposal could be significantly different from the actions envisioned by shareholders voting on the proposal." *See Philadelphia Electric Company* (July 30, 1992) and *NYNEX Corporation* (January 12, 1990).

Neither the Corporation nor its stockholders can determine with reasonable certainty what is required to implement the Proposal. In addition, Stockholders are being asked to approve a Proposal that is beyond the Corporation's power to implement. The Proposal is not clearly presented and the Corporation's stockholders cannot be asked to guess on what they are voting. In addition, the Corporation and the stockholders could have significantly different interpretations of the Proposal. The Corporation believes that the Proposal is so inherently vague, ambiguous, indefinite and misleading, that the Proposal may be omitted under Rule 14a-8(i)(3), as both a violation of Rule 14a-9 and Rule 14a-5.

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,

Andrew A. Gerber

cc: Teresa M. Brenner
John C. Harrington

HUNTON&
WILLIAMS

EXHIBIT A

See attached.

HARRINGTON
INVESTMENTS, INC.

October 30, 2008

Kenneth D. Lewis
CEO
Bank of America Corporation
100 North Tryon Street, NC1-007-20-01
Charlotte, NC 28255.

RE: A Shareholder Proposal

As a beneficial owner of Bank of America stock, I am submitting the enclosed shareholder resolution for inclusion in the 2009 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (the "Act"). I am the beneficial owner, as defined in Rule 13d-3 of the Act, of at least $2,000 in market value of Bank of America common stock. I have held these securities for more than one year as of the filing date and will continue to hold at least the requisite number of shares for a resolution through the shareholder's meeting. I have enclosed a copy of Proof of Ownership from Charles Schwab & Company. I or a representative will attend the shareholder's meeting to move the resolution as required.

I am concerned that our company is in need of oversight by a Board of Directors Committee on U.S. Economic Security in order to insure that our company's worldwide business operations do not negatively impact the domestic economy to the detriment of shareholders.

Sincerely,

John Harrington

jwu

encl.

1001 2ND STREET, SUITE 325 NAPA, CALIFORNIA 94559 707-252-6166 800-788-0154 FAX 707-257-7923
WWW.HARRINGTONINVESTMENTS.COM

Resolution to Create a Board Committee on US Economic Security

RESOLVED:

To amend the corporate bylaws by inserting in Article IV of the Bylaws the following new section:

Section 8. Board Committee on US Economic Security. There is established a Board Committee on US Economic Security. The Board Committee shall review whether our Company's policies, beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders. The Board Committee may issue reports to the Board and the shareholders at reasonable expense and omitting confidential information on the impacts of bank policy on US Economic Security. For purposes of this bylaw, "US Economic Security" impacted by bank policy may include, among other things 1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and 4) the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies.

The Chairman of the Board of Directors is authorized consistent with these regulations and applicable law, to appoint the members of the Board Committee on US Economic Security. Nothing herein shall restrict the power of the Board of Directors to manage the business and affairs of the company or its authority under the corporate articles of incorporation, bylaws, and applicable law. Notwithstanding the language of this section, the Board Committee on US Economic Security shall not incur any costs to the company except as authorized consistent with these bylaws.

Supporting Statement:

Our company has received Federal assistance under the Troubled Asset Relief Program of the US Treasury. In the opinion of the proponents, the financial system's weaknesses that precipitated this taxpayer effort to stabilize the US financial system was the result of years of irresponsible lending and business practices across the US economy, including speculative derivatives trading and a general lack of management and board oversight. While the US government has decided not to take voting shares in our company, the need for shareholders and the public to understand our company's role in long term US economic security is more evident than ever.

Following the dramatic recent government interventions, there can be no doubt that our company's financial integrity is interdependent with a strong and secure US economy. Proponents believe that the time has come for shareholders and members of the public to inquire further of our management and Board to ensure that these recent events are not repeated and that the investment by the US taxpayers brings reciprocal benefit to US economic security.

HUNTON&
WILLIAMS

EXHIBIT B

See attached.

RICHARDS LAYTON & FINGER

December 19, 2008

Bank of America Corporation
Bank of America Corporate Center Fl 18
100 N Tryon St
Charlotte, NC 28255

Re: Stockholder Proposal Submitted by John C. Harrington

Ladies and Gentlemen:

We have acted as special Delaware counsel to Bank of America Corporation, a Delaware corporation (the "Company"), in connection with a proposal (the "Proposal") submitted by John C. Harrington of Harrington Investments, Inc. (the "Proponent") that the Proponent intends to present at the Company's 2009 annual meeting of stockholders (the "Annual Meeting"). In this connection, you have requested our opinion as to a certain matter under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For the purpose of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents:

(i) the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on April 28, 1999, as amended by the Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State on March 29, 2004 (collectively, the "Certificate of Incorporation");

(ii) the Bylaws of the Company, as amended on January 24, 2007 (the "Bylaws"); and

(iii) the Proposal and the supporting statement thereto.

With respect to the foregoing documents, we have assumed: (a) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of each of the officers and other persons and entities signing or whose signatures appear upon each of said documents as or on behalf of the parties thereto; (b) the conformity to authentic originals of all documents submitted to us as certified,

conformed, photostatic, electronic or other copies; and (c) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. For the purpose of rendering our opinion as expressed herein, we have not reviewed any document other than the documents set forth above, and, except as set forth in this opinion, we assume there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. We have conducted no independent factual investigation of our own, but rather have relied solely upon the foregoing documents, the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

The Proposal

The Proposal reads as follows:

RESOLVED:

To amend the corporate bylaws by inserting in Article IV of the Bylaws the following new section:

Section 8. Board Committee on US Economic Security. There is established a Board Committee on US Economic Security. The Board Committee shall review whether our Company's policies, beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders. The Board Committee may issue reports to the Board and the shareholders at reasonable expense and omitting confidential information on the impacts of bank policy on US Economic Security. For purposes of this bylaw, "US Economic Security" impacted by bank policy may include, among other things 1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and 4) the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the board of directors of foreign companies.

The Chairman of the Board of Directors is authorized consistent with these regulations and applicable law, to appoint the members of the Board Committee on US Economic Security. Nothing herein shall restrict the power of the Board of Directors to manage

> the business and affairs of the company or its authority under the corporate articles of incorporation, bylaws, and applicable law. Notwithstanding the language of this section, the Board Committee on US Economic Security shall not incur any costs to the company except as authorized consistent with these bylaws.

DISCUSSION

You have asked our opinion as to whether implementation of the Proposal would violate the General Corporation Law. For the reasons set forth below, in our opinion, implementation of the Proposal by the Company would violate the General Corporation Law.

As a general matter, the stockholders of a Delaware corporation have the power to amend the corporation's bylaws. See 8 Del. C. § 109(a). This power, however, is subject to the limitation that the bylaws may not contain any provision inconsistent with law or with the certificate of incorporation. 8 Del. C. § 109(b).

Section 141(c)(2) of the General Corporation Law addresses committees of the board of directors of a Delaware corporation and provides:

> The board of directors may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by this chapter to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the corporation.

8 Del. C. § 141(c)(2) (emphasis added).[1]

Section 141(c)(2) expressly contemplates that the bylaws of a Delaware corporation (and, consequently, the stockholders by amendment of the bylaws) may: (1) permit the members of a committee to unanimously appoint another member of the board of directors to act at a meeting of the committee in place of any absent or disqualified member, and (2) restrict the powers that a board committee may exercise in the management of the business and affairs of the corporation.[2] Section 141(c)(2), however, contemplates only one process by which a committee of the board of directors may be constituted -- by act of the board of directors. Moreover, implicit in the specificity of the procedures set forth in Section 141(c)(2) is that a bylaw purporting to implement the procedure outlined in Section 141(c)(2) "probably should not deviate from the procedure authorized." 1 R. Franklin Balotti & Jesse A. Finkelstein, The Delaware Law of Corporations & Business Organizations, § 4.10[B] at 4-33 (2008 Supp.). Because Section 141(c)(2) grants only the board of directors of a Delaware corporation the power to constitute a committee of the board, a bylaw that would enable a single director, the Chairman of the Board of Directors (the "Board") of the Company, to "appoint the members of the Board Committee on US Economic Security" would be "inconsistent with law."

In addition, Section 141(a) of the General Corporation Law provides in pertinent part:

> The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.

8 Del. C. § 141(a) (emphasis added). Thus, absent any provision in the Certificate of Incorporation to the contrary, implicit in the management of the business and affairs of the Company is that the Board, not one individual director, would direct the decision-making process regarding, among other things, the appointment of members of a committee of the Board.

The legislative history to Section 141(c) of the General Corporation Law also confirms that the power to constitute a committee of the board is a function specifically reserved to the whole board of directors by statute. The Official Comment to the 1996 amendments that

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[1] All corporations incorporated on or after July 1, 1996 are governed by Section 141(c)(2). Bank of America Corporation was incorporated on July 31, 1998.

[2] See Hollinger Int'l Inc. v. Black, 844 A.2d 1022, 1079 n.131 (Del. Ch. 2004) (noting that Section 141(c)(2) authorizes the bylaws, within certain limits, to set forth the ceiling of powers a board committee may have), aff'd, 872 A.2d 559 (Del. 2005).

created Section 141(c)(2) provides: "This amendment is intended to simplify Section 141(c) and expand for corporations incorporated on or after July 1, 1996, the powers and authority that a board of directors may delegate to a committee of the board and to eliminate for such corporations the requirement that a committee of the board be formed by resolution passed by a majority of the whole board." 2 R. Franklin Balotti & Jesse A. Finkelstein, The Delaware Law of Corporations & Business Organizations, § 141 at IV-23 (3d ed. 1999 Supp.) (emphasis added). As indicated by the underscored language above, it is the board of directors who has the power to designate a board committee. See also S. Samuel Arsht & Walter K. Stapleton, Analysis of the 1967 General Corporation Law 330 (Prentice-Hall 1967) ("Under the new statute, the board may designate one or more directors as alternate members of a committee who replace an absent or disqualified member at any meeting.") (emphasis added); Lewis S. Black, Jr. and Frederick H. Alexander, Analysis of the 1996 Amendments to the Delaware General Corporation Law, at 312 (Prentice-Hall 1996) ("The 1996 amendments make two important changes to Section 141(c). First, the requirement that committees be appointed only by a majority of the whole board has been eliminated, so that the board can act to appoint a committee by a simple majority vote.") (emphasis added). Thus, it is the board of directors, and not one individual director, that has the power to designate the members of a committee of the board.

Finally, the "savings clause" which suggests the Chairman of the Board of Directors' authority to appoint the members of the Board Committee on US Economic Security is "consistent with ... applicable law" is a nullity. The "savings clause" does not resolve the conflict between the proposed bylaw that would enable a single director to appoint the members of a board committee and the dictates of the General Corporation Law. Section 141(c)(2) of the General Corporation Law does not permit a single director to appoint the members of a board committee. Rather, Section 141(c)(2) grants only the board of directors the power to constitute a committee of the board. Accordingly, there is no means by which the Chairman of the Board of Directors can act "consistent with applicable law" to appoint the members of the proposed Board Committee on US Economic Security.

The Proposal, if implemented, would enable a single director, the Chairman of the Board, to "appoint the members of the Board Committee on US Economic Security." Because the power to constitute a committee of the Board is a power specifically conferred upon the whole Board by Section 141(c)(2) of the General Corporation Law, a bylaw that purports to confer upon the Chairman of the Board the authority to appoint the members of a board committee would violate the General Corporation Law. Accordingly, implementation of the Proposal would violate the General Corporation Law.

CONCLUSION

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if adopted by the stockholders, would violate the General Corporation Law.

The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the SEC in connection with the matters addressed herein and that you may refer to it in your proxy statement for the Annual Meeting, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

CSB/TNP