



DIVISION OF  
CORPORATION FINANCE

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

February 11, 2010

John Chevedden

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

Re: Bank of America Corporation  
Incoming letter dated January 17, 2010

Dear Mr. Chevedden:

This is in response to your letter dated January 17, 2010 concerning the shareholder proposal submitted to Bank of America by Nick Rossi. On January 13, 2010, we issued our response expressing our informal view that Bank of America could exclude the proposal from its proxy materials for its upcoming annual meeting.

We received your letter after we issued our response. After reviewing the information contained in your letter, we find no basis to reconsider our position.

Sincerely,

Heather L. Maples  
Senior Special Counsel

cc: Andrew A. Gerber  
Hunton & Williams LLP  
Bank of America Plaza  
Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

**JOHN CHEVEDDEN**

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

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January 17, 2010

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

**# 1 Nick Rossi's Rule 14a-8 Proposal  
Bank of America Corporation (BAC)  
Written Consent Topic**

Ladies and Gentlemen:

This responds to the December 18, 2009 no action request.

The proposal states: "RESOLVED, Shareholders hereby request that our board of directors undertake such steps as may be necessary to permit shareholders to act by the written consent of a majority of our shares outstanding."

The above text uses the word "permit" and does not add or emphasize that "a majority of our shares outstanding" would apply to every conceivable instance. The company cites certain exceptions to "a majority of our shares outstanding" but does not elaborate on whether these exceptions ever applied to the company throughout its long history.

And written consent seems to be well understood under Section 228(a) of the DGCL:  
§ 228. Consent of stockholders or members in lieu of meeting.

(a) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

The company i-6 objection appears to be gratuitously dependent on its i-2 objection.

The rule 14a-8 proposal text uses the word "permit" and does not add or emphasize that "a majority of our shares outstanding" would apply to every conceivable instance. Plus written consent seems to be well understood under Section 228(a) of the DGCL.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2010 proxy.

Sincerely,



John Chevedden

cc:  
Nick Rossi  
Teresa M. Brenner <Teresa.Brenner@bankofamerica.com>

[BAC: Rule 14a-8 Proposal, November 17, 2009]

**3** [Number to be assigned by the company] – **Shareholder Action by Written Consent**  
RESOLVED, Shareholders hereby request that our board of directors undertake such steps as may be necessary to permit shareholders to act by the written consent of a majority of our shares outstanding.

Taking action by written consent in lieu of a meeting is a mechanism shareholders can use to raise important matters outside the normal annual meeting cycle.

Limitations on shareholders' rights to act by written consent are considered takeover defenses because they may impede the ability of a bidder to succeed in completing a profitable transaction for us or in obtaining control of the board that could result in a higher stock price. Although it is not necessarily anticipated that a bidder will materialize, that very possibility presents a powerful incentive for improved management of our company.

A study by Harvard professor Paul Gompers supports the concept that shareholder disempowering governance features, including restrictions on shareholder ability to act by written consent, are significantly correlated to a reduction in shareholder value.

Please encourage our board to respond positively to this proposal to enable shareholder action by written consent – Yes on 3. [Number to be assigned by the company]

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Notes:

Nick Rossi, \*\*\*FISMA & OMB Memorandum M-07-16\*\*\*, sponsored this proposal.

The above format is requested for publication without re-editing, re-formatting or elimination of text, including beginning and concluding text, unless prior agreement is reached. It is respectfully requested that the final definitive proxy formatting of this proposal be professionally proofread before it is published to ensure that the integrity and readability of the original submitted format is replicated in the proxy materials. Please advise in advance if the company thinks there is any typographical question.

Please note that the title of the proposal is part of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or