

December 23, 2016

VIA E-MAIL

Office of Chief Counsel
Division of Corporate Finance
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Re: *Bank of America Corporation*
Stockholder Proposal of Harrington Investments, Inc.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter respectfully requests the Staff's concurrence for our client, Bank of America Corporation (the "Company"), to omit from its proxy statement and form of proxy for its 2017 Annual Meeting of Stockholders (collectively, the "2017 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof received from Harrington Investments, Inc. (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2017 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal relates to the Company's general employee compensation practices and activities. Specifically, the Proposal states:

RESOLVED,

Shareholders request the Board to prepare a public report, at reasonable cost, analyzing to the extent permitted under applicable law and the Company's contractual obligations:

- whether compensation and incentives policies relating to low level employees may create pressures exposing the Company to an aggregate of material losses, and
- categories of incentives or activities posing greatest risk.

A copy of the Proposal and its supporting statements, as well as related correspondence from the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2017 Proxy Materials pursuant to:

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to

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the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”). As further described below, the Proposal is so vague and indefinite that neither the Company’s Board of Directors (the “Board”) nor the Company’s stockholders can comprehend what the Proposal would entail and, therefore, is excludable under Rule 14a-8(i)(3).

The Staff has on numerous occasions concurred in the exclusion of stockholder proposals under Rule 14a-8(i)(3) where key terms used in the proposal were so inherently vague and indefinite that stockholders voting on the proposal would be unable to ascertain with reasonable certainty what actions or policies the company should undertake if the proposal were enacted. For example, in *Puget Energy, Inc.* (avail. Mar. 7, 2002), the Staff concurred in the exclusion of a stockholder proposal under Rule 14a-8(i)(3) where the proposal requested that the company’s board of directors implement “a policy of improved corporate governance” and included a broad array of unrelated topics that could be covered by such a policy. *See also Berkshire Hathaway Inc.* (avail. Jan. 31, 2012) (concurring in the exclusion of a proposal that specified company personnel “sign off [by] means of an electronic key . . . that they . . . approve or disapprove of [certain] figures and policies” because it did not “sufficiently explain the meaning of ‘electronic key’ or ‘figures and policies’”); *The Boeing Co. (Recon.)* (avail. Mar. 2, 2011) (concurring in the exclusion of a proposal under Rule 14a-8(i)(3), noting “that the proposal does not sufficiently explain the meaning of ‘executive pay rights’ and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires”); *General Electric Co.* (Feb. 10, 2011) (same); *The Allstate Corp.* (avail. Jan. 18, 2011) (same).

Likewise, Staff precedent permits the exclusion of proposals as vague and indefinite where it is unclear to whom the proposal would apply. In this regard, the Staff permitted the exclusion of a stockholder proposal requesting “that the officers and directors responsible for . . . [the reduced stock dividend] . . . have their pay reduced” as vague and indefinite because the identity of the affected executives was susceptible to multiple interpretations as the proponent failed to provide any guidance as to how the proposal was to be implemented. *International Business Machines Corp.* (avail. Feb. 2, 2005). The Staff also has permitted the exclusion of a stockholder proposal requesting that future executives’ salary be limited as vague and indefinite because, among other reasons, it was unclear who would be considered a “future executive” for purposes of the proposal. *Otter Tail Corp.* (avail. Jan. 12, 2004).

The Proposal requests the publication of a report that includes an analysis of “whether compensation and incentives policies relating to low level employees may create pressures exposing the Company to an aggregate of material losses.” Understanding the meaning of the term “low level employees” is essential to the Board’s efforts to comply with the Proposal if

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adopted, and essential to stockholders' understanding of the Proposal as they consider how to vote on the Proposal. First, the term "low level employees" is a key term because it defines the scope of the employee population that the Board would be required to consider under the Proposal. Second, the scope of the term "low level employees" is a key term because the Proposal asks for an assessment of the potential for material losses in the aggregate based on the Company's compensation practices and incentive policies relating to "low level employees." However, similar to the proposals in the precedents cited above, this key term does not have an ordinary, commonly understood meaning, and the Proposal does not define the term or explain its meaning. Given that the Company employs approximately 209,000 people in multiple levels of organizational structures,¹ the Proposal's vague and indefinite use of this key term makes it impossible for stockholders and the Board to know the scope of the requested review, including the potential risks that need to be assessed in the aggregate.

The Proposal's supporting statements do not provide any guidance as to who constitutes "low level employees." The first sentence of the supporting statements contrasts "low level employees" to "top executives,"² suggesting that the term "low level employees" encompasses everyone who is not a "top executive." However, subsequent sentences in the supporting statements refer to The Dodd-Frank Act Wall Street Reform and Consumer Protection Act's ("Dodd-Frank") focus on bank employees who "individually have the ability to expose the institution to possible losses that are substantial" and says that this law "largely neglected . . . low level employees who may not individually expose the institution to material losses," thus suggesting that the term "low level employees" excludes non-executive bank employees who individually have the ability to expose the institution to possible losses that are substantial. The supporting statements then variously refer to bank tellers, employees subject to sales incentives, part-time employees, and employees relying on public assistance. Thus, the language in the supporting statements only add to the Proposal's ambiguity and create further confusion over whether the term "low level employees" refers to (i) the Company's organizational structure (so as to encompass all employees who are not "top executives"), (ii) job responsibilities (so as to encompass all employees who do not individually have the ability to expose the Company to substantial financial risk, or alternatively, all tellers), (iii) some undefined measure of compensation (such as any employees who are paid on an hourly basis), or (iv) some other employment or job classification system (such as encompassing only part-time employees).

¹ As reported in the Company's Form 10-Q for the quarterly period ended September 30, 2016, *available at* <https://www.sec.gov/Archives/edgar/data/70858/000007085816000222/bac-930201610xq.htm>.

² The Proposal specifically states: "A clear lesson from the financial crisis is low level employees as well as top executives of large banks can affect the stability of the economy and confidence in the banking system."

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As a result of the Proposal's lack of guidance or clarity in its use of the term "low level employees," stockholders would be unable to determine the scope and nature of the review they are being asked to support, and the Board would be unable to determine how to implement the Proposal. In order to implement the Proposal and assess whether there is a risk for "low level employees" in the aggregate to expose the Company to material losses, the Board must have a clear understanding about which of the Company's 209,000 employees are to be assessed, and yet the Proposal provides no clear guidance on that point.

In this respect, the Proposal can be distinguished from no-action requests where the Staff has declined to find that references to "senior executives" were impermissibly vague and indefinite. For instance, in *JPMorgan Chase & Co. (AFSCME Emps. Pension Plan)* (avail. Mar. 9, 2009), a stockholder proposal requested that the board's compensation committee make certain changes to its performance-based compensation plan for "senior executives." In that letter, the Staff did not agree that the term "senior executives" was subject to multiple interpretations that would muddle the applicability of the proposal. *See also The AES Corp.* (avail. Mar. 12, 2008) (declining to concur in the exclusion of a similar proposal requesting that the board's compensation committee adopt a particular performance-based compensation plan for "senior executives"). But in *JPMorgan* and *AES*, the intended scope of the proposals remained clear despite the lack of definition for the term at issue, as those proposals were aimed at board committees whose ongoing responsibilities already included evaluating the performance and related compensation of each company's highest ranking executives. In contrast, the instant Proposal requests that the Board assess an undefined class of employees, obscuring the scope of the requested review and the report that the Board would need to complete in effecting the Proposal and preventing stockholders from determining what would result if the Proposal were adopted.

Without knowing which employees constitute "low level employees," it is impossible for the Board or stockholders to determine the scope of the "compensation," "incentives" and related "activities" that the Company would need to address in the aggregate under the Proposal. *See Bank of America Corp.* (avail. Feb. 25, 2008) (concurring in the exclusion of a proposal requesting that the company's board of directors revise its policies on greenhouse gas emissions to cease operations including "further involvement in activities that support MTR coal mining," as such term invited too much speculation as to what actions the proposal would proscribe if implemented). Accordingly, the Proposal's failure to define the meaning of the term "low level employees" causes the Proposal to be impermissibly vague and indefinite and renders it excludable under Rule 14a-8(i)(3).

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II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company's Ordinary Business Operations.

The Proposal requests that the Board assess whether any of its compensation policies or incentive compensation arrangements create pressures that may expose the Company to a potential for an aggregate of material losses. In connection with this assessment, the Proposal requests that the Board rank the Company's "incentives or activities" so as to report on those that pose the "greatest risk" to the Company. Because the Proposal deals with matters relating to the Company's ordinary business operations, namely, matters involving the Company's general compensation practices and management of its workforce, the Company may properly exclude the Proposal pursuant to Rule 14a-8(i)(7).

According to the Commission release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "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," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."

A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *see also Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

Similarly, a proposal's request for a board-level review or report on areas of risk for a company does not preclude exclusion if the underlying subject matters of the risks are ordinary business matters. As the Staff indicated in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), in evaluating stockholder proposals that request a risk assessment:

[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the

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subject matter to which the risk pertains or that gives rise to the risk
[S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

A. *The Proposal Is Excludable Because It Relates To General Employee Compensation Matters.*

The Staff consistently has concurred that proposals addressing general employee compensation matters may be excluded pursuant to Rule 14a-8(i)(7), regardless of whether they may also touch upon or include significant policy issues. For example, in *Yum! Brands, Inc.* (avail. Feb. 24, 2015), the proposal requested that the compensation committee of the company’s board of directors prepare a report on the company’s executive compensation policies and suggested that the report include a comparison of senior executive compensation and “our store employees’ median wage.” Accordingly, the Staff concurred that the company could “exclude the proposal under [R]ule 14a-8(i)(7), as relating to Yum’s ordinary business operations,” noting “that the proposal relates to compensation that may be paid to employees and is not limited to compensation that may be paid to senior executive officers and directors.” See also *ENGlobal Corp.* (avail. Mar. 28, 2012) (concurring with the exclusion of a proposal that sought to amend the company’s equity incentive plan, noting that “the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); *Intel Corp.* (avail. Mar. 18, 1999) (concurring in the exclusion of a proposal requesting an employee bill of rights, and stating that “[t]here appears to be some basis for your view that Intel may exclude the proposal under [R]ule 14a-8(i)(7), as relating, *in part*, to Intel’s ordinary business operations (i.e., management of the workforce)”) (emphasis added); Staff Legal Bulletin No. 14A (July 12, 2002)³ (“SLB 14A”). Here, even though the supporting statements assert that the Proposal’s concerns transcend the ordinary business of the Company, the plain language of the Proposal does not focus on a significant policy issue and instead seeks to involve stockholders in the Company’s ordinary business operations regarding the Company’s general employee compensation.

³ In SLB 14A, the Staff stated that “[s]ince 1992, we have applied a bright-line analysis to proposals concerning equity or cash compensation: [w]e agree with the view of companies that they may exclude proposals that relate to general employee compensation matters in reliance on Rule 14a-8(i)(7)” On the other hand, the Staff stated that it did “not agree with the view of companies that they may exclude proposals that concern only senior executive and director compensation in reliance on Rule 14a-8(i)(7).”

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The Proposal implicates the Company's broad-based employee compensation practices and activities and therefore relates to the Company's ordinary business operations. In this respect, the Proposal is comparable to the proposal considered in *Bank of America Corp.* (avail. Feb. 19, 2014, *recon. denied* Mar. 10, 2014, *Comm. review denied* May 22, 2014) ("*Bank of America (2014)*"), which the Staff concurred could be excluded under Rule 14a-8(i)(7) because it addressed both incentive and non-incentive based compensation arrangements. The proposal in *Bank of America (2014)* requested that the Company prepare a report discussing "whether the Company has identified employees that have the ability to expose [the Company] to possible material losses, as determined in accordance with generally accepted accounting principles," and for any employees so identified, a litany of information including criteria for their identification, the number of such employees, and the overall rates of incentive-based compensation paid to them based on achievement of short- and long-term goals. In response to the Company's no-action request, the Staff stated that "the incentive compensation paid by a major financial institution to its personnel who are in a position to cause the institution to take inappropriate risks that could lead to a material financial loss to the institution is a significant policy issue." However, the Staff concurred in the exclusion of the proposal because it related to "compensation paid to any employee who has the ability to expose Bank of America to possible material losses without regard to whether the employee receives incentive compensation and therefore does not, in our view, focus on the significant policy issue." (emphasis added).

Consistent with the Staff's decision in *Bank of America (2014)*, the Proposal is excludable because it is not limited to incentive compensation arrangements for certain employees or executives. Instead, it addresses general compensation practices and activities, and relates to compensation paid to any employee without regard to whether the employee is an executive officer or is in a position to cause the institution to take inappropriate risks that could lead to a material financial loss to the institution. The Proposal clearly addresses general compensation practices: the caption of the proposal is "Report on Risks from Low Level Employee Compensation Policies," and the text of the resolved clause requests a report on "whether compensation and incentives policies relating to low level employees may create pressures" As well, the supporting statements in the Proposal address compensation practices that are not related to incentive compensation, such as "poor compensation," jobs shifting from full- to part-time, and whether bank tellers' compensation result in them relying on public assistance.⁴ Likewise, the Proposal is not focused on employees who, due to their positions, could cause the Company to take inappropriate risks that could lead to a material financial loss to the institution, but instead addresses activities that "may create pressures exposing the Company to an aggregate of material losses." Thus, the Proposal's requirement to address "categories of . . . activities

⁴ The Company is committed to paying its employees competitive wages. Notably, the Company recently announced that it will increase its minimum wage to \$15 an hour.

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posing greatest risk” implicates activities affecting (and results arising from) employee turnover as well as such ordinary business matters as part-time employment practices.

In fact, the Proposal admits that its focus diverges from that of Section 956 of Dodd-Frank, stating that Dodd-Frank has called for federal regulation of “incentive-based compensation arrangements . . . [that] could lead to material financial loss,” and noting further that the act focuses on the effect of such arrangements in relation to “employees ‘that individually have the ability to expose the institution to losses that are substantial in relation to the institution’s size, capital, or overall risk tolerance.’” See Exchange Act Release No. 64140 (Mar. 29, 2011) (emphasis added). Thus, the Proponent concedes that the Proposal is not addressing a topic within the scope that the Staff has previously recognized as involving a significant policy issue. Instead, the Proposal lacks the requisite focus and is therefore excludable under Rule 14a-8(i)(7).

Finally, the Proposal does not focus on the Board’s oversight role in risk management. Instead, the Proposal primarily implicates the Company’s general supervision of its employee workforce. In SLB 14E, the Staff stated,

[T]here is widespread recognition that the board’s role in the oversight of a company’s management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board’s role in the oversight of a company’s management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.

By asking the Company to consider “[w]hether compensation and incentives policies relating to low level employees may create pressures exposing the Company to an aggregate of material losses,” the Proposal squarely addresses employee compensation practices and activities that the Board may not have a direct role in formulating or evaluating. Thus, the Proposal clearly is not focused on the Board’s oversight of risk, and therefore is properly excludable. See, e.g., *The Goldman Sachs Group, Inc.* (avail. Feb. 8, 2011) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal that requested a report relating to risk management structure, staffing and reporting lines as it related to the manner in which the company manages risk, wherein the Staff noted “that the proposal addresses matters beyond the board’s role in oversight of [the company’s] management of risk”); *JPMorgan Chase & Co.* (avail. Feb. 17, 2011) (same).

B. The Proposal Is Excludable Because It Relates To Management Of The Company’s Workforce.

The Commission and Staff also have long held that stockholder proposals may be excluded under Rule 14a-8(i)(7) when they relate to a company’s management of its workforce. By

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requesting a report regarding an assessment by the Board of the Company's compensation practices and an evaluation of "activities" relating to the Company's general employee population, the Proposal directly implicates the Company's management of its workforce and is therefore excludable.

The Commission recognized in the 1998 Release that "management of the workforce, such as the hiring, promotion, and termination of employees," is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, the Staff has recognized that proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, a proposal in *Berkshire Hathaway Inc.* (avail. Jan. 31, 2012) mandated the dismissal of employees who engaged in behavior that would create a conflict of interest, "constitut[e] cause [for dismissal]" or violate certain other principles specified in the proposal. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it dealt with "management of [the company's] workforce." See also *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (Staff concurred that a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce could be excluded because it concerned the "company's management of its workforce"); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (Staff concurred that a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company's reduction in force review process could be excluded, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)"); *Fluor Corp.* (avail. Feb. 3, 2005) (Staff concurred that a proposal requesting information relating to the elimination or relocation of U.S.-based jobs within the company could be excluded as it related to the company's "management of the workforce"); *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) (concurring in the exclusion of a proposal requesting a report on Wal-Mart's actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, child labor or who fail to comply with laws protecting employees' rights because "paragraph 3 of the description of matters to be included in the report relates to ordinary business operations").

Here, the Proposal addresses workforce management by requesting the Board to report on "categories of . . . activities" relating to the Company's low level employees that pose the greatest risk. Although the Proposal does not provide a definition for "low level employees," the number of employees covered by this term is inherently large because the Company employed approximately 209,000 full-time employees as of September 30, 2016. The Proposal's supporting statements provide specific examples of day-to-day management decisions, such as wage garnishment, layoffs or employee turnover, job freezes and jobs shifting from full-time to part-time. Thus, by requesting a report that addresses compensation practices and activities relating to the Company's low level employees, the Proposal is clearly addressed to the Company's management of its workforce, and is analogous to the proposals in *Berkshire*

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Hathaway and the related lines of Staff precedent. Consistent with such precedent, the Proposal is excludable under Rule 14a-8(i)(7).

C. *Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Because It Addresses Ordinary Business Matters.*

The plain language of the Proposal and the well-established lines of precedent set forth above demonstrate that the Proposal addresses ordinary business matters and therefore is excludable under Rule 14a-8(i)(7). Even where a proposal has been deemed to touch upon a significant policy issue, the Staff has concurred in the exclusion of a proposal that also implicated a company's ordinary business operations. In determining whether a proposal implicates a company's ordinary business operations, the Staff looks at all of the facts, circumstances, and evidence surrounding a proposal, including its supporting statement. For instance, the Staff allowed the exclusion of proposals relating to disclosure regarding charitable contributions when these proposals' supporting statements made clear that the proposals were actually directed towards contributions to specific types of charitable organizations (an ordinary business matter). *See, e.g., Johnson & Johnson* (avail. Feb. 12, 2007) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on charitable contributions when the supporting statement focused on contributions to groups "involved in abortion" and that "promote[d] same sex marriages").

Similarly, the Staff has allowed the exclusion of proposals requesting that companies adopt "principles for comprehensive health care reform" when such proposals also included a request for annual reporting on ordinary business operations. *See Wyeth* (avail. Feb. 25, 2008) and *CVS Caremark Corp.* (avail. Jan. 31, 2008, *recon. denied* Feb. 29, 2008). The *Wyeth* and *CVS* proposals asserted that health care access was "an overriding public policy issue for the health care industry" and "[b]esides the Iraqi war, the greatest public policy issue in the 2008 presidential campaign." However, because the proposals' supporting statements also urged each of the companies' boards "to report annually about how it is implementing such principles," the Staff concurred that the proposals could be excluded as relating to the companies' ordinary business operations. Based on this reference in the proposals' supporting statements, the *Wyeth* and *CVS* proposals were excludable under Rule 14a-8(i)(7) while several virtually identical proposals that lacked such additional element were not. *See Exxon Mobil Corp.* (avail. Feb. 25, 2008); *The Boeing Co.* (avail. Feb. 5, 2008); *United Technologies Corp.* (avail. Jan. 31, 2008).

Likewise, because the Proposal clearly addresses ordinary business matters relating to general compensation practices and management of the Company's workforce, it is properly excludable under Rule 14a-8(i)(7), regardless of whether some aspects of the Proposal could be viewed as implicating significant policy issues. Therefore, in accordance with the precedent discussed

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above, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2017 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Ross E. Jeffries, Jr., the Company's Corporate Secretary, at (980) 388-6878.

Sincerely,



Ronald O. Mueller

Enclosure

cc: Ross E. Jeffries, Jr., Bank of America Corporation
John Harrington, Harrington Investments, Inc.

EXHIBIT A



OFFICE OF THE

NOV 08 2016

CORPORATE SECRETARY

November 7, 2016

Bank of America Corporate Center,
100 North Tryon Street
Charlotte, NC 28255
Attention: Ross E. Jeffries, Jr.
Corporate Secretary

RE: Shareholder Proposal

Dear Corporate Secretary,

As a shareholder in Bank of America, I, representing Harrington Investments, Inc. (HII), am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in Bank of America's Proxy Statement for the 2017 annual meeting of shareholders.

HII is the beneficial owner of at least \$2,000 worth of Bank of America stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in Bank of America through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership will be provided under separate cover. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington

President
Harrington Investments, Inc.





November 7, 2016

Bank of America Corporate Center,
100 North Tryon Street,
Charlotte, NC 28255
Attention: Ross E. Jeffries, Jr.
Corporate Secretary

RE: ~~Account XXXX~~ Memorandum M-07-16***
HARRINGTON INVESTMENTS, INC.

Dear Corporate Secretary:

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the Harrington Investments, Inc. account and which holds in the account 600 shares of common stock in Bank of America. These shares have been held continuously for at least one year prior to and including November 7, 2016.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,

A handwritten signature in black ink, appearing to read "Melanie Salazar".

Melanie Salazar
Advisor Services
Charles Schwab & Co. Inc.

Report on Risks from Low Level Employee Compensation Policies

A clear lesson from the financial crisis is low level employees as well as top executives of large banks can affect the stability of the economy and confidence in the banking system. Section 956 of the Dodd-Frank Act directed federal regulators to set rules examining bank employees' "incentive-based compensation arrangements ... [that] could lead to material financial loss." The focus is on employees "that individually have the ability to expose the institution to possible losses that are substantial in relation to the institution's size, capital, or overall risk tolerance."

As such, the law largely neglected focus on incentives to low level employees who may not individually expose the institution to material losses, but can do so in the aggregate. Low level employees are driven to excess risk when poor compensation combines with aggressive sales goals and incentives. In a study conducted December 2013 regarding recent changes to the banking, 35 percent of surveyed workers reported increased sales pressure.

- An employee of HSBC stated workers failing to meet sales goals had the difference taken out of paychecks.
- Twenty-nine percent of surveyed workers reported issues with layoffs or turnover.
- Eighteen percent mentioned jobs shifted from full-time to part-time, or job freezes.

Another study found approximately 31 percent of families of bank tellers rely on public assistance.

The epidemic of fraudulent cross selling by low level employees at Wells Fargo may also forewarn of problems elsewhere. In 2015, a consulting firm found the top complaint of 40 percent of Wells Fargo customers surveyed was employees' constant pushing of products the customers did not need or want. For Bank of America, this was the top complaint of 31 percent of customers.

In 2014, CFPB assessed Bank of America 727 million dollars in consumer relief, found the bank's deceptive marketing of add-on products affected 1.4 million consumers and the bank charged 1.9 million consumer accounts for credit monitoring services not received.

RESOLVED Shareholders request the Board prepare a public report, at reasonable cost, analyzing to the extent permitted under applicable law and the Company's contractual obligations:

- whether compensation and incentives policies relating to low level employees may create pressures exposing the Company to an aggregate of material losses, and
- categories of incentives or activities posing greatest risk.

The Board may integrate, as appropriate, any information developed as a result of arrangements or consent orders with the CFPB.

Supporting Statement

Support for this proposal indicates your interest as a shareholder in preventing banking activities that harm consumers and create systemic risk, undermine confidence in the banking system and expose the bank to material losses. These concerns transcend the ordinary business of our Company and necessitate investor oversight.