DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

March 7, 2011

Andrew A. Gerber
Hunton & William LLP
Bank of America Plaza
Suite 3500
101 South Tryon Street
Charlotte, NC 28280

Re: Bank of America Corporation
Incoming letter dated January 6, 2011

Dear Mr. Gerber:

This is in response to your letters dated January 6, 2011, February 14, 2011, and February 24, 2011 concerning the shareholder proposal submitted to Bank of America by the AFSCME Employees Pension Plan. We have also received letters from the proponent dated February 4, 2011 and February 18, 2011. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Gregory S. Belliston
Special Counsel

Enclosures

cc: Charles Jurgonis
Plan Secretary
American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, N.W.
Washington, DC 20036-5687

March 7, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Bank of America Corporation
Incoming letter dated January 6, 2011

The proposal requests that Bank of America provide a report on lobbying contributions and expenditures that contains information specified in the proposal.

We are unable to concur in your view that Bank of America may exclude the proposal under rule 14a-8(i)(7). In our view, the proposal focuses primarily on Bank of America's general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate. Accordingly, we do not believe that Bank of America may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Bryan J. Pitko
Attorney-Advisor

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

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FILE NO: 46123.74

February 24, 2011

Rule 14a-8

BY ELECTRONIC MAIL

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

Re: Stockholder Proposal Submitted by the AFSCME Employees Pension Plan

Ladies and Gentlemen:

By letters dated January 6, 2011 and February 14, 2011 (together, the "Initial Letters"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "Proposal") submitted by the AFSCME Employees Pension Plan (the "Proponent") from its proxy materials for the Corporation's 2011 Annual Meeting of Stockholders (the "2011 Annual Meeting") for the reasons set forth therein.

As counsel to the Corporation, we hereby supplement the Initial Letters and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2011 Annual Meeting. This letter is intended to supplement, but does not replace, the Initial Letter. While we believe the arguments set forth in the Initial Letters meet the necessary burden of proof to support the exclusion of the Proposal as provided therein, the Corporation would like to clarify several matters raised in the Proponent's supplemental letter dated February 18, 2011 (the "AFSCME Letter").

A copy of this letter is also being sent to the Proponent.

DISCUSSION

The Corporation continues to have significant and legitimate concerns regarding the safety and privacy of its employees. Managing employee safety and privacy concerns are serious matters that must be part of the Corporation's day-to-day ordinary business operations.

The Initial Letters illustrated numerous examples where special interest groups targeted the private residences of persons with whom they disagreed. In the AFSCME Letter, the Proponent again dismisses these events. The Proponent argues that the May 2010 protest outside the home of a Corporation employee (the "May 2010 Event") is a "single unrelated incident." *AFSCME Letter.* The Proponent argues that the there is "no evidence to suggest that any of the cited episodes [in the Initial Letters] followed company disclosures that occurred in response to a shareholder proposal." *Id.* This argument is one dimensional and misses the point. The concern is not only the *means* by which information is gained but also the *use* of such information by special interest groups.

The events discussed in the Initial Letters are real, recurring and recent. The Corporation's concerns are well-grounded in actual events. Contrary to the Proponent's argument that the May 2010 Event was a one-time, unique incident, special interest group targeting of private residences has become a well established form of protest. A recent Wall Street Journal article highlights this fact.[1] The growing use of residential protests can also be seen in the recent publishing of home addresses of persons whom the Wisconsin Education Association Council ("WEAC") targets for protest on its website. Although these addresses are publicly available elsewhere, the compilation of these names and addresses and posting on the WEAC website under the caption "Public employee unions plan actions" may reasonably be viewed as a call to action.[2] This is especially true given the guidelines provided to protestors on the WEAC and AFSCME websites regarding how to conduct protests at private residences (discussed below).

The relevant page of the WEAC website lists various protest activities. In addition, it is clear from the WEAC website and other related websites that AFSCME is integrally involved in the protest activities, including protesting at private residences. One example of this relationship is the link to an "AFSCME bus schedule" on the WEAC website.[3] Another WEAC webpage states

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[1] *See "So Much for a 'More Civil' Public Disclosure," Wall Street Journal,* available at http://online.wsj.com/article /SB10001424052748704476604576158283198424372.html?mod=ITP_opinion_0 (the "*WSJ Article*").

[2] *See* http://www.weac.org/news_and_ publications/education _news/11-02-11/Public_employee_ unions_plan_actions.aspx.

[3] *Id.*

"Note: AFSCME also is maintaining a list of activities and events. If you don't see an event in your community here you may find one on the AFSCME activities list."[4]

Most telling is the information provided on (1) the WEAC webpage titled "Rallies continue in Madison and throughout the state!" and (2) on the AFSCME (Wisconsin Council 40) website.[5] Both of these websites provide information regarding protests at personal residences under the heading: **"Here are some guidelines to follow if you are planning public demonstrations or picketing at legislators' homes."**[6] Such targeting activities require additional measures by companies to protect the safety and privacy of employees and their families.

Examples of this tactic, in addition to those previously discussed in the Initial Letters, include:

- protests at Wisconsin Governor Scott Walker's private residence in Wauwatosa, Wisconsin in February 2011[7];
- protests at a Wisconsin state Senator's private residence in Rural Falls, Wisconsin on February 18, 2011[8];
- protests in February 2011 at the home of Wisconsin state Representative Samantha Kerkman in Kenosha, Wisconsin, during which her parents were confronted as they drove down her street[9]; and
- protests by a group called "DC Vote" recently swarmed the private home of House Speaker John Boehner in Washington, D.C., with one protestor stating, "[w]e decided to come to his house to tell him to leave D.C. alone." [10]

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[4] *See* http://www. weac.org/Issues_Advocacy/Legislative_Resources/Support_Our_Union/ activities.aspx.

[5] *See* http://www.weac.org/Issues_Advocacy/Legislative_Resources/Support_Our_ Union/activities.aspx and http://www.afscme40.org/

[6] See *Id.*

[7] In response to the protests at Governor Walker's home, Senator Ron Johnson stated, "I was deeply troubled when I learned that union supporters were surrounding Governor Walker's private home in Wauwatosa. That is out of line and out of bounds." *"New U.S. Senator Rushes to Wis. Governor's Defense," Townhall.com*, February 17, 2011, available at http://townhall.com/tipsheet/elisabethmeinecke/ 2011/02/17/new_us_senator_rushes_to_wisc_governors _defense. *See also WSJ Article.*

[8] *See River Falls Journal,* online ed., *"UPDATE: Protests continue locally; group visits Harsdorf home,"* February 18, 2011, available at http://www.riverfallsjournal.com/event/article/id/97752/; *see also WSJ Article.*

[9] *See WSJ Article.*

News articles and web pages discussing the above examples are attached hereto as **Exhibit A**.

Conclusion.

As noted, special interest group targeting of private residences is a well established form of protest that is growing in popularity. Based on the May 2010 Event, similar occurrences (such as those described above) and fact that the Proponent provides guidelines for demonstrating at a private residence on its website, the Corporation respectively requests the ability to protect its employees from this real and legitimate threat. At the same time, the Individual Employee Identification Requirement (as defined in the Initial Letters) is an irrelevant requirement serving no valid purpose in the context of the Proposal. The Proponent fails to provide any justification for or benefit to stockholders from such exposure.

The Proposal would preclude the Corporation from properly managing and protecting its workforce and employees. The Corporation and its management are in the best position to determine what policies and practices are prudent to protect employees and their privacy. Based on the foregoing discussion, the Corporation believes that the Proposal is excludable pursuant to Rule 14a-8(i)(7).

* * * * * ** *

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 2011 Annual Meeting. Based on the Corporation's timetable for the 2011 Annual Meeting, a response from the Division by March 1, 2011 would be of great assistance.

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, Craig T. Beazer, Deputy General Counsel of the Corporation, at 646-855-0892.

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[10] *"New U.S. Senator Rushes to Wis. Governor's Defense," Townhall.com*, February 17, 2011, available at http://townhall.com/tipsheet/elisabethmeinecke/ 2011/02/17/new_us_senator_rushes_to_wisc_governors_defense.

Thank you for your prompt attention to this matter.

Very truly yours,

Andrew A. Gerber

cc: Craig T. Beazer
Charles Jurgonis

AFSCME
We Make America Happen

EMPLOYEES PENSION PLAN

February 18, 2011

VIA EMAIL
Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Shareholder proposal of AFSCME Employees Pension Plan; request by Bank of America Corporation for determination allowing exclusion

Dear Sir/Madam:

The AFSCME Employees Pension Plan (the "Plan") submits this response to the supplemental letter filed by Bank of America Corporation ("BAC" or the "Company"), which letter is dated February 14, 2011 ("BAC Supp. Letter").

BAC effectively concedes that the only way it can avoid the precedents that authorize this Proposal is to argue that the Proposal implicates employee privacy and safety. To this end the Company cites a handful of protests at homes of executives at other companies (plus one political candidate) and accuses the Plan of conceding that such protests "might happen" if the resolution appears in BAC's proxy materials. This accusation is inaccurate.

First, contrary to BAC's accusation, the Plan did not "concede" that protests "might happen" at executives' homes if the Proposal is adopted. BAC Supp. Letter at 5. The Plan's letter simply stated (at 9) that the one episode cited by BAC is not "predictive of what might happen" in the future. That is a matter of simple logic, given the difficulty in extrapolating the likelihood of a future event based on a single unrelated incident. BAC badly distorts our argument.

Second, the three or four new incidents cited by BAC illustrate our point. These protests involved other companies and other issues stretching over a period of years. The cited incidents appear to be random episodes of the sort that could occur at any time for any number of reasons. There is no reason to believe that any of the cited incidents occurred because the company in question had suddenly or recently released information that facilitated these episodes. And there is surely no evidence to suggest that any of the

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cited episodes followed company disclosures that occurred in response to a shareholder proposal.

* * * *

For these reasons, as well as those stated in our prior letter, the Plan respectfully asks the Division to deny the no-action relief that Bank of America has sought.

Thank you in advance for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,

Charles Jurgonis
Plan Secretary

cc: Andrew A. Gerber, Esq.

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February 14, 2011

Rule 14a-8

BY ELECTRONIC MAIL

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

Re: Stockholder Proposal Submitted by the AFSCME Employees Pension Plan

Ladies and Gentlemen:

By letter dated January 6, 2011 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "Proposal") submitted by the AFSCME Employees Pension Plan (the "Proponent") from its proxy materials for the Corporation's 2011 Annual Meeting of Stockholders (the "2011 Annual Meeting") for the reasons set forth therein. In response to the Initial Letter, the Proponent submitted a letter (the "AFSCME Letter") dated February 4, 2011 to the Division indicating its view that the Proposal may not be omitted from the proxy materials for the 2011 Annual Meeting. The AFSCME Letter is attached hereto as **Exhibit A**. For ease of reference, this response follows the order of the discussion in the AFSCME Letter.

As counsel to the Corporation, we hereby supplement the Initial Letter and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2011 Annual Meeting. This letter is intended to supplement, but does not replace, the Initial Letter. While we believe the arguments set forth in the Initial Letter meet the necessary burden of proof to support the exclusion of the Proposal as provided therein, the Corporation would like to clarify several matters raised in the AFSCME Letter. A copy of this letter is also being sent to the Proponent.

DISCUSSION

Under Division precedent, where any portion of a proposal is excludable under Rule 14a-8(i)(7), the entire proposal is excludable, even if a portion of the proposal deals with matters that raise significant policy concerns (which the Proposal does not).

The objectionable portion of the Proposal requires the identification by name of each individual employee who participates in decisions regarding each and every payment (regardless of amount) for lobbying contributions or expenditures (the "Individual Employee Identification Requirement"). While the Proponent in the AFSCME Letter states that Individual Employee Identification raises significant policy concerns, it provides no meaningful evidence to support its assertion that the Individual Employee Identification Requirement has garnered any public or media focus. Rather, the AFSCME Letter focuses on corporate lobbying generally and related media attention. As discussed in the Initial Letter, there is no public or media focus on identifying individual employees (regardless of their rank or title) that are involved in any aspect of decisions regarding lobbying contributions and expenditures.

As detailed in the Initial Letter and described below, the Individual Employee Identification Requirement also raises issues of employee safety and privacy in light of specific recent events where employees believed to have engaged in a disfavored activity by a special interest group have been the target of protests.

The AFSCME Letter argues that because a portion of the Proposal deals with corporate lobbying, a matter the Division has found to be outside a company's ordinary business operations, the Proposal is immune from exclusion under Rule 14a-8(i)(7). This conclusion is incorrect as the Proponent ignores the fact that the Proposal has three essential and distinct components, one of which deals with an ordinary business matter. First, the Proposal seeks information about lobbying policies and procedures. Second, it seeks information about payments for lobbying activities. Third, the Proposal imposes the Individual Employee Identification Requirement. We do not dispute that the Division has found proposals with provisions similar to those contained in components one and two of the Proposal to be matters that transcend ordinary business; however, we believe that the third component of the Proposal, which imposes the Individual Employee Identification Requirement, deals with a matter of ordinary business (employee safety and privacy). As discussed at length in the Initial Letter, the Division's practice has been to permit exclusion of a proposal in its entirety where any portion of the proposal touches on a company's ordinary business operations, even if particular aspects of the proposal would not be excludable on a stand-alone basis or raise significant policy concerns. *See Bank of America Corporation* (February 24, 2010); *E*Trade Group, Inc.* (October 31, 2000); and *Wal-Mart Stores, Inc* (March 15, 1999) (as discussed in the Initial Letter). Rather

than offer to omit the Individual Employee Identification Requirement, the AFSCME Letter specifically argues the importance of such requirement. The Individual Employee Identification Requirement deals with a matter of ordinary business and, per the AFSCME Letter, cannot be severed from the Proposal. Accordingly, even if the Division finds that one or both of the first two prongs of the Proposal related to matters that transcend ordinary business matters, the entire Proposal may be excluded under Rule 14a-8(i)(7).

AFSCME Letter's Cited Division Precedent does not support its conclusion.

The AFSCME Letter cites several letters in support of its proposition that because language similar to the Individual Employee Identification Requirement was included in prior proposals that were not found excludable under Rule 14a-8(i)(7), that the Division has determined that such proposals do not involve employment-related matters that are excludable. We believe, however, that the precedent presented in the AFSCME Letter supports the conclusion that the subject companies failed to meet their burden of persuasion under Rule 14a-8(g) rather than the conclusion that the Division previously considered the employee safety and privacy arguments raised by the Corporation.

The AFSCME Letter first cites *Halliburton Co.* (March 11, 2009) ("*Halliburton*"). In *Halliburton*, the Division's response provided no guidance on its decision. Further, the company in *Halliburton* failed to meaningfully raise that the employee identification provisions found in that proposal were problematic or raised safety or privacy concerns. The entire *Halliburton* argument with respect to the employee identification requirement was that "the following items in the [p]roposal deal with Halliburton's ordinary business matters . . . [i]dentification of the persons who make decisions to make political contributions – employment related matter (resolution paragraph 2.b.)." Finally, it does not appear that the company in *Halliburton* presented any evidence that any of its employees had been specifically targeted by special interests groups based on their lobbying activities. For the foregoing reasons, we do not believe that the Division considered employee identification issues (safety and privacy). Consequently, we respectively submit that this letter should not stand as relevant precedent.

The AFSCME Letter next cites *Chubb Corp.* (January 27, 2004) ("*Chubb*"). As in Halliburton, the Division failed to provide guidance on its decision in *Chubb*. And once again, the company did not argue in any meaningful way that the employee identification provisions contained in the proposal were problematic or raised safety or privacy concerns. In *Chubb*, the company argued that the problem with an identification requirement centered not on employee safety or privacy concerns but around (i) the fact that decision making processes are fluid and involve numerous company officials, (ii) the administrative burden that such a requirement creates and (iii) the fact that such a requirement would affect daily decision-making procedures. The company in *Chubb*

also did not provide any evidence that any of its employees had been specifically targeted by special interests groups based on their lobbying activities. For the foregoing reasons, we do not believe that *Chubb* provides on-point precedent.

The AFSCME Letter also cites *American International Group. Inc.* (February 19, 2004) ("*AIG*"). In *AIG*, the Division's response provided no guidance on its decision. Once again, the company in *AIG* failed to argue that the employee identification provisions were problematic or raised safety or privacy concerns. In *AIG*, the only relevant argument presented by the company consisted of the following conclusionary statement – "the [p]roponent's request to identify each employee involved in the decision-making process encroaches upon the [c]ompany's relations with its employees." In short, the company in *AIG* only makes a generic employee relations argument. Again, there does not appear to be any evidence presented in *AIG* that any employees were the targets of special interests groups based on their lobbying activities. Thus, the *AIG* letter does not stand, as the Proponent argues, for the proposition that the Division has considered the employee identification issue in light of safety and privacy concerns as presented by the Corporation in the present instance.

Finally, the AFSCME Letter cites to *Time Warner Inc.* (February 11, 2004) ("*TWI*"), although *TWI* is inapplicable to the discussion. In *TWI*, the company failed to argue that the employee identification provisions were problematic or raised safety or privacy concerns. The company in *TWI* did not present any direct evidence that any of its employees had been specifically targeted by special interests groups based on their lobbying activities. As safety and privacy concerns related to the identification of employees were not raised or addressed, the *TWI* letter cannot stand for the proposition that the Division has considered the employee identification issue in light of safety and privacy concerns as the Proponent asserts in the AFSCME Letter.

The AFSCME Letter correctly states that "BAC did not discuss these decisions (*Halliburton, Chubb, AIG* and *TWI).*" We did not discuss these no-action letters because:

- the Division's responses in these letters provided no guidance on the matters of employee safety and privacy;
- the subject company in each of these letters failed to meaningfully argue that employee identification provisions were problematic or raised safety or privacy concerns; and
- the subject company in each of these letters failed to present any evidence that company employees had been specifically targeted by special interests groups based on their lobbying activities.

Consequently, these no-action letters are essentially irrelevant to the Corporation's primary argument that the Individual Employee Identification Requirement raises significant employee safety and privacy concerns and that the Corporation's ordinary business includes its ability to manage such concerns.

Managing employee safety and privacy concerns are serious matters that must be part of the Corporation's day-to-day ordinary business operations.

The AFSCME Letter tries to minimize the significance of the May 2010 protest at the private residence of the Corporation's employee (as well as the home of another company's employee) discussed in the Initial Letter. The Proponent attempts to justify and dismiss this event by reference to certain foreclosure activities. The AFSCME Letter argues that the targeting of the personal residence of one of the Corporation's employees in May 2010 is only "*one* example" and "is hardly predictive of what ***might happen***" if the Proposal were to be adopted. (emphasis added) The fact that the Proponent qualified its statement with a "***might***" is troublesome. The Proponent essentially concedes the point that targeting the personal residences of Corporation employees might happen if the Proposal is adopted.

We believe that "one example" is one to many. Furthermore, as illustrated below, targeting of private residences has occurred multiple times during the past year. These instances should not be dismissed and require additional measures by companies to protect the safety and privacy of their employees. Recent events include:

- A special interest group, Wal-Mart Free DC, has held at least two protests at the private home of a developer they believed was involved in bringing Wal-Mart stores to Washington, D.C. The group's flyers included the developer's home address and some included a target crosshair symbol.

- In July 2010, 1,000 union nurses gathered in protest at California Gubernatorial candidate Meg Whitman's private residence[1].

- In December 2010, workers locked out from Roquette America visited the private homes of top executives to protest.

[1] Video of the Whitman protest can be seen here:
http://www.youtube.com/watch?v=p6NMhcZIi2Q&feature=player_embedded#

- In 2009, the Connecticut Working Families Party organized a bus tour that stopped at the private homes of AIG executives.

See **Exhibit B** for a news articles and the demonstration flyers regarding these protests.

Conclusion.

As noted in the Initial Letter, the Proposal probes into matters of a complex nature involving employee safety and privacy matters as well as matters relating to the legislative process. The Individual Employee Identification Requirement, which requires the Corporation to identify by name each individual employee that participates in decisions regarding any payment (regardless of amount) for lobbying contributions or expenditures, forces the Corporation to unnecessarily expose its employees to harm. Further, the Individual Employee Identification Requirement is an irrelevant requirement serving no valid purpose in the context of the Proposal. The Proponent fails to provide any justification for or benefit to stockholders from such exposure. The Proposal precludes the Corporation from properly managing and protecting its workforce and employees. Based on the recent events involving a Corporation employee, as well as similar occurrences such as those described above, the Corporation respectively requests the ability to protect its employees from real and legitimate threats.

The Corporation and its management are in the best position to determine what policies and practices are prudent to protect employees and their privacy. In addition, the portions of the Proposal related to the Corporation's engagement in the political and legislative process are part of the Corporation's ordinary and daily business operations. The Proposal seeks to take this authority from management. Based on the foregoing discussion, the Corporation believes that the Proposal is excludable pursuant to Rule 14a-8(i)(7).

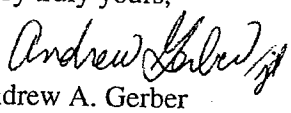
* * * * * ** *

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 2011 Annual Meeting. Based on the Corporation's timetable for the 2011 Annual Meeting, a response from the Division by February 25, 2011 would be of great assistance.

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, Craig T. Beazer, Deputy General Counsel of the Corporation, at 646-855-0892.

Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Craig T. Beazer
Charles Jurgonis

HUNTON& WILLIAMS

EXHIBIT A

See attached.

AFSCME
We Make America Happen

EMPLOYEES PENSION PLAN

February 4, 2011

VIA EMAIL – shareholderproposals@sec.gov
Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Shareholder proposal of AFSCME Employees Pension Plan; request by Bank of America Corporation for determination allowing exclusion

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFSCME Employees Pension Plan (the "Plan") submitted to Bank of America Corporation ("BAC" or the "Company") a shareholder proposal (the "Proposal") requesting a report on lobbying.

In a letter dated January 6, 2011 ("BAC Letter"), the Company advised of its intention to omit the Proposal from the proxy materials being prepared for BAC's 2011 annual meeting of shareholders and asked that the Division issue a determination that it would not recommend enforcement action if the Company does so.

BAC relies exclusively on Rule 14a-8(i)(7), arguing that the proposal deals with a matter related to the Company's ordinary business operations. Because BAC has not met its burden of proving that it is entitled to rely on this exclusion, the Plan respectfully urges that BAC's request for relief be denied.

The Proposal

The proposal asks BAC's board of directors to prepare an annual report disclosing the Company's—

1. Policies and procedures for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.

2. Payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including the amount of the payment and the recipient.

3. The report shall also include the following for each payment, as relevant:

a Identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure; and

b. Identification of the person or persons in the Company who participated in making the decision to make the payment for grassroots lobbying expenditures.

The resolution goes on to define "grassroots lobbying communication" and to specify that those communications and "direct lobbying" include efforts at the federal, state and local levels.

The supporting statement explains that the proposal is filed based on a belief in the need for transparency and accountability in corporate spending to influence legislation. It cites a report by three International Monetary Fund economists that lobbying by financial institutions, including BAC in 2000-07, was correlated with more risk taking and worse performance in 2008, adding that lobbying lenders were more likely to be bailed out in 2008.

The supporting statement also cites BAC's expenditure of $7.66 million in 2008 and 2009 on direct lobbying expenses, which may not include grassroots lobbying efforts, adding that publicly available data may not provide a complete picture of the Company's lobbying expenditures, given the lack of uniform disclosure requirements in this area.

As we explain below, BAC has failed to sustain its burden of demonstrating that this proposal relates to the Company's "ordinary business" under Rule 14a-8(i)(8) and may therefore be excluded.

Analysis

Rule 14a-8(i)(7) allows exclusion of a proposal that relates to the company's ordinary business operations. The purpose of the exclusion is to keep stockholders from micromanaging the company's day-to-day business decision making. The exclusion reflects the Commission's judgment that stockholders generally do not have sufficient information to make ordinary business decisions and that stockholder oversight of such decisions is impractical because those decisions are made daily. Examples provided in the Commission's 1998 release include the hiring and firing of employees, "decisions on production quality and quantity," and choice of suppliers. (Exchange Act Release No. 40,018 (May 21, 1998))

The ordinary business exclusion does not apply, however, to a proposal dealing with a "significant social policy issue," even if the subject matter of the proposal would otherwise be considered ordinary business. For instance, although proposals dealing with management of the workforce are generally considered to relate to ordinary business, companies have not been permitted to exclude proposals on the MacBride Principles—fair employment principles for businesses in Northern Ireland—on ordinary business grounds because ending religious discrimination in employment there was considered a significant social policy issue. (See, e.g., TRW Inc. (Jan. 28, 1986))

That a proposal's subject involves a company's products and services does not preclude it from being deemed a significant social policy issue. Sponsors of proposals addressing tobacco marketing to minors at a cigarette company (see Phillip Morris Companies Inc. (Feb. 22, 1990); the sale of genetically-modified foods by a grocery chain (see Kroger Co. (Apr. 12, 2000)); and the selection of countries in which an oil exploration company should do business (see Chevron Corporation (Mar. 21, 2008)), among many others, successfully avoided exclusion on ordinary business grounds by arguing that the proposals implicated significant social policy issues, despite their close connections to the company's products or services. Thus, corporate lobbying can be considered a significant social policy issue (as discussed more fully below), defeating application of the ordinary business exclusion, even if lobbying is often[1] done on measures that affect a company's products or services.

The Intense Public and Media Focus on Corporate Lobbying and Its Effect on the Political Process Makes It a Significant Social Policy Issue

In the past several years, an intense public debate has arisen over the extent and role of corporate involvement in both direct and grassroots lobbying activities. Direct lobbying encompasses efforts made directly by companies and their lobbyists, as well as lobbying undertaken by trade associations and other groups on behalf of their corporate members. Grassroots lobbying is an attempt to influence the general public, or segments thereof, with respect to elections, legislative matters or referenda. (See 26 U.S.C. section 162(e).)

Extensive coverage in major national media outlets demonstrates that corporate lobbying has become a significant social policy issue. The public debate over corporate lobbying has greatly

[1] It is worth noting that companies may lobby on measures that have little or no connection with their products or services. For example, companies and their trade associations have vigorously lobbied against legislation and regulation that would provide public company stockholders with procedures for nominating director candidates using the company's proxy statement ("proxy access" procedures). (See, e.g., Stephen Grocer, "Proxy Access: The Biggest Businesses Get Their Way," Deal Journal (Wall Street Journal), Aug. 4, 2010) The authors of a recent Harvard Law Review article note that management may use corporate resources to lobby against the expansion of stockholder rights that stockholders favor; they argue that the likelihood that directors' and officers' interests may be very different from the interests of stockholders when it comes to corporate political speech, including lobbying, should take political speech decisions out of the realm of ordinary business. (Lucian Bebchuk and Robert Jackson, Jr., "Corporate Political Speech: Who Decides?" Harvard Law Review, Vol. 124, pp. 83-117 (2010))

intensified in the past two years as a result of well-publicized corporate lobbying efforts against three pieces of reform legislation that enjoyed substantial public support--health care reform, climate change legislation and financial reform--as well as on other less high-profile measures.

Corporate lobbying on financial services reform was controversial in 2009 and 2010. CEOs of financial services companies tried to distance themselves from the vigorous stances against financial reform undertaken by their own lobbyists, pledging to support re-regulation of financial markets. A Wall Street Journal article reported on a White House meeting involving top executives from a number of large financial services firms, some of whom claimed that their lobbyists had "taken stronger stands than they would have wanted." (Jonathan Weisman, "Bank CEOs Pledge to Push for Re-Regulation," Wall Street Journal, Dec. 15, 2009) President Obama emphasized after that meeting that he had "no intention of letting [financial firms'] lobbyists thwart reforms necessary to protect the American people"; the day before the meeting, National Economic Council Director Lawrence Summers appeared on CNN to blast the industry's $300 million lobbying effort. (Id.)

Lobbying by trade associations, financed by corporate members whose identities are not disclosed, received a great deal of attention because of concerns that it subverts disclosure regulations and allows corporations to avoid accountability for their lobbying activities. An October 2010 article in The New York Times, "Top Corporations Aid U.S. Chamber of Commerce Campaign," detailed the Chamber's role in channeling corporate funds to lobbying efforts aimed at influencing specific legislation, including health care and financial reform, as well as to a Chamber-affiliated foundation critical of regulation. (Eric Lipton, et al., "Top Corporations Aid U.S. Chamber of Commerce Campaign," The New York Times, Oct. 21, 2010) A 2009 New Yorker article described the internal fractures caused by the Chamber's lobbying against climate change legislation. (James Surowiecki, "Exit Through Lobby," The New Yorker, Oct. 19, 2009)

It is not possible to catalog the extensive national media coverage of the Chamber's recent lobbying efforts; some illustrative examples include:

- The New York Times (see Eric Lichtblau and Edward Wyatt, "Pro-Business Lobbying Blitz Takes on Obama's Plan for Wall Street Overhaul," The New York Times, Mar. 27, 2010 and Anne Mulkern, "'Hot Button' Climate Issue Spotlights How U.S. Chamber Sets Policy," The New York Times, Oct. 6, 2009);

- MSNBC.com (see "Chamber of Commerce Opposes Obama's Plans," MSNBC.com, Aug. 9, 2009 and Jim Kuhnhenn, "Chamber Emerges as Formidable Political Force," MSNBC.com, Aug. 21, 2010);

- Newsweek (see Nancy Cook, "You Call This Financial Reform," Newsweek, Oct. 15, 2009);

- Bloomberg Business Week (see Jane Sasseen, "Financial Regulation: Main Street vs. the White House," Bloomberg Business Week, Sept. 16, 2009 and Rebecca Christie and Timothy Homan, "Wolin Criticizes Lobbying Against Financial Overhaul," Bloomberg Business Week, Mar. 24, 2010);

- Forbes (see Thomas Cooley, "Lobbying Against Reform," Forbes, Dec. 9, 2009) ("We are now in the midst of a very important national debate.");

- The Washington Post (see Brady Dennis, "House Panel Backs New Protection for Consumers," The Washington Post, Oct. 23, 2009);

- The Wall Street Journal (see Christopher Conkey, "Pro-Business Group Targets Obama Agenda," The Wall Street Journal, June 11, 2009; Brody Mullins, "Chamber Ad Campaign Targets Consumer Agency," The Wall Street Journal, Sept. 8, 2009; and Brody Mullins, "Financial-Services Regulation Fuels Tiff," The Wall Street Journal, Oct. 14, 2009);

- Roll Call (see Bennett Roth, "U.S. Chamber Reports Record Spending on Lobbying," Roll Call, Oct. 19, 2009)

- The Hill (see Silla Brush, "Chamber Pushes Dems to Cut New Financial Regulator's Powers, The Hill, Dec. 10, 2009);

- CNNMoney (see Jennifer Liberto, "No Senate Deal on Consumer Financial Protection," CNNMoney.com, Feb. 5, 2010); and

- National Public Radio (see "Chamber Ads Aim to Stop CFPA," Mar. 26, 2010) (available at marketplace.publicradio.org/display/web/2010/03/26/pm-chamber-of-commerce/?refid=0)(last visited Jan. 2, 2011)

Similarly, Bloomberg reported that the America's Health Insurance Plans ("AHIP") trade association gave the Chamber $86 million to oppose a public option in health care reform, and to convince lawmakers to vote against the final bill, in 2009 and 2010. Critics such as the Center for Responsive Politics lambasted the health insurers for covertly funding opposition to reform while negotiating with Democrats over the bill's contents. A former Chairman of the Federal Election Commission characterized the expenditure as "breathtaking." (Drew Armstrong, "Insurers Gave U.S. Chamber $86 Million Used to Oppose Obama's Health Law," Bloomberg, Nov. 17, 2010), available at http://www.bloomberg.com/news/2010-11-17/insurers-gave-u-s-chamber-86-million-used-to-oppose-obama-s-health-law.html.

Former CIGNA head of corporate communications turned corporate whistle-blower Wendell Potter garnered substantial media attention in 2009, when he testified before Congress and went

public with his descriptions of underhanded health insurer practices. (See Kate Pickert, "The Making of a Health-Care Whistle-Blower," Time, Sept. 8, 2009) Among other things, Potter described the industry's "duplicitous PR campaign" of appearing supportive of reform but working behind the scenes through organizations like AHIP to kill it. (See Lee Fang, "'Duplicitous' Campaign of Insurers to Charm the Public While Secretly Killing Reform," ThinkProgress.org, Sept. 17, 2009 (available at thinkprogress.org/2009/09/17/potter-charm-dirty-campaign)(last visited January 2, 2011))

Potter stressed the role of insurers' lobbying and political expenditures in protecting them from negative consequences of their own behavior. (See pbs.org/moyers/journal/03052010/profile.html) Potter's media appearances and mentions are too numerous to list; he appeared on CNN, CBS News, Fox, ABC News, MSNBC and the BBC, among others, in 2009. A complete list, with links to video, can be found at wendellpotter.com/media/media-archive/.

Corporations' roles in funding simulated "grassroots" citizen communications, using third-party front groups, have also come in for a great deal of scrutiny and criticism recently. A Newsweek article noted in August 2009 that corporate-funded fake grassroots activism (also referred to as "astroturf" lobbying) was behind the protests over "death panels" that supposedly would result from health care reform legislation, as well as the "tea party" protests against the Obama administration's economic stimulus proposals. (Daniel Stone, "The Browning of Grassroots," Newsweek, Aug. 20, 2009) The article reported on a leaked email from the American Petroleum Institute seeking to orchestrate, through funding and logistical coordination, seemingly independent protests against climate change legislation. Corporate interests opposed to financial reform funded an ostensibly grassroots organization, "Stop Too Big To Fail," which opposed financial reform on the ground that it set the stage for another bailout. (See Paul Krugman, "Stop Too Big To Fail," New York Times, Apr. 21, 2010)

In 2009, a scandal erupted when lobbying firm Bonner & Associates was contracted to run a grassroots lobbying campaign for the American Coalition for Clean Coal Electricity ("ACCCE"), an industry-funded group, against the American Clean Energy and Security Act. Bonner sent forged letters to a Virginia Congressman purporting to be from several Virginia senior citizens' women's, Hispanic and black charities and nonprofit organizations, expressing opposition to the legislation. (See Brian McNeill, "Perriello, Area Groups Contradict Lobbying Firm," The Daily Progress (Charlottesville), Aug, 29, 2009)

The House Select Committee on Energy Independence and Global Warming held a hearing on the Bonner fraud. (See globalwarming.house.gov/mediacenter/pressreleases_2008?id=0162#main_content)(last visited Jan. 2, 2011)) Congress also probed whether the ACCCE had accurately reported its lobbying activities. (Anne Mulkern and Alex Kaplun, "Markey Expands ACCCE Investigation From Forged Letters to Lobbying Disclosures," The New York Times, Oct. 26, 2009)

The U.S. Supreme Court's decision in Citizens United v. FEC in January 2010 invalidated on free speech grounds certain provisions of the McCain-Feingold campaign finance reform law, a decision that also served to focus attention on corporate lobbying activities, even though the provision struck down there dealt with election-related advertising. According to a former general counsel of the Federal Election Commission, the Citizens United decision empowered lobbyists, allowing them to say to lawmakers, "We have got a million we can spend advertising for you or against you—whichever one you want." (David Kirkpatrick, "Lobbyists Get Potent Weapon in Campaign Ruling," The New York Times, Jan. 21, 2010)

In sum, it is indisputable that there is a robust public debate over the role that corporate lobbying, including lobbying done through conduit organizations, plays in the U.S. political process. Accordingly, the Plan respectfully urges that corporate lobbying is a significant social policy issue and that BAC should therefore not be permitted to exclude the Proposal in reliance on the ordinary business exclusion.

Prior No-action Determinations Do Not Bar This Resolution.

The Division has rejected "ordinary business" arguments in the context of proposals such as this one, which focuses on what the Division has termed a company's "general political activities," including lobbying. E.g., General Electric Co. (Feb. 2, 2004). In some situations a company may exclude proposals that focus on lobbying as to a company's specific products or services, e.g., Bristol-Myers Squibb Co. (Feb. 17, 2009) (seeking report on lobbying as to Medicare Part D prescription drug program), but the Division has rejected arguments that broadly worded policies such as the Plan's proposal here can be excluded on that basis. PepsiCo. (Feb. 26, 2010).

Perhaps recognizing the uphill climb it faces in trying to evade these precedents, BAC tries a two-part strategy. First, it argues that the Plan's proposal involves the "management of employees, health and safety of employees, privacy matters and the disclosure of ordinary business affairs." BAC Letter at 4. Second, BAC makes a traditional "ordinary business" argument about how the Proposal relates to the Company's engagement in political discourse, how other no-action letters involving other issues should control, and how the Proposal seeks a "highly detailed" report. BAC Letter at 8. For good measure, the Company adds a coda that if any one flaw is identified under Rule 14a-8(i)(7), the entire proposal must fail (a legal point not in dispute). We answer as follows.

Health, safety, privacy and ordinary business. BAC's first argument is basically old wine in a new bottle. The entire claim turns on the request for an "identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure" as well as "the payment for grassroots lobbying expenditures." Of course, virtually identical or similar language was included in recent proposals seeking comparable disclosures, which companies sought to exclude because such disclosures involved employment-

related matters and alleged "micromanagement" on complex topics. The Division rejected those objections, yet BAC does not cite, much less distinguish a single one of these rulings.

• In Halliburton Co. (Mar. 11, 2009), the company singled out for criticism a request for "identification of the persons who make decisions to make political contributions" as an "employment-related matter."

• In Chubb Corp. (Jan. 27, 2004), the company objected to identifying "personnel who participate in decisions to make political contributions," which was said to constitute "complicated, fluid and dynamic processes," and thus "providing detailed information regarding which members of management influence which decisions about political contributions extends deeply into the Company's daily decision-making procedures about matters of fundamental significance to the Company.

• In American International Group, Inc. (Feb. 19, 2004), the company specifically objected to a request "to identify each employee involved in the decision-making process," citing letters "involving a company's relations with its employees as being part of the company's ordinary business operations." The AIG letter cited Labor Ready, Inc. (Apr. 1, 2003), as well as letters concluding that "employment policies and practices with respect to ... [the] non-executive workforce [are] uniquely matters relating to the conduct of the company's ordinary business operations," namely, United Technologies Co. (Feb. 19, 1993) and Unisys Corp. (Feb. 19, 1993).

• In Time Warner Inc. (Feb. 11, 2004), the Division denied relief notwithstanding the company's specific protest about the requests to provide an "accounting of Company resources, including Company property and personnel, that have been utilized in support of or in opposition to any ballot initiative brought before voters on a local or state level," as well as the "identification of Company personnel with the authority to approve the utilization of Company resources in the political arena."

BAC does not discuss these decisions, but it claims that the cited language raises an employee-related concern, attempts micromanagement or involves a matter of great complexity have thus been litigated, re-litigated, and re-re-litigated with the same result.

BAC thus tries a different tack, arguing that the language is problematic because it "may be detrimental to not only [employees'] safety but also that of their families; besides, the proposal serves "no legitimate purpose." BAC Letter at 6. Cited as Exhibit A is a demonstration in May 2010 in which hundreds of people associated with "certain groups" descended on the home of a BAC "employee" after which busloads of people left to "descend upon" the nearby resident of a JPMorgan Chase "employee." BAC Letter at 7.

The problem with this claim – and its supposedly supportive no-action letters – is that the cited situation and authorities are light years away from the issues raised by the Plan's proposal.

First, according to the authorities cited in BAC's letter (at 7 n.1), the protests in question (which focused on BAC executives, whom BAC refers to as "employees") were sparked by concerns about people losing their homes through aggressive foreclosure tactics that dominated the news in 2010; namely, the use by BAC and other lenders of forged affidavits and "robosigners" to attest to the veracity of documents they have not verified. As a result of these activities, financial institutions that could not prove they owned someone's home were seeking to foreclose on it using dubious techniques. In fact, several months after the protest, the situation reached such a critical mass that Bank of America called a nationwide halt to foreclosure sales and had to announce that it would be filing new paperwork in more than 100,000 cases. Zachary A. Goldfarb and Ariana Eujung Cha, "Bank of America to restart foreclosures in 23 states," The Washington Post (Oct. 18, 2010).

Losing one's home is traumatic enough. Losing one's home based on false affidavits and forgery can raise the emotions associated with foreclosure to a new level. Indeed, as the cited article notes, Bank of America had to acknowledge that its foreclosure practices were so troubled that the Company halted foreclosure sales.

It is difficult if not impossible to take the concerns or anxiety facing people confronting foreclosure and extrapolate those concerns to other facets of BAC operations – and the Company makes no effort to do so. Significantly, BAC fails to take into account the point made above about how half of BAC's peers in the S&P 100 have agreed to make disclosures about their political contributions, yet there is no example of protesters demonstrating outside the homes of those executives following such disclosures.

Moreover, the specific example proves too much. That a company with BAC's size and reach can cite only *one* example in its 106-year history indicates that the cited incident is hardly predictive of what might happen if the Plan's proposal were to be adopted.

The no-action letters that BAC cites also deal with other situations, namely—

- employee relations: *Labor Ready* (Apr. 1, 2003) (requesting policy on resolving union-reported disputes and pay levels); *Duke Power Co.* (Mar. 24, 1992) (establish employee advisory council);
- plant closings: *Boeing Co.* (Feb. 3, 2005); *Fluor Corp.* (Feb. 3, 2005);
- workplace management: *Johnson & Johnson* (Feb. 24, 2006) (company policies dealing with employee misconduct); *Wal-Mart Stores, Inc.* (Mar. 17, 2003) (health insurance); *W.R. Grace & Co.* (Feb. 29, 1996) (request for report on "high-performance workplace);
- employees' physical qualifications for particular jobs: *General Motors Corp.* (Mar. 18, 1998);

• union organizing situations: *Wal-Mart Stores, Inc.* (Mar. 16, 2006) (adopt a policy against intimidation of employees during union organizing drive); *United Parcel Services, Inc.* (Feb. 23, 2004) (same);

• security from a terrorist attack: *Kansas City Southern* (Mar. 14, 2008);

• request to disclose safety data and claims data in an annual report: *CNF Transportation, Inc.* (Jan. 26, 1998);

• request for report on airline safety operations: *AMR Corp.* (Apr. 2, 1987).

BAC also cites letters dealing with privacy, which are said to be relevant to its executives' privacy. BAC Letter at 5-6. However, the letters it cites deal with corporate policies on customer privacy and may thus be distinguished from alleged concerns about executive privacy. AT&T Inc. (Feb. 7, 2008); *AT&T Inc.* (Jan. 26, 2009); Qwest Communications Int'l Inc. (Feb. 17, 2009); Bank of America Corp. (Feb. 21, 2006).

BAC's hard slog through this thicket of irrelevant no-action letters concludes with a citation to letters "seeking additional disclosure of ordinary business matters." BAC Letter at 6. Of course, requests for reports on a given topic have been standard fare in shareholder proposals for decades. Even so, the letters that BAC cites are far removed from this proposal. Pfizer Inc. (Jan. 7, 2004) (a request with a strong "personal grievance" element to "supply all the information when asked by shareholders whether available to the public or not [and if] they feel that there is good cause for not supplying it" or explain why not) Peregrine Pharmaceuticals, Inc. (July 28, 2006) (request for posting of monthly data on a drug company's clinical trials); WPS Resources Corp. (Jan. 23, 1997) (requests for data on costs of company's "quality program").

But apart from all this, BAC ignores arguments about why the disclosure of those responsible for corporate political donations *is* important to shareholders and not a matter of ordinary business.

A recent article by Professors Bebchuk and Jackson posits that for most ordinary business decisions, the interests of managers and shareholders are sufficiently aligned such that there is not a need to require disclosures to shareholders. Lucien A. Bebchuk and Robert J. Jackson, Jr., Corporate Political Speech: Who Decides? (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1670085. They note that where management interests and shareholder interests may diverge – in areas such as executive compensation – there are disclosure requirements. Id. at 8. They posit that political spending decisions may reflect more the views of managers and directors with results that are exogenous to firm performance. Id. They note that possible negative shareholder reactions may be blunted if funds are channeled through third parties, such as trade associations or others. Id. at 11.

This is another way of stating that there is an "agency problem," in that corporate managers and directors (as agents) may pursue their own interests as opposed to those of shareholders, as

principals. In that context, disclosure of the identities of the persons making decisions is particularly important.

The issue gained public visibility in late 2010 with reports that News Corp. had donated $1 million to the Republican Governors Association because of Chairman Rupert Murdoch's personal friendships with Republican Party leaders. See Letter from Nathan Cummings Foundation to News Corp. (Oct. 11, 2010), available at http://nathancummings.net/news/NewsCoprLtr101110.pdf. In similar fashion, Merck gained unwanted publicity after reports that the company donated funds in a state judicial race to a candidate whose anti-gay-marriage platform and racially tinged rhetoric struck some as being contrary to the company's code of ethics and conduct. Douglas Waller, "Secrets of Corporate Giving," Time (May 14, 2006), available at http://time.com/time/magazine/article/0,9171,1194037,00.html.

Events such as these inevitably raise shareholder concerns: Who decides these matters? Who is responsible? Has the board of directors given its approval? Is the board even aware of a company's practices in this area? Disclosure of the names of individuals making the decisions will thus provide necessary transparency to the benefit of shareholders because it allows them (including minority shareholders who may disagree with decisions) to understand who is accountable for decisions that may yield no economic benefit to the company and that may benefit managers or directors as agents.

Company engagement in political discourse and request for detailed disclosure. Most of the Company's objections under this heading have been addressed already, but we add the following additional responses.

BAC cites letters indicating that a company may exclude proposals that would seek to involve the company in the political or legislative process. BAC Letter at 8. However, as the resolution points out, BAC is already involved – indeed, heavily involved – in the legislative process.

BAC then argues that the requested report is too detailed because it seeks reporting of "each payment." BAC Letter at 8-9. This "too detailed" objection was answered previously in the discussion as to similar proposals that the Division has said may not be excluded under Rule 14a-8(i)(7).

In short, BAC has deployed thousands of words in an effort to re-litigate old issues and to deny its shareholders from expressing themselves on how exactly the Company does business on a substantial policy issue. BAC has failed to sustain its burden on this score, and its request should be denied.

* * * *

For these reasons, the Plan respectfully asks the Division to deny the no-action relief that Bank of America has sought.

Thank you in advance for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,

Charles Jurgonis
Plan Secretary

cc: Andrew A. Gerber, Esq.
agerber@hunton.com

HUNTON& WILLIAMS

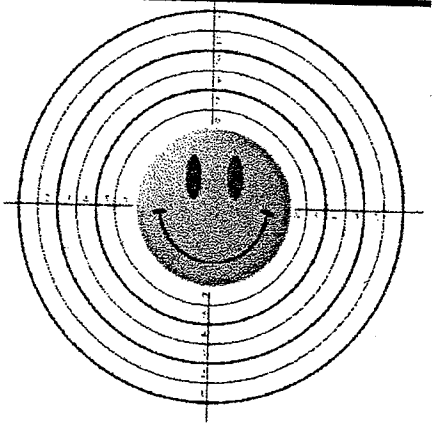
EXHIBIT B

See attached.

NO WAL-MART ON GEORGIA AVENUE.
NO WAL-MART IN DC.

March on the Developer's House

*** FISMA & OMB Memorandum M-07-16 ***



Thursday
December 16th 6PM

Meet at Woodley Park/Adams Morgan Metro

At the Ward 4 Community Meeting regarding the proposed Wal-Mart on December 7th, Dick Knapp of Foulger Pratt Development, said that his company intended to sign a lease with Wal-Mart, for the old Curtis Chevrolet site, near Georgia Ave and Missouri Avenue ANY DAY NOW.

With little community input and sparse public notice, Foulger-Pratt and Wal-Mart want to destroy our neighborhood.

***No to higher unemployment – on average, every job created by Wal-Mart eliminates 1.4 other area retail jobs.**

***No to the wage decline in other retail stores that Wal-Mart causes.**

***No to the closing of small businesses due to Wal-Mart's presence.**

***No to low wages and paltry benefits at Wal-Mart.**

No Wal-Mart on Georgia Ave : No Wal-Mart in DC.

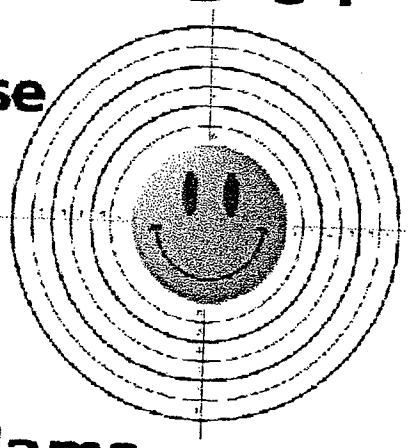
www.walmartfreedc.org

NO WAL-MART ON GEORGIA AVENUE.

No Wal-Mart in DC.

March on the Developer's House

*** FISMA & OMB Memorandum M-07-16 ***



Thursday
January 20th 7:30PM

Meet at Woodley Park/Adams Morgan Metro

At the Ward 4 Community Meeting regarding the proposed Wal-Mart on December 7th, Dick Knapp of Foulger Pratt Development, said that his company intended to sign a lease with Wal-Mart, for the old Curtis Chevrolet site, near Georgia Ave and Missouri Avenue ANY DAY NOW.

With little community input and sparse public notice, Foulger-Pratt and Wal-Mart want to ram this down our throats.

***No to higher unemployment – on average, every job created by Wal-Mart eliminates 1.4 other area retail jobs.**

***No to Wal-Mart's funding of anti-statehood and other right wing Congressional candidates.**

***No to the closing of small businesses due to Wal-Mart's presence.**

***No to low wages and paltry benefits at Wal-Mart.**

No Wal-Mart on Georgia Ave : No Wal-Mart in DC.

www.walmartfreedc.org

AFSCME
We Make America Happen

EMPLOYEES PENSION PLAN

February 4, 2011

VIA EMAIL – shareholderproposals@sec.gov
Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Shareholder proposal of AFSCME Employees Pension Plan; request by Bank of America Corporation for determination allowing exclusion

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFSCME Employees Pension Plan (the "Plan") submitted to Bank of America Corporation ("BAC" or the "Company") a shareholder proposal (the "Proposal") requesting a report on lobbying.

In a letter dated January 6, 2011 ("BAC Letter"), the Company advised of its intention to omit the Proposal from the proxy materials being prepared for BAC's 2011 annual meeting of shareholders and asked that the Division issue a determination that it would not recommend enforcement action if the Company does so.

BAC relies exclusively on Rule 14a-8(i)(7), arguing that the proposal deals with a matter related to the Company's ordinary business operations. Because BAC has not met its burden of proving that it is entitled to rely on this exclusion, the Plan respectfully urges that BAC's request for relief be denied.

The Proposal

The proposal asks BAC's board of directors to prepare an annual report disclosing the Company's—

1. Policies and procedures for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, N.W., Washington, D.C. 20036-5687

2. Payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including the amount of the payment and the recipient.

3. The report shall also include the following for each payment, as relevant:

a Identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure; and

b. Identification of the person or persons in the Company who participated in making the decision to make the payment for grassroots lobbying expenditures.

The resolution goes on to define "grassroots lobbying communication" and to specify that those communications and "direct lobbying" include efforts at the federal, state and local levels.

The supporting statement explains that the proposal is filed based on a belief in the need for transparency and accountability in corporate spending to influence legislation. It cites a report by three International Monetary Fund economists that lobbying by financial institutions, including BAC in 2000-07, was correlated with more risk taking and worse performance in 2008, adding that lobbying lenders were more likely to be bailed out in 2008.

The supporting statement also cites BAC's expenditure of $7.66 million in 2008 and 2009 on direct lobbying expenses, which may not include grassroots lobbying efforts, adding that publicly available data may not provide a complete picture of the Company's lobbying expenditures, given the lack of uniform disclosure requirements in this area.

As we explain below, BAC has failed to sustain its burden of demonstrating that this proposal relates to the Company's "ordinary business" under Rule 14a-8(i)(8) and may therefore be excluded.

Analysis

Rule 14a-8(i)(7) allows exclusion of a proposal that relates to the company's ordinary business operations. The purpose of the exclusion is to keep stockholders from micromanaging the company's day-to-day business decision making. The exclusion reflects the Commission's judgment that stockholders generally do not have sufficient information to make ordinary business decisions and that stockholder oversight of such decisions is impractical because those decisions are made daily. Examples provided in the Commission's 1998 release include the hiring and firing of employees, "decisions on production quality and quantity," and choice of suppliers. (Exchange Act Release No. 40,018 (May 21, 1998))

The ordinary business exclusion does not apply, however, to a proposal dealing with a "significant social policy issue," even if the subject matter of the proposal would otherwise be considered ordinary business. For instance, although proposals dealing with management of the workforce are generally considered to relate to ordinary business, companies have not been permitted to exclude proposals on the MacBride Principles—fair employment principles for businesses in Northern Ireland—on ordinary business grounds because ending religious discrimination in employment there was considered a significant social policy issue. (See, e.g., TRW Inc. (Jan. 28, 1986))

That a proposal's subject involves a company's products and services does not preclude it from being deemed a significant social policy issue. Sponsors of proposals addressing tobacco marketing to minors at a cigarette company (see Phillip Morris Companies Inc. (Feb. 22, 1990); the sale of genetically-modified foods by a grocery chain (see Kroger Co. (Apr. 12, 2000)); and the selection of countries in which an oil exploration company should do business (see Chevron Corporation (Mar. 21, 2008)), among many others, successfully avoided exclusion on ordinary business grounds by arguing that the proposals implicated significant social policy issues, despite their close connections to the company's products or services. Thus, corporate lobbying can be considered a significant social policy issue (as discussed more fully below), defeating application of the ordinary business exclusion, even if lobbying is often[1] done on measures that affect a company's products or services.

The Intense Public and Media Focus on Corporate Lobbying and Its Effect on the Political Process Makes It a Significant Social Policy Issue

In the past several years, an intense public debate has arisen over the extent and role of corporate involvement in both direct and grassroots lobbying activities. Direct lobbying encompasses efforts made directly by companies and their lobbyists, as well as lobbying undertaken by trade associations and other groups on behalf of their corporate members. Grassroots lobbying is an attempt to influence the general public, or segments thereof, with respect to elections, legislative matters or referenda. (See 26 U.S.C. section 162(e).)

Extensive coverage in major national media outlets demonstrates that corporate lobbying has become a significant social policy issue. The public debate over corporate lobbying has greatly

[1] It is worth noting that companies may lobby on measures that have little or no connection with their products or services. For example, companies and their trade associations have vigorously lobbied against legislation and regulation that would provide public company stockholders with procedures for nominating director candidates using the company's proxy statement ("proxy access" procedures). (See, e.g., Stephen Grocer, "Proxy Access: The Biggest Businesses Get Their Way," Deal Journal (Wall Street Journal), Aug. 4, 2010) The authors of a recent Harvard Law Review article note that management may use corporate resources to lobby against the expansion of stockholder rights that stockholders favor; they argue that the likelihood that directors' and officers' interests may be very different from the interests of stockholders when it comes to corporate political speech, including lobbying, should take political speech decisions out of the realm of ordinary business. (Lucian Bebchuk and Robert Jackson, Jr., "Corporate Political Speech: Who Decides?" Harvard Law Review, Vol. 124, pp. 83-117 (2010))

intensified in the past two years as a result of well-publicized corporate lobbying efforts against three pieces of reform legislation that enjoyed substantial public support--health care reform, climate change legislation and financial reform--as well as on other less high-profile measures.

Corporate lobbying on financial services reform was controversial in 2009 and 2010. CEOs of financial services companies tried to distance themselves from the vigorous stances against financial reform undertaken by their own lobbyists, pledging to support re-regulation of financial markets. A Wall Street Journal article reported on a White House meeting involving top executives from a number of large financial services firms, some of whom claimed that their lobbyists had "taken stronger stands than they would have wanted." (Jonathan Weisman, "Bank CEOs Pledge to Push for Re-Regulation," Wall Street Journal, Dec. 15, 2009) President Obama emphasized after that meeting that he had "no intention of letting [financial firms'] lobbyists thwart reforms necessary to protect the American people"; the day before the meeting, National Economic Council Director Lawrence Summers appeared on CNN to blast the industry's $300 million lobbying effort. (Id.)

Lobbying by trade associations, financed by corporate members whose identities are not disclosed, received a great deal of attention because of concerns that it subverts disclosure regulations and allows corporations to avoid accountability for their lobbying activities. An October 2010 article in The New York Times, "Top Corporations Aid U.S. Chamber of Commerce Campaign," detailed the Chamber's role in channeling corporate funds to lobbying efforts aimed at influencing specific legislation, including health care and financial reform, as well as to a Chamber-affiliated foundation critical of regulation. (Eric Lipton, et al., "Top Corporations Aid U.S. Chamber of Commerce Campaign," The New York Times, Oct. 21, 2010) A 2009 New Yorker article described the internal fractures caused by the Chamber's lobbying against climate change legislation. (James Surowiecki, "Exit Through Lobby," The New Yorker, Oct. 19, 2009)

It is not possible to catalog the extensive national media coverage of the Chamber's recent lobbying efforts; some illustrative examples include:

- The New York Times (see Eric Lichtblau and Edward Wyatt, "Pro-Business Lobbying Blitz Takes on Obama's Plan for Wall Street Overhaul," The New York Times, Mar. 27, 2010 and Anne Mulkern, "'Hot Button' Climate Issue Spotlights How U.S. Chamber Sets Policy," The New York Times, Oct. 6, 2009);

- MSNBC.com (see "Chamber of Commerce Opposes Obama's Plans," MSNBC.com, Aug. 9, 2009 and Jim Kuhnhenn, "Chamber Emerges as Formidable Political Force," MSNBC.com, Aug. 21, 2010);

- Newsweek (see Nancy Cook, "You Call This Financial Reform," Newsweek, Oct. 15, 2009);

- Bloomberg Business Week (see Jane Sasseen, "Financial Regulation: Main Street vs. the White House," Bloomberg Business Week, Sept. 16, 2009 and Rebecca Christie and Timothy Homan, "Wolin Criticizes Lobbying Against Financial Overhaul," Bloomberg Business Week, Mar. 24, 2010);

- Forbes (see Thomas Cooley, "Lobbying Against Reform," Forbes, Dec. 9, 2009) ("We are now in the midst of a very important national debate.");

- The Washington Post (see Brady Dennis, "House Panel Backs New Protection for Consumers," The Washington Post, Oct. 23, 2009);

- The Wall Street Journal (see Christopher Conkey, "Pro-Business Group Targets Obama Agenda," The Wall Street Journal, June 11, 2009; Brody Mullins, "Chamber Ad Campaign Targets Consumer Agency," The Wall Street Journal, Sept. 8, 2009; and Brody Mullins, "Financial-Services Regulation Fuels Tiff," The Wall Street Journal, Oct. 14, 2009);

- Roll Call (see Bennett Roth, "U.S. Chamber Reports Record Spending on Lobbying," Roll Call, Oct. 19, 2009)

- The Hill (see Silla Brush, "Chamber Pushes Dems to Cut New Financial Regulator's Powers, The Hill, Dec. 10, 2009);

- CNNMoney (see Jennifer Liberto, "No Senate Deal on Consumer Financial Protection," CNNMoney.com, Feb. 5, 2010); and

- National Public Radio (see "Chamber Ads Aim to Stop CFPA," Mar. 26, 2010) (available at marketplace.publicradio.org/display/web/2010/03/26/pm-chamber-of-commerce/?refid=0)(last visited Jan. 2, 2011)

Similarly, Bloomberg reported that the America's Health Insurance Plans ("AHIP") trade association gave the Chamber $86 million to oppose a public option in health care reform, and to convince lawmakers to vote against the final bill, in 2009 and 2010. Critics such as the Center for Responsive Politics lambasted the health insurers for covertly funding opposition to reform while negotiating with Democrats over the bill's contents. A former Chairman of the Federal Election Commission characterized the expenditure as "breathtaking." (Drew Armstrong, "Insurers Gave U.S. Chamber $86 Million Used to Oppose Obama's Health Law," Bloomberg, Nov. 17, 2010), available at http://www.bloomberg.com/news/2010-11-17/insurers-gave-u-s-chamber-86-million-used-to-oppose-obama-s-health-law.html.

Former CIGNA head of corporate communications turned corporate whistle-blower Wendell Potter garnered substantial media attention in 2009, when he testified before Congress and went

public with his descriptions of underhanded health insurer practices. (See Kate Pickert, "The Making of a Health-Care Whistle-Blower," Time, Sept. 8, 2009) Among other things, Potter described the industry's "duplicitous PR campaign" of appearing supportive of reform but working behind the scenes through organizations like AHIP to kill it. (See Lee Fang, "'Duplicitous' Campaign of Insurers to Charm the Public While Secretly Killing Reform," ThinkProgress.org, Sept. 17, 2009 (available at thinkprogress.org/2009/09/17/potter-charm-dirty-campaign)(last visited January 2, 2011))

Potter stressed the role of insurers' lobbying and political expenditures in protecting them from negative consequences of their own behavior. (See pbs.org/moyers/journal/03052010/profile.html) Potter's media appearances and mentions are too numerous to list; he appeared on CNN, CBS News, Fox, ABC News, MSNBC and the BBC, among others, in 2009. A complete list, with links to video, can be found at wendellpotter.com/media/media-archive/.

Corporations' roles in funding simulated "grassroots" citizen communications, using third-party front groups, have also come in for a great deal of scrutiny and criticism recently. A Newsweek article noted in August 2009 that corporate-funded fake grassroots activism (also referred to as "astroturf" lobbying) was behind the protests over "death panels" that supposedly would result from health care reform legislation, as well as the "tea party" protests against the Obama administration's economic stimulus proposals. (Daniel Stone, "The Browning of Grassroots," Newsweek, Aug. 20, 2009) The article reported on a leaked email from the American Petroleum Institute seeking to orchestrate, through funding and logistical coordination, seemingly independent protests against climate change legislation. Corporate interests opposed to financial reform funded an ostensibly grassroots organization, "Stop Too Big To Fail," which opposed financial reform on the ground that it set the stage for another bailout. (See Paul Krugman, "Stop Too Big To Fail," New York Times, Apr. 21, 2010)

In 2009, a scandal erupted when lobbying firm Bonner & Associates was contracted to run a grassroots lobbying campaign for the American Coalition for Clean Coal Electricity ("ACCCE"), an industry-funded group, against the American Clean Energy and Security Act. Bonner sent forged letters to a Virginia Congressman purporting to be from several Virginia senior citizens' women's, Hispanic and black charities and nonprofit organizations, expressing opposition to the legislation. (See Brian McNeill, "Perriello, Area Groups Contradict Lobbying Firm," The Daily Progress (Charlottesville), Aug, 29, 2009)

The House Select Committee on Energy Independence and Global Warming held a hearing on the Bonner fraud. (See globalwarming.house.gov/mediacenter/pressreleases_2008?id=0162#main_content)(last visited Jan. 2, 2011)) Congress also probed whether the ACCCE had accurately reported its lobbying activities. (Anne Mulkern and Alex Kaplun, "Markey Expands ACCCE Investigation From Forged Letters to Lobbying Disclosures," The New York Times, Oct. 26, 2009)

The U.S. Supreme Court's decision in Citizens United v. FEC in January 2010 invalidated on free speech grounds certain provisions of the McCain-Feingold campaign finance reform law, a decision that also served to focus attention on corporate lobbying activities, even though the provision struck down there dealt with election-related advertising. According to a former general counsel of the Federal Election Commission, the Citizens United decision empowered lobbyists, allowing them to say to lawmakers, "We have got a million we can spend advertising for you or against you—whichever one you want." (David Kirkpatrick, "Lobbyists Get Potent Weapon in Campaign Ruling," The New York Times, Jan. 21, 2010)

In sum, it is indisputable that there is a robust public debate over the role that corporate lobbying, including lobbying done through conduit organizations, plays in the U.S. political process. Accordingly, the Plan respectfully urges that corporate lobbying is a significant social policy issue and that BAC should therefore not be permitted to exclude the Proposal in reliance on the ordinary business exclusion.

Prior No-action Determinations Do Not Bar This Resolution.

The Division has rejected "ordinary business" arguments in the context of proposals such as this one, which focuses on what the Division has termed a company's "general political activities," including lobbying. E.g., General Electric Co. (Feb. 2, 2004). In some situations a company may exclude proposals that focus on lobbying as to a company's specific products or services, e.g., Bristol-Myers Squibb Co. (Feb. 17, 2009) (seeking report on lobbying as to Medicare Part D prescription drug program), but the Division has rejected arguments that broadly worded policies such as the Plan's proposal here can be excluded on that basis. PepsiCo. (Feb. 26, 2010).

Perhaps recognizing the uphill climb it faces in trying to evade these precedents, BAC tries a two-part strategy. First, it argues that the Plan's proposal involves the "management of employees, health and safety of employees, privacy matters and the disclosure of ordinary business affairs." BAC Letter at 4. Second, BAC makes a traditional "ordinary business" argument about how the Proposal relates to the Company's engagement in political discourse, how other no-action letters involving other issues should control, and how the Proposal seeks a "highly detailed" report. BAC Letter at 8. For good measure, the Company adds a coda that if any one flaw is identified under Rule 14a-8(i)(7), the entire proposal must fail (a legal point not in dispute). We answer as follows.

Health, safety, privacy and ordinary business. BAC's first argument is basically old wine in a new bottle. The entire claim turns on the request for an "identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure" as well as "the payment for grassroots lobbying expenditures." Of course, virtually identical or similar language was included in recent proposals seeking comparable disclosures, which companies sought to exclude because such disclosures involved employment-

related matters and alleged "micromanagement" on complex topics. The Division rejected those objections, yet BAC does not cite, much less distinguish a single one of these rulings.

• In Halliburton Co. (Mar. 11, 2009), the company singled out for criticism a request for "identification of the persons who make decisions to make political contributions" as an "employment-related matter."

• In Chubb Corp. (Jan. 27, 2004), the company objected to identifying "personnel who participate in decisions to make political contributions," which was said to constitute "complicated, fluid and dynamic processes," and thus "providing detailed information regarding which members of management influence which decisions about political contributions extends deeply into the Company's daily decision-making procedures about matters of fundamental significance to the Company.

• In American International Group, Inc. (Feb. 19, 2004), the company specifically objected to a request "to identify each employee involved in the decision-making process," citing letters "involving a company's relations with its employees as being part of the company's ordinary business operations." The AIG letter cited Labor Ready, Inc. (Apr. 1, 2003), as well as letters concluding that "employment policies and practices with respect to ... [the] non-executive workforce [are] uniquely matters relating to the conduct of the company's ordinary business operations," namely, United Technologies Co. (Feb. 19, 1993) and Unisys Corp. (Feb. 19, 1993).

• In Time Warner Inc. (Feb. 11, 2004), the Division denied relief notwithstanding the company's specific protest about the requests to provide an "accounting of Company resources, including Company property and personnel, that have been utilized in support of or in opposition to any ballot initiative brought before voters on a local or state level," as well as the "identification of Company personnel with the authority to approve the utilization of Company resources in the political arena."

BAC does not discuss these decisions, but it claims that the cited language raises an employee-related concern, attempts micromanagement or involves a matter of great complexity have thus been litigated, re-litigated, and re-re-litigated with the same result.

BAC thus tries a different tack, arguing that the language is problematic because it "may be detrimental to not only [employees'] safety but also that of their families; besides, the proposal serves "no legitimate purpose." BAC Letter at 6. Cited as Exhibit A is a demonstration in May 2010 in which hundreds of people associated with "certain groups" descended on the home of a BAC "employee" after which busloads of people left to "descend upon" the nearby resident of a JPMorgan Chase "employee." BAC Letter at 7.

The problem with this claim – and its supposedly supportive no-action letters – is that the cited situation and authorities are light years away from the issues raised by the Plan's proposal.

First, according to the authorities cited in BAC's letter (at 7 n.1), the protests in question (which focused on BAC executives, whom BAC refers to as "employees") were sparked by concerns about people losing their homes through aggressive foreclosure tactics that dominated the news in 2010; namely, the use by BAC and other lenders of forged affidavits and "robosigners" to attest to the veracity of documents they have not verified. As a result of these activities, financial institutions that could not prove they owned someone's home were seeking to foreclose on it using dubious techniques. In fact, several months after the protest, the situation reached such a critical mass that Bank of America called a nationwide halt to foreclosure sales and had to announce that it would be filing new paperwork in more than 100,000 cases. Zachary A. Goldfarb and Ariana Eujung Cha, "Bank of America to restart foreclosures in 23 states," The Washington Post (Oct. 18, 2010).

Losing one's home is traumatic enough. Losing one's home based on false affidavits and forgery can raise the emotions associated with foreclosure to a new level. Indeed, as the cited article notes, Bank of America had to acknowledge that its foreclosure practices were so troubled that the Company halted foreclosure sales.

It is difficult if not impossible to take the concerns or anxiety facing people confronting foreclosure and extrapolate those concerns to other facets of BAC operations – and the Company makes no effort to do so. Significantly, BAC fails to take into account the point made above about how half of BAC's peers in the S&P 100 have agreed to make disclosures about their political contributions, yet there is no example of protesters demonstrating outside the homes of those executives following such disclosures.

Moreover, the specific example proves too much. That a company with BAC's size and reach can cite only *one* example in its 106-year history indicates that the cited incident is hardly predictive of what might happen if the Plan's proposal were to be adopted.

The no-action letters that BAC cites also deal with other situations, namely—

- employee relations: *Labor Ready* (Apr. 1, 2003) (requesting policy on resolving union-reported disputes and pay levels); *Duke Power Co.* (Mar. 24, 1992) (establish employee advisory council);
- plant closings: *Boeing Co.* (Feb. 3, 2005); *Fluor Corp.* (Feb. 3, 2005);
- workplace management: *Johnson & Johnson* (Feb. 24, 2006) (company policies dealing with employee misconduct); *Wal-Mart Stores, Inc.* (Mar. 17, 2003) (health insurance); *W.R. Grace & Co.* (Feb. 29, 1996) (request for report on "high-performance workplace);
- employees' physical qualifications for particular jobs: *General Motors Corp.* (Mar. 18, 1998);

• union organizing situations: *Wal-Mart Stores, Inc.* (Mar. 16, 2006) (adopt a policy against intimidation of employees during union organizing drive); *United Parcel Services, Inc.* (Feb. 23, 2004) (same);

• security from a terrorist attack: *Kansas City Southern* (Mar. 14, 2008);

• request to disclose safety data and claims data in an annual report: *CNF Transportation, Inc.* (Jan. 26, 1998);

• request for report on airline safety operations: *AMR Corp.* (Apr. 2, 1987).

BAC also cites letters dealing with privacy, which are said to be relevant to its executives' privacy. BAC Letter at 5-6. However, the letters it cites deal with corporate policies on customer privacy and may thus be distinguished from alleged concerns about executive privacy. AT&T Inc. (Feb. 7, 2008); *AT&T Inc.* (Jan. 26, 2009); Qwest Communications Int'l Inc. (Feb. 17, 2009); Bank of America Corp. (Feb. 21, 2006).

BAC's hard slog through this thicket of irrelevant no-action letters concludes with a citation to letters "seeking additional disclosure of ordinary business matters." BAC Letter at 6. Of course, requests for reports on a given topic have been standard fare in shareholder proposals for decades. Even so, the letters that BAC cites are far removed from this proposal. Pfizer Inc. (Jan. 7, 2004) (a request with a strong "personal grievance" element to "supply all the information when asked by shareholders whether available to the public or not [and if] they feel that there is good cause for not supplying it" or explain why not) Peregrine Pharmaceuticals, Inc. (July 28, 2006) (request for posting of monthly data on a drug company's clinical trials); WPS Resources Corp. (Jan. 23, 1997) (requests for data on costs of company's "quality program").

But apart from all this, BAC ignores arguments about why the disclosure of those responsible for corporate political donations *is* important to shareholders and not a matter of ordinary business.

A recent article by Professors Bebchuk and Jackson posits that for most ordinary business decisions, the interests of managers and shareholders are sufficiently aligned such that there is not a need to require disclosures to shareholders. Lucien A. Bebchuk and Robert J. Jackson, Jr., Corporate Political Speech: Who Decides? (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1670085. They note that where management interests and shareholder interests may diverge – in areas such as executive compensation – there are disclosure requirements. Id. at 8. They posit that political spending decisions may reflect more the views of managers and directors with results that are exogenous to firm performance. Id. They note that possible negative shareholder reactions may be blunted if funds are channeled through third parties, such as trade associations or others. Id. at 11.

This is another way of stating that there is an "agency problem," in that corporate managers and directors (as agents) may pursue their own interests as opposed to those of shareholders, as

principals. In that context, disclosure of the identities of the persons making decisions is particularly important.

The issue gained public visibility in late 2010 with reports that News Corp. had donated $1 million to the Republican Governors Association because of Chairman Rupert Murdoch's personal friendships with Republican Party leaders. See Letter from Nathan Cummings Foundation to News Corp. (Oct. 11, 2010), available at http://nathancummings.net/news/NewsCoprLtr101110.pdf. In similar fashion, Merck gained unwanted publicity after reports that the company donated funds in a state judicial race to a candidate whose anti-gay-marriage platform and racially tinged rhetoric struck some as being contrary to the company's code of ethics and conduct. Douglas Waller, "Secrets of Corporate Giving," Time (May 14, 2006), available at http://time.com/time/magazine/article/0,9171,1194037,00.html.

Events such as these inevitably raise shareholder concerns: Who decides these matters? Who is responsible? Has the board of directors given its approval? Is the board even aware of a company's practices in this area? Disclosure of the names of individuals making the decisions will thus provide necessary transparency to the benefit of shareholders because it allows them (including minority shareholders who may disagree with decisions) to understand who is accountable for decisions that may yield no economic benefit to the company and that may benefit managers or directors as agents.

Company engagement in political discourse and request for detailed disclosure. Most of the Company's objections under this heading have been addressed already, but we add the following additional responses.

BAC cites letters indicating that a company may exclude proposals that would seek to involve the company in the political or legislative process. BAC Letter at 8. However, as the resolution points out, BAC is already involved – indeed, heavily involved – in the legislative process.

BAC then argues that the requested report is too detailed because it seeks reporting of "each payment." BAC Letter at 8-9. This "too detailed" objection was answered previously in the discussion as to similar proposals that the Division has said may not be excluded under Rule 14a-8(i)(7).

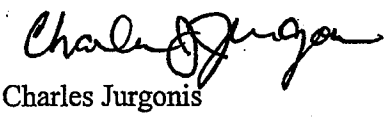
In short, BAC has deployed thousands of words in an effort to re-litigate old issues and to deny its shareholders from expressing themselves on how exactly the Company does business on a substantial policy issue. BAC has failed to sustain its burden on this score, and its request should be denied.

* * * *

For these reasons, the Plan respectfully asks the Division to deny the no-action relief that Bank of America has sought.

Thank you in advance for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,



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January 6, 2011

Rule 14a-8

VIA OVERNIGHT DELIVERY

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

Re: Stockholder Proposal Submitted by the AFSCME Employees Pension Plan

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 2011 Annual Meeting of Stockholders (the "2011 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 November 15, 2010 (the "Proposal") from the AFSCME Employees Pension Plan (the "Proponent") for inclusion in the proxy materials for the 2011 Annual Meeting. The Proposal is attached hereto as **Exhibit A**. The 2011 Annual Meeting is scheduled to be held on or about May 11, 2011. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 30, 2011.

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; and

2. Six copies of the Proposal.

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 2011 Annual Meeting.

THE PROPOSAL

The Proposal reads as follows:

> **Resolved**, that the stockholders of Bank of America Corporation ("BAC" or the "Company") hereby request that the Company provide a report, updated annually, disclosing BAC's:
>
> 1. Policies and procedures for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.
>
> 2. Payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including the amount of the payment and the recipient.
>
> 3. The report shall also include the following for ***each payment***, as relevant:
>
> a. ***Identification of the person or persons*** in the Company who participated in making the decision to make the direct lobbying contribution or expenditure; and
>
> b. ***Identification of the person or persons*** in the Company who participated in making the decision to make the payment for grassroots lobbying expenditures.
>
> For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation, (b) reflects a view of the legislation and (c) encourages the recipient of the communication to take action with respect to the legislation.

Both "direct lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee of the Board of Directors (the "Board") or other relevant oversight committee of the Board and posted on the Company's website to reduce costs to stockholders.

(emphasis added)

REASON FOR EXCLUSION OF PROPOSAL

The Corporation believes that the Proposal may be properly omitted from the proxy materials for the 2011 Annual Meeting pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the ordinary business of the Corporation. The core basis for an exclusion under Rule 14a-8(i)(7) is to protect the authority of a company's board of directors and its management to manage the business and affairs of the company. In the adopting release to the amended stockholder 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) ("*1998 Release*"). In addition, one must also consider "the degree to which the 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." *Id.*

The Corporation believes that the Proposal falls squarely within the scope of the above considerations. The Proposal probes into matters of a complex nature involving management of the workforce, privacy matters and the health and safety of employees, as well as matters relating to the legislative process. The Commission and the Division have consistently found proposals related to these matters excludable under Rule 14a-8(i)(7). *See 1998 Release; The Boeing Company* (February 25, 2005) ("*Boeing*"). As discussed below, these matters are not suitable for stockholders at large and are more appropriately left to experienced management of the Corporation. Management of these issues are complex and involve numerous considerations, a significant number of which are not matters about which stockholders are appropriately informed to make decisions.

The protection of the Corporation's workforce is paramount. The Proposal puts the Corporation's employees in harm's way by requiring the identification by name of each individual employee that

participates in decisions regarding each and every payment (regardless of amount) for lobbying contributions or expenditures (the "Individual Employee Identification Requirement"). The Corporation believes that the Individual Employee Identification Requirement is a wholly irrelevant requirement, serving no valid purpose in the context of the Proposal. The Corporation fears that the Individual Employee Identification Requirement would present a clear and present danger to its employees. This fear is not raised merely in the abstract or as a hypothetical possibility. As discussed further below, unions and other special interest groups recently gathered in large numbers at the private residence of one of the Corporation's employees (as well as the home of another company's employee).

A. The Proposal's Individual Employee Identification Requirement relates to the management of employees, health and safety of employees, privacy matters and disclosure of ordinary business matters.

In the *1998 Release*, the Commission clearly stated that matters relating to the management of the workforce, including hiring, promotion and termination of employees are matters of ordinary business that are fundamental to management's ability to run a company on a day-to-day basis. Division no-action letters clearly indicate that a wide range of workforce and workplace related proposals are excludable under Rule 14a-8(i)(7). The Corporation believes that maintaining employees safety is an important part of workforce management and as such is a matter of ordinary business under both Commission and Division precedent. In *Wal-Mart Stores, Inc.* (March 16, 2006) ("*Wal-Mart 2006*"), a proposal to adopt a policy to "bar intimidation of company employees exercising their right to freedom of association" was excludable because it related to the "relations between the company and its employees" and thus, was a matter of ordinary business. In *Wal-Mart 2006*, the company argued, among other things, that the "negotiation of wages, hours, and working conditions are fundamental business issues for employers." In *United Parcel Services, Inc.* (February 23, 2004), a proposal seeking a report regarding the relationship between the company and a union was excludable because it related to the "relations between the company and its employee representatives" and thus, was a matter of ordinary business. *See also Labor Ready, Inc.* (April 1, 2003); *Wal-Mart Stores, Inc.* (April 2, 2002); and *Duke Power Company* (March 4, 1992) (all dealing with employee relations).

In *Boeing* and *Flour Corporation* (February 3, 2005), proposals relating to the elimination of jobs and/or the relocation of jobs to foreign countries were excludable because they related to the management of the workforce. In *Johnson & Johnson* (February 24, 2006), a proposal seeking policies to assure research integrity; the detection, investigation and prevention of research misconduct; investigation and maintenance of confidential disclosures; and complaints and claims of reprisal was excludable because it related to the management of the workplace. In *Wal-Mart*

Stores, Inc. (March 17, 2003), the Division found a proposal related top health insurance coverage for employees to be a matter of ordinary business because it dealt with "general employee benefits." See also, *3M Company* (March 6, 2008) (excludable because the proposal dealt with general compensation matters).

In *W.R. Grace & Co.* (February 29, 1996), a proposal related to the creation of "a 'high performance' workplace based on policies of workplace democracy and meaningful worker participation, including training and continuous learning programs for employees, information sharing by management and employees, employee participation in quality control and safety, input involving the organizational structure of the company, linking compensation to job performance, employment security, supportive work environment, and management of the workplace" was excludable because it all related to the ordinary business matters of the company "(i.e., employment related matters)." In *General Motors Corporation* (March 18, 1998) ("*General Motors*"), a proposal that the company amend its job postings to include the physical abilities necessary to perform the job was excludable because it related to ordinary business matters "(i.e., employment and personnel decisions"). In *General Motors*, the company noted that the proposal was made "to ensure for safety reasons that employees possess the physical attributes necessary to perform jobs to which the are assigned."

In *Kansas City Southern* (March 10, 2008, reversed on reconsideration March 14, 2008) a proposal requesting information relevant to the company's efforts to safeguard the security of their operations from a terrorist attack was excludable under Rule 14a-8(i)(7). The company argued that the requested information regarding the specific measures taken by the company to safeguard its employees must be kept confidential. In *AMR Corporation* (April 2, 1987) and *CNF Transportation, Inc.* (January 26, 1998), proposals regarding each company's safety and security efforts were found to be matters of ordinary business.

As illustrated above, the Division has found a wide range of issues related to employees, including the protection of a workforce's safety, as matters of ordinary business. Similar to the precedent no-action letters discussed above, the Proposal involves the management and protection of the Corporation's workforce because it includes the Individual Employee Identification Requirement, which requires the Corporation to provide information about individual employees that could be used by third parties to target and potentially harm the Corporation's employees.

The Division has also held that proposals generally related to maintaining privacy are excludable under Rule 14a-8(i)(7) as matters of ordinary business. While the Division's precedent has generally been applied in the context of customer privacy, we see no reason why employee privacy would be distinguishable in any meaningful way. In *AT&T Inc.* (February 7, 2008), a proposal

regarding the technical, legal and ethical issues pertaining to the disclosure of customer records and communications as well as the effect of such disclosures on privacy right was excludable because it related to ordinary business matters "(i.e., procedures for protecting customer information"). *See also, AT&T Inc.* (January 26, 2009) and *Qwest Communications International Inc.* (February 17, 2009) (proposals regarding each company's internet network management policies was excludable because it related to "procedures for protecting user information." Similarly, in *Bank of America Corporation* (February 21, 2006), a proposal seeking a report on policies and procedures for protecting customer information was excludable.

In addition, the Division has found that proposals seeking additional disclosure of ordinary business matters may be excluded under Rule 14a-8(i)(7). In *Pfizer Inc.* (January 7, 2004), a proposal "to supply all the information when asked by shareholders whether available to the public or not [and if] they feel that there is good cause for not supplying it to them they must explain the reason for doing so" was excludable because it related to a matter of ordinary business "(i.e., communications with the board and management on matters related to Pfizer's ordinary business operations)." In *Peregrine Pharmaceuticals, Inc.* (July 28, 2006), a proposal seeking disclosure of monthly statistics was excludable because it related to ordinary business matters "(i.e., disclosure of ordinary business matters)." See also, *WPS Resources Corp.* (January 23, 1997) (proposal regarding disclosure of the costs of the company's quality program was excludable).

The Division has overwhelmingly made clear that a very broad range of proposals related to employees including, workforce and workplace management, employee safety measures, wages, employment decisions, promotion and termination decisions, job relocations all deal with ordinary business matters and have been excludable under Rule 14a-8(i)(7). Similarly, the Division has made clear that proposals related to privacy and ordinary business disclosures may be excluded under Rule 14a-8(i)(7). The Corporation has a duty to protect the safety, health, welfare and privacy of its employees. Maintaining policies and procedures that create a safe work environment and ensuring the safety of its employees, as well as their privacy are matters that are best left to the Corporation's management. The Individual Employee Identification Requirement prevents the Corporation's management from taking prudent and reasonable steps to protect certain employees and their privacy and thus, seeks to micro-manage the Corporation.

The public identification of the Corporation's employees who participate in the decision to make lobbying contributions or expenditures may be detrimental to not only their safety but also that of their families. As noted above, the Individual Employee Identification Requirement serves no legitimate purpose in the context of the remainder of the Proposal. Neither the Corporation nor we are able to determine any legitimate or proper benefit to stockholders as a result of identifying individual employees pursuant to the Individual Employee Identification Requirement. Based on

recent events, as discussed herein, the reasonable conclusion is that the primary purpose of the Individual Employee Identification Requirement is to provide employee specific identifying information to the Proponent and similar special interest groups that could be used to target and discourage both the employee and the Corporation from engaging in legitimate and legal activities. The Corporation fears that the Individual Employee Identification Requirement presents a clear and present danger to employees and their families based on recent events.

Specifically, in May 2010, hundreds of people associated with certain groups descended upon the home of one of the Corporation's employees who they believed was connected to certain of the Corporation's decisions with which they disagreed.[1] Media accounts indicated that "500 screaming placard-waving strangers on a mission to intimidate [the Corporation's employee]" came to demonstrate. *See Forbes Article.* According to media reports, after leaving the home of the Corporation's employee, 14 busloads of people that had been at the employee's home left to descend on the nearby residence of an employee of JPMorgan Chase. *Id.* In a direct tie to the Proposal, a community organizer involved with the aforementioned event stated that the subject employees were the "people who are responsible for lobbying efforts against financial reform" and that "[t]hey're the ones responsible for the foreclosure crises and predatory lending in our communities." *See CBS Article.*

The Individual Employee Identification Requirement could serve as a direct feeder for the next target of these types of demonstrations. Publicly linking the Corporation's employees to particular contribution or expenditure decisions made on behalf of the Corporation would be dangerous, as those employees identified could be future victims of strategic, personal targeting by special interest groups such as the employee described above. Such targeting is designed not to open lines of communication or express a viewpoint on a topic but to intimidate and silence both the Corporation and its employees. Protecting the health, welfare and privacy of its employees, while extremely important to the Corporation, is simply a matter of ordinary business. As stated above, the Corporation believes that there is no legitimate reason to identify individual employees as their safety may be at subsequent risk from special interest groups and such information would not provide any meaningful information to stockholders.

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[1] This incident was well documented in the media. Additional information on this incident can be found at: http://money.cnn.com/2010/05/19/news/companies/SEIU_Bank_of_America_protest.fortune/ (the "*Forbes Article*") and http://www.cbsnews.com/8301-503544_162-20005112-503544.html (the "*CBS Article*"). Videos of and regarding the events can be seen at: http://www.youtube.com/watch?v=FEsdxakaBIo and at: http://www.youtube.com/watch?v=tsf-XsC18IQ&feature=related

B. The Proposal relates to the engagement of the Corporation in political discourse and calls for a highly detailed report on ordinary business matters.

The Division has consistently permitted a proposal to be excluded under Rule 14a-8(i)(7) where the proposal appeared to be directed at engaging the company in a political or legislative process relating to an aspect of its business operations. *See Microsoft Corporation* (September 29, 2006) (permitting exclusion of a proposal seeking a report on the company's rationale for supporting certain public policy measures concerning regulation of the internet); *Verizon Communications Inc.* (January 31, 2006) (permitting exclusion of proposal seeking a report on the impact of flat tax); and *International Business Machines Corporation* (March 2, 2000) (proposal seeking establishment of a board committee to evaluate the impact of pension-related proposals under consideration by national policymakers was excludable). *See also Pacific Enterprises* (February 12, 1996) (proposal that a utility dedicate its resources to ending state utility deregulation was excludable) and *Pepsico, Inc.* (March 7, 1991); *Dole Food Company* (February 10, 1992); and *GTE Corporation* (February 10, 1992) (each permitting exclusion of proposal calling for an evaluation of the impact on the company of various federal healthcare proposals). We are aware of the Division's prior views that proposals regarding political contributions are not generally excludable. However, we believe that a proposal seeking to have a company engage in the political or legislative process is no less of an ordinary business matter than a proposal seeking information regarding a company's current engagement in such process.

The Proposal calls for a detailed report regarding:

- policies and procedures for direct and indirect lobbying contributions and expenditures made with (i) corporate funds and (ii) payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications;
- internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications;
- payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications;
- the amount of the payment (***without regard to amount***);
- the recipient of the payment;

- for ***each payment***,
  - ***identification of the person or persons*** in the Corporation who participated in making the decision; and
  - ***identification of the person or persons*** in the Corporation who participated in making the decision to make the payment for grassroots lobbying expenditures.

The report would cover any communication directed to the general public that:

- refers to specific legislation;
- reflects a view of the legislation;
- encourages the recipient of the communication to take action with respect to the legislation; and
- at the local, state and federal levels.

The proposed report requires a significant amount of detailed disclosure. There is no size or amount limitations in the Proposal. A contribution or expenditure of merely $1.00 triggers the entirety of the Proposal's disclosure requirements, including the Individual Employee Identification Requirement. As discussed above, the Division has found that proposals calling for detailed disclosure of ordinary business matters, may be excluded under Rule 14a-8(i)(7).

On a day-to-day basis the Corporation devotes resources to monitoring the legislative process, especially in today's legislative and regulatory environment. The Proposal inappropriately seeks to intervene in the Corporation's routine management of this basic area of its business in order to limit or stop the Corporation from engaging in certain political or legislative objectives. Interestingly, we note that the American Federation of State, County & Municipal Employees ("AFSCME") is extremely active in the legislative and political process, frequently opposing the Corporation's position on matters. According to the Wall Street Journal, AFSCME was the biggest non-government spender in the 2010 elections, spending almost $90 million in the 2009-2010 election cycle. [2] In that same article, the head of AFSCME's political operations stated "We're the big dog. . . . But we don't like to brag." According to opensecrets.org, AFSCME spent in excess of $5 million in various lobbying activities. Political activity and lobbying have certainly become

[2] *See* http://online.wsj.com/article/SB10001424052702303339504575566481761790288.html

ordinary business for AFSCME, and we believe that such activity should be viewed equally with respect to the Corporation's political and lobbying activities. A finding to the contrary would effectively put the Corporation at a competitive disadvantage with respect to its efforts to engage in the political process for the benefit of itself and its stockholders.

C. Under Division precedent, where any portion of a proposal is excludable under Rule 14a-8(i)(7), the entire proposal is excludable, even if a portion of the proposal deals with matters that raise significant policy concerns (which this Proposal does not).

The Division's practice has been to permit exclusion of a proposal in its entirety where any portion of the proposal touches on a company's ordinary business operations, even if particular aspects of the proposal would not be excludable on a stand-alone basis or raise significant policy concerns. In the event that the Division is unable to concur with our views under Section B above (regarding prongs 1 and 2 of the Proposal), we believe the Proposal may nevertheless be excluded because the Individual Employee Identification Requirement set forth in prong 3 of the Proposal, as discussed in detail above, is a matter of ordinary business. In *E*Trade Group, Inc.* (October 31, 2000), a proposal was excludable as it related to the company establishing a stockholder value committee for the purpose of advising the board on potential mechanisms for increasing stockholder value. In concurring that the proposal could be excluded, the Division stated,

> [w]e note in particular that, although the proposal appears to address matters outside the scope of ordinary business, subparts "c." and "d." relate to [the company's] ordinary business operations. Accordingly, insofar as it has not been the Division's practice to permit revisions under rule 14a-8(i)(7), we will not recommend enforcement action to the Commission if [the company] omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

In *Wal-Mart Stores, Inc.* (March 15, 1999), in concurring with the exclusion of a proposal related to child labor, wage adjustments and protecting employees rights, the Division stated,

> [w]e note in particular that, although the proposal appears to address matters outside the scope of ordinary business, paragraph 3 of the description of matters to be included in the report relates to ordinary business operations. Accordingly, insofar as it has not been the Division's practice to permit revisions under rule 14a-8(i)(7), we will not recommend enforcement action to the Commission if [the company] omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Finally, in *Bank of America Corporation* (February 24, 2010), in concurring with the exclusion of a proposal related to the extension of credit and to greenhouse gas emissions generally, the Division stated,

> we note that the first part of the proposal addresses implementation of [the company's] existing policy on funding companies that use mountain top removal as their predominant method of coal extraction. In our view, this part of the proposal addresses matters beyond the environmental impact of [the company's] project finance decisions, such as [the company's] decisions to extend credit or provide financial services to particular types of customers. Proposals concerning customer relations or the sale of particular services are generally excludable under Rule 14a-8(i)(7). Accordingly, we will not recommend enforcement action to the Commission if [the company] omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

See also JPMorgan Chase & Co. (March 12, 2010) (same as previous) and *Marriott International, Inc.* (excluding a proposal related to global warming but that micro-managed the company to such a degree that the exclusion of the proposal was appropriate).
The Individual Employee Identification Requirement set forth in prong 3 of the Proposal relates to a matter of ordinary business. While the Individual Employee Identification Requirement raises significant and important health and safety concerns for the Corporation to manage, providing the names of individual employees cannot be considered to raise any significant policy concerns. Accordingly, even if the Division finds that one or both of the first two prongs of the Proposal related to matters that transcend ordinary business matters, the entire Proposal may be excluded under Rule 14a-8(i)(7).

The Division has stated that proposals that deal with matters that transcend the day-to-day business of a company and raise policy issues so significant that it would be appropriate for stockholder vote would not be excludable under Rule 14a-8(i)(7). *See Staff Legal Bulletin No. 14E (CF)* (October 27, 2009) ("*SLB 14E*"). However, *SLB 14E* did not change the Division's analysis with respect to determining whether a proposal relates to significant policy issues as *SLB 14E* specifically cites the *1998 Release*. The *1998 Release* provides that, in addition to the subject matter of the proposal, the Division considers the degree to which the proposal seeks to micro-manage the company.

We do not believe that the Proposal raises any significant policy issues. While we are aware of the Division's prior views that certain proposals regarding political contributions can raise significant policy concerns and are not generally matters of ordinary business, we believe that the Proposal's report request is so detailed that it seeks to micro-manage the legal and legitimate business

operations of the Corporation. As noted above, there is no size or amount limitations in the Proposal. A contribution or expenditure of merely $1.00 triggers the entirety of the Proposal's disclosure requirements, including the Individual Employee Identification Requirement. Finally, it would seem inappropriate for the Division entertain an argument from a party affiliated with AFSCME, the biggest non-government spender in the 2010 elections and a significant spender on lobbying efforts, that a proposal related to political and lobbying contributions and expenditures raises significant policy issues.

D. Conclusion.

The Division has a long history of finding a broad array of proposals dealing with the management of the workforce and the work place and privacy matters excludable. The Proposal probes into matters of a complex nature involving employee safety and privacy matters, as well as matters relating to the legislative process. The Individual Employee Identification Requirement, which requires the Corporation to identify by name, each individual employee that participates in decisions regarding each and every payment (regardless of amount) for lobbying contributions or expenditures, forces the Corporation to unnecessarily expose its employees to harm. The Proposal precludes the Corporation from properly managing and protecting its workforce and employees. Based on recent events that occurred at the private residence of one of the Corporation's employees (as well as other similar incidents with respect to other company's employees), the Corporation must be permitted to protect its employees from real and legitimate threats. Further, the Individual Employee Identification Requirement is an wholly irrelevant requirement that serves no valid purpose in the context of the balance of the Proposal.

The Corporation and its management are in the best position to determine what policies and practices are prudent to protect employees and their privacy. In addition, the portions of the Proposal related to the Corporation's engagement in the political and legislative process are part of the Corporation's ordinary and daily business operations. The Proposal seeks to take this authority from management. Based on the foregoing discussion, the Corporation believes that the Proposal is excludable pursuant to Rule 14a-8(i)(7).

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 2011 Annual Meeting. Based on the Corporation's timetable for the 2011 Annual Meeting, a response from the Division by February 3, 2011 would be of great assistance.

HUNTON& WILLIAMS

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, Craig T. Beazer, Deputy General Counsel of the Corporation, at 646-855-0892.

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: Craig T. Beazer
Charles Jurgonis

HUNTON& WILLIAMS

EXHIBIT A

The Proposal

American Federation of State, County & Municipal Employees
Capital Strategies
1625 L Street, NW
Washington, DC 20036
(202) 223-3255 Fax Number

Facsimile Transmittal

DATE: November 15, 2010

To: Alice A. Herald, Deputy General Counsel and Corporate Secretary, Bank of America
(704) 386-6699

From: Lisa Lindsley

Number of Pages to Follow: 3

Message: Attached please find shareholder proposal from AFSCME Employees Pension Plan. Please note proof of ownership is also attached.

PLEASE CALL (202) 429-1215 IF ANY PAGES ARE MISSING. Thank You

AFSCME
We Make America Happen

EMPLOYEES PENSION PLAN

November 15, 2010

VIA OVERNIGHT MAIL and FAX (704) 386-6699
Bank of America Corporation
101 South Tryon Street, NC1-002-29-01
Charlotte, North Carolina 28255
Attention: Alice A. Herald, Deputy General Counsel and Corporate Secretary

Dear Ms. Herald:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2010 proxy statement of Bank of America Corporation. (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2011 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of shares of voting common stock (the "Shares") of the Company in excess of $2,000, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held. A copy of our proof of ownership will be forthcoming within seven days.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to me at (202) 429-1007.

Sincerely,

Charles Jurgonis
Plan Secretary

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, N.W., Washington, D.C. 20036-5687

Resolved, that the stockholders of Bank of America Corporation ("BAC" or the "Company") hereby request that the Company provide a report, updated annually, disclosing BAC's:

1. Policies and procedures for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.

2. Payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including the amount of the payment and the recipient.

3. The report shall also include the following for each payment, as relevant:

   a. Identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure; and
   b. Identification of the person or persons in the Company who participated in making the decision to make the payment for grassroots lobbying expenditures.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation, (b) reflects a view on the legislation and (c) encourages the recipient of the communication to take action with respect to the legislation.

Both "direct lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee of the Board of Directors (the "Board") or other relevant oversight committee of the Board and posted on the Company's website to reduce costs to stockholders.

Supporting Statement

As long-term BAC stockholders, we support transparency and accountability in corporate spending to influence legislation. We believe that disclosure is consistent with public policy and is in the best interest of our Company and its stockholders. Absent a system of accountability, Company assets can be used for policy objectives that may be inimical to BAC's long-term interests and may pose risks to the Company and its stockholders.

Three IMF economists found that lobbying by financial institutions including BAC in 2000-2007 was correlated with more risk taking and worse performance in 2008, and that lobbying lenders were more likely to be bailed out in 2008. (Igan, Mishra, and Tressel; *A Fistful of Dollars: Lobbying and the Financial Crisis*, April 2010.)

BAC spent about $7.66 million in 2008 and 2009 on direct federal lobbying activities, according to the Company's disclosure reports. (U.S. Senate Office of Public Records) This figure may not include grassroots lobbying, which may indirectly influence legislation by mobilizing the public to support or oppose it.

Publicly available data does not provide a complete picture of the Company's lobbying expenditures. Not all states require disclosure of lobbying expenditures. BAC's Board and its stockholders need complete disclosure to be able to evaluate the use of corporate assets for direct and grassroots lobbying and the risks the spending poses.

We urge support FOR this proposal.

STATE STREET.

Timothy Stone

Vice President
Specialized Trust Services
STATE STREET BANK
1200 Crown Colony Drive CC17
Quincy, Massachusetts 02169
tstone@statestreet.com

telephone +1 617 985 9509
facsimile +1 617 769 6695

www.statestreet.com

November 15, 2010

Lonita Waybright
A.F.S.C.M.E.
Benefits Administrator
1625 L Street N.W.
Washington, D.C. 20036

Re: Shareholder Proposal Record Letter for Bank of America (cusip 060505104)

Dear Ms Waybright:

State Street Bank and Trust Company is Trustee for **146,808 shares of Bank of America** common stock held for the benefit of the American Federation of State, County and Municiple Employees Pension Plan ("Plan"). The Plan has been a beneficial owner of at least 1% or $2,000 in market value of the Company's common stock continuously for at least one year prior to the date of this letter. The Plan continues to hold the shares of **Bank of America** stock.

As Trustee for the Plan, State Street holds these shares at its Participant Account at the Depository Trust Company ("DTC"). Cede & Co., the nominee name at DTC, is the record holder of these shares.

If there are any questions concerning this matter, please do not hesitate to contact me directly.

Sincerely,

Timothy Stone