



DIVISION OF
CORPORATION FINANCE

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

January 23, 2023

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Bank of America Corporation (the "Company")
Incoming letter dated December 16, 2022

Dear Ronald O. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Kenneth Steiner for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors adopt an enduring policy and amend the governing documents as necessary in order that two separate people hold the office of the chairman and the office of the CEO.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). We note that the Proposal is substantially duplicative of a previously submitted proposal that will be included in the Company's 2023 proxy materials. 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)(11).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

December 16, 2022

VIA E-MAIL

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

Re: *Bank of America Corporation*
Shareholder Proposal of Kenneth Steiner
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Bank of America Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Duplicate Proposal”) and statement in support thereof (the “Duplicate Proposal Supporting Statement”), received from Kenneth Steiner (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 2022 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 shareholder 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 sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE DUPLICATE PROPOSAL

The Duplicate Proposal, titled “Independent Board Chairman,” states:

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

This policy could be phased in when there is a leadership transition.

A copy of the Duplicate Proposal and the Duplicate Proposal Supporting Statement, as well as related correspondence with the Proponent, are attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company that the Company intends to include in the 2023 Proxy Materials.

ANALYSIS

The Duplicate Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates An Earlier Submitted Proposal That The Company Intends To Include In Its 2023 Proxy Materials

A. Background

On October 10, 2022, the Company received a shareholder proposal (the “Prior Proposal”, and together with the Duplicate Proposal, the “Proposals”) and statement in support thereof (the “Prior Proposal Supporting Statement”, and together with the Duplicate Proposal Supporting Statement, the “Supporting Statements”). The Prior Proposal is titled “Request for Board of Directors to Adopt Policy for an Independent

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Chair” and, as with the Duplicate Proposal, requests that the Company adopt a policy providing for an independent board chairman. The Prior Proposal and the Prior Proposal Supporting Statement, as well related correspondence, are attached to this letter as Exhibit B.

The Prior Proposal states:

Shareholders request the Board of Directors adopt as policy, and amend the governing documents as necessary, to require hereafter that that two separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board: The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board may select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board seeks an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

Selection of the Chairman of the Board shall be consistent with applicable law and existing contracts.

The Company received the Duplicate Proposal on October 18, 2022, which is after the date on which the Company first received the Prior Proposal. *See* Exhibit A and Exhibit B. The Company intends to include the Prior Proposal in its 2023 Proxy Materials.

B. Analysis

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting.” The Commission has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (Nov. 22, 1976). When two substantially

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duplicative proposals are received by a company, the Staff has indicated that the company may exclude the later of the proposals it received from its proxy materials, unless the initial proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994). A later proposal may be excluded as substantially duplicative of an earlier proposal despite differences in terms or breadth and despite the proposals requesting different actions. *See, e.g., Amazon.com, Inc.* (avail. Apr. 6, 2022) (concurring that a proposal requesting the board commission an independent third-party audit on workplace health and safety, evaluating productivity quotas, surveillance practices, and the effects of these practices on injury rates and turnover was substantially duplicative of a proposal requesting the board commission an independent audit and report of the working conditions and treatment that warehouse workers face). The Staff has traditionally referred to Rule 14a-8(i)(11)'s substantial duplication standard as assessing whether the later proposal presents the same "principal thrust" or "principal focus" as a previously submitted proposal. *See Pacific Gas & Electric Co.* (avail. Feb. 1, 1993).¹

As demonstrated below, the Proposals share the same principal thrust or focus. In this regard, both Proposals seek adoption of a policy that the chairman (the "Chair") of the Company's Board of Directors (the "Board") be an independent director. A comparison of the two Proposals demonstrates that they address the same subject matter and share the same objective of having the Company adopt a policy providing for an independent Board Chair:

- the titles of both Proposals refer to the Board having an independent Board Chair ;
- both Proposals request that the Board adopt a policy that "two/2 separate people hold the office of the Chairman and the office of the CEO";
- the Proposals use identical language to describe the requested policy—"Whenever possible, the Chairman of the Board shall be an Independent Director";

¹ We note that the Commission has proposed amendments to Rule 14a-8(i)(11) to provide "that a proposal 'substantially duplicates' another proposal if it 'addresses the same subject matter and seeks the same objective by the same means.'" Exchange Act Release No. 34-95267 (July 13, 2022). We believe that the Duplicate Proposal satisfies this standard as well for the reasons noted below, specifically the Proposals each require that the Board Chair be an independent director and each would accomplish that shared objective by the same means—the adoption of a permanent policy requiring that the positions of Board Chair and CEO be separate and that the Board Chair be an independent director.

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- both Proposals request amendments to the Company’s “governing documents as necessary” to implement the requested policy;
- both Proposals note that the policy may be phased in for the next Chief Executive Officer transition (as the Prior Proposal notes, applied on a prospective basis so as to not violate any existing contractual obligation);
- both Proposals provide that the Board may “select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board [seeks][is seeking] an Independent Chairman of the Board”; and
- both Proposals ask that the requested policy be permanent in its application (the Prior Proposal requests that policy should “require hereafter” that separate people hold the two offices and the Duplicate Proposal requests the policy be “enduring”).

Moreover, the Supporting Statements demonstrate that the Proposals have the same thrust and focus and share the same concerns and objectives:

- both Supporting Statements address the different roles that the Board Chair and Chief Executive Officer fulfill and claim that those roles are better served when filled by different individuals;
- both Supporting Statements set forth potential benefits from having an independent Board Chair; and
- both Supporting Statements assert that companies can be better managed by separating the roles of Board Chair and Chief Executive Officer.

Although the Duplicate Proposal and the Prior Proposal use some different words to phrase their shared request that the Company adopt a policy requiring that the Board Chair be an independent director and deploy distinct arguments in their supporting statements in support of that request, these are not substantive differences that detract from the overall shared principal thrust or focus of the Proposals.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(11) of substantially duplicative proposals relating to an independent board chair. For example, in *PepsiCo, Inc.* (avail. Feb. 8, 2022), the Staff concurred with the exclusion of a proposal requesting that the board “adopt a policy, and amend the bylaws as necessary, require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts” under Rule 14a-8(i)(11)

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where the principal thrust of both proposals was the adoption of a policy requiring an independent board chairman. The Staff's response in *PepsiCo, Inc.*, involving the same two proponents as involved here and substantially similar supporting statements, is only one of a long string of precedent where the Staff has concurred in the applicability of Rule 14a-8(i)(11) when a company has received two shareholder proposals requesting adoption of an independent chair policy.² As described above, the principal thrust of the

² See also, *The Southern Co.* (avail. Mar. 6, 2020), (concurring with the exclusion of a proposal requesting that the board "adopt as policy, and amend [its] governing documents as necessary, to require that the [c]hairman of the [b]oard be an independent member of the [b]oard whenever possible," under Rule 14a-8(i)(11) where the principal thrust of both proposals was the adoption of a policy requiring an independent board chairman); *Comcast Corp.* (avail. Mar. 14, 2019) (concurring with the exclusion of a proposal requesting that the board adopt a policy to require that the chair of the board of directors be independent, whenever possible, under Rule 14a-8(i)(11) where the two proposals contained virtually identical resolved clauses); *Pfizer Inc.* (avail. Dec. 20, 2018) (same); *The Kroger Co.* (avail. Apr. 4, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy and amend the company's governing documents to require that the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition so it does not violate any existing agreement, because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair to be independent and to apply the policy prospectively so as not to violate any contractual obligation); *Pfizer Inc.* (avail. Jan. 11, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy that, whenever possible, the board chair should be a director who has not previously served as an executive officer of the company and who is independent of management, and to implement the policy without violating any contractual obligation, because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition); and *Nabors Industries Ltd.* (avail. Feb. 28, 2013) (concurring with the exclusion of a proposal requesting adoption of a policy to require the chair to be an independent director who has not previously served as an executive officer of the company and to implement the policy so as not to violate any contractual obligation, because it substantially duplicated a previously submitted proposal requesting adoption of a policy to require the board chair to be an independent director and to apply the policy prospectively so as to not violate any contractual obligation).

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Proposals is the adoption of a policy providing for an independent Board Chair. Accordingly, like the precedent cited above, even though the Proposals have certain inconsequential differences in their terms, the Duplicate Proposal substantially duplicates the Prior Proposal and is excludable pursuant to Rule 14a-8(i)(11).

Furthermore, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(11) when the earlier and later-received proposals presented the same principal thrust or focus even when the supporting statements are worded differently. For example, in *PepsiCo, Inc.*, as noted above, the Staff concurred with the exclusion under Rule 14a-8(i)(11) of an independent board chair proposal where, as with the Supporting Statements here, the supporting statements were worded differently, but both addressed concerns with having the same person fulfilling two roles, with one supporting statement elaborating on concerns that the situation is not remedied by having an independent lead director, and the other supporting statement citing various corporate governance studies. In *The Southern Co.*, the Staff concurred with the exclusion an independent board chair proposal where the supporting statement outlined certain management-related benefits of an independent chair and expressed concern with the company's corporate governance practices, including the company's failure "to adopt a simple majority vote standard for company elections," but the earlier-received proposal's supporting statement raised concerns related to the company's "strategic transformation necessary for [the company] to capitalize on the opportunities available in the transition to a low carbon economy." Despite the different concerns expressed in the supporting statements of the proposals at issue, the Staff concurred that the proposals in *The Southern Co.* shared the same principal thrust such that relief under Rule 14a-8(i)(11) was appropriate.³

³ See also *Comcast Corp.*, (concurring with the exclusion of an independent board chair proposal, with a supporting statement outlining certain management-related benefits of an independent chair and expressing concern with the company's current employment practices as substantially duplicative of an earlier-received proposal, with a supporting statement raising concerns with a certain "beneficial owner of [company] class B common stock (with 100-to-one voting power)"); *Pfizer Inc. (International Brotherhood of Teamsters General Fund)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal requesting information on certain categories of lobbying expenditures and related company risks, with a supporting statement that "describe[d] the [p]roponents' concern that the lack of lobbying disclosure creates reputational risk when such lobbying contradicts public positions," as substantially duplicative of an earlier-received proposal with a supporting statement that "describe[d] lobbying in the context of [the company's] free speech and freedom of association rights") and *Danaher Corp.* (avail. Jan. 19, 2017)

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As noted above, while the resolved clauses of the Proposals vary slightly in phrasing, they both request that the Company adopt a policy and amend the Company's governing documents to require that the Board Chair be independent. The Supporting Statements are also very similar. For example, both Proposals associate an independent Board Chair with potential for certain corporate governance outcomes and advocate for the separation of the roles of Board Chair and Chief Executive Officer. While the Supporting Statements also contain some differing arguments in support of their shared request, consistent with the aforementioned precedent, this does not change the conclusion that the Duplicate Proposal would have its key focus addressed through implementation of the Prior Proposal and shares the same principal thrust or focus.

Finally, as noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). As the Duplicate Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its 2023 Proxy Materials, there is a risk that the Company's shareholders would be confused when asked to vote on both Proposals. In such a circumstance, shareholders could assume incorrectly that there are substantive differences between the Proposals and the requested actions. In addition, if the voting outcome on the Proposals differed, the shareholder vote would not provide guidance on what actions shareholders want the Company to pursue, given that the same actions would be necessary to implement either the Duplicate Proposal or the Prior Proposal.

For the reasons discussed above, the principal thrust or focus of the Proposals is the same. Moreover, the Company intends to include the Prior Proposal in the 2023 Proxy Materials. Accordingly, the Company believes that the Duplicate Proposal may be excluded under Rule 14a-8(i)(11).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Duplicate Proposal from its 2023 Proxy Materials pursuant to Rule 14a-8(i)(11).

(concurring with the exclusion of a proposal to adopt goals for reducing greenhouse gas emissions, with a supporting statement describing reasons to do so, as substantially duplicative of an earlier-received proposal with a supporting statement describing risks and opportunities associated with climate change).

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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

Enclosures

cc: Ross E. Jeffries Jr., Bank of America Corporation
Kenneth Steiner
John Chevedden

EXHIBIT A

From: Kenneth Steiner <[REDACTED]>

Date: Tuesday, Oct 18, 2022, 6:51 PM

To: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>, Ross Jeffries - Bank of America Corporate Secretary <bac_corporate_secretary@bofa.com>, kristin.gest@bankofamerica.com <kristin.gest@bankofamerica.com>

Cc: olmsted <[REDACTED]>

Subject: Shareholder proposal for Bank of America (BAC) for 2023 annual meeting from Kenneth Steiner
[Sent To: ross.jeffries@bankofamerica.com]

Rule 14a-8 Proposal (BAC)

Dear Mr. Jeffries,
Please see the attached rule 14a-8 proposal.

Sincerely
Kenneth Steiner

Kenneth Steiner

Mr. Ross Jeffries
Corporate Secretary
Bank of America Corporation (BAC)
100 North Tryon Street
Charlotte, North Carolina 28255
PH: [REDACTED]
FX: [REDACTED]

Dear Mr. Jeffries,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I intent to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

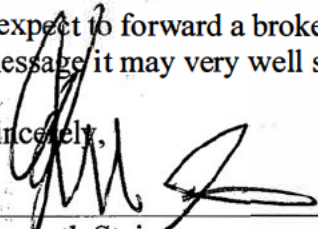
Please copy
John Chevedden

[REDACTED]
on all communication regarding this proposal.

Mr. Chevedden is assisting me on my representing my proposal.

I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from requesting a broker letter from me.

Sincerely,



Kenneth Steiner

10/8/22
Date

cc: Ross Jeffries <ross.jeffries@bankofamerica.com>
Kristen Gest <kristen.gest@bofa.com>

[BAC – Rule 14a-8 Proposal, October 14, 2022]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Independent Board Chairman

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

This policy could be phased in when there is a leadership transition.

This proposal topic won 52% support at Boeing and 54% support at Baxter International. Boeing then adopted this proposal topic in June 2020. The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

A lead director is thus no substitute for an independent board chairman. With the current CEO serving as Chair this means giving up a substantial check and balance safeguard that can only occur with an independent Board Chairman. A lead director cannot call a special shareholder meeting.

A lead director can delegate many details of his lead director duties to management and then simply rubber-stamp it. Management has not explained how shareholders can be sure of what goes on in regard to lead director delegation.

One sign that Bank of America management does not believe in shareholder input on this important topic is that BAC management gives its shareholders extra “help” to make sure shareholders vote the management approved way. BAC management routinely spends shareholder money to publish a glossy simplified voting guide for dummies shortly before the annual meeting. How can there be any genuine shareholder engagement if management is routinely stacking the deck in its favor with an extra dose of the approved management way to vote?

This proposal topic previously won 30% support from Bank of America shareholders in spite of an extra edition of how management thinks shareholders should vote.

There is clearly a need for a change because the BAC stock price was at \$32 five years ago.

The increased complexities of companies of more than \$240 Billion in market capitalization, like BAC, increasingly demand that 2 persons fill the 2 most important jobs in the company – CEO and Chairman.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

"Proposal 4" stands in for the final proposal number that management will assign.

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
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

PI

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

This proposal is not intended to be more than 500 words. Should it exceed 500 words then the words that exceed 500 words would be taken out of the proposal starting with the last sentence of the proposal and moving upwards as needed to omit full sentences.

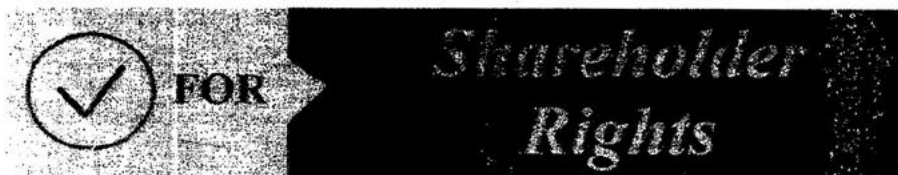


EXHIBIT B

From: Paul Chesser <[REDACTED]>
Date: Monday, Oct 10, 2022, 7:06 AM
To: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>
Cc: Gest, Kristen - Legal <kristen.gest@bofa.com>
Subject: Shareholder resolution for 2023 annual shareholder meeting

Dear Ross/Kristen/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Bank of America Corporation's 2023 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
[REDACTED]
nlpc.org

National Legal and Policy Center

"promoting ethics in public life"



October 10, 2022

Mr. Ross E. Jeffries, Jr.
Deputy General Counsel & Corporate Secretary
Bank of America Corporation
Bank of America Corporate Center
100 N. Tryon St., NC1-007-56-06
Charlotte, NC 28255

VIA UPS & EMAIL: ross.jeffries@bofa.com

Dear Mr. Jeffries/Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Bank of America Corporation's ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 166 shares of the Company's common stock with a value exceeding \$2,000, which requisite shares have been held continuously for more than three years prior to, and including, this date of submission. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to adopt a policy for an Independent Chair in corporate governance. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I am able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal. I can be reached at [REDACTED] or at [REDACTED]. I am available Monday through Friday from 9am to 5pm, Eastern Time.

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me via

Nat'l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: [REDACTED] Email: [REDACTED]

email, and/or mailed to me at [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser". The signature is written in dark ink and is positioned above the typed name.

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Request for Board of Directors to
Adopt Policy for an Independent Chair" proposal

Request for Board of Directors to Adopt Policy for an Independent Chair

RESOLVED:

Shareholders request the Board of Directors adopt as policy, and amend the governing documents as necessary, to require hereafter that that two separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board: The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board may select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board seeks an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

Selection of the Chairman of the Board shall be consistent with applicable law and existing contracts.

SUPPORTING STATEMENT:

The Chief Executive Officer of Bank of America Corporation is also Board Chairman. We believe these roles – each with separate, different responsibilities that are critical to the health of a successful corporation – are greatly diminished when held by a singular company official, thus weakening its governance structure.

Expert perspectives substantiate our position:

- According to the Council of Institutional Investors (<https://bit.ly/3pKrtJK>), “A CEO who also serves as chair can exert excessive influence on the board and its agenda, weakening the board’s oversight of management. Separating the chair and CEO positions reduces this conflict, and an independent chair provides the clearest separation of power between the CEO and the rest of the board.”
- A 2014 report from Deloitte (<https://bit.ly/3vQGqe1>) concluded, “The chairman should lead the board and there should be a clear division of responsibilities between the chairman and the chief executive officer (CEO).”
- A pair of business law professors wrote for *Harvard Business Review* (<https://bit.ly/3xvcIOA>) in March 2020 that “letting the CEO chair the board can compromise board discussion quality, weakening the corporation’s risk management ability... Splitting the CEO and board chair jobs between two people can help strengthen the quality of questions the corporation asks itself. When

those questions remain weak, the organization is less likely to develop strategies that mitigate risk.”

- Proxy adviser Glass Lewis advised (<https://bit.ly/3xwuJwa>) in 2021, “the presence of an independent chair fosters the creation of a thoughtful and dynamic board not dominated by the views of senior management. Further, we believe that the separation of these two key roles eliminates the conflict of interest that inevitably occurs when a CEO is responsible for self-oversight.”

JOHN CHEVEDDEN

January 3, 2023

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

1 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

The Boeing Company (December 20, 2022) suggests that the National Legal and Policy Center is having a big problem with broker letters.

I do not believe that management can overlook a defective broker letter and thereby include the proposal of Proponent A in its annual meeting proxy in preference to Proponent B, who has a valid broker letter.

Management should promptly forward to the Staff the National Legal and Policy Center broker letter submitted to Bank of America.

Sincerely,


John Chevedden

cc: Ross Jeffries

January 8, 2023

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

2 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

If a company need not show that a duplicate proposal is supported by a proper broker letter, the company could logically chose to include a rule 14a-8 proposal in its proxy that is not even supported by a broker letter.

And the next easy downhill step is a company could chose to publish a poorly drafted rule 14a-8 proposal by a non shareholder in order defeat a qualified shareholder.

Management should promptly forward to the Staff the National Legal and Policy Center broker letter submitted to Bank of America.

Sincerely,


John Chevedden

cc: Kenneth Steiner

Ross Jeffries

January 12, 2023

VIA E-MAIL

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

Re: *Bank of America Corporation*
Supplemental Letter Regarding Shareholder Proposal of Kenneth Steiner
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 16, 2022, we submitted a letter (the “No-Action Request”) on behalf of our client, Bank of America Corporation (the “Company”), to inform the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Duplicate Proposal”) entitled “Independent Board Chairman” purportedly submitted by Kenneth Steiner (“Steiner”). The No-Action Request sets forth the basis for our view that the Duplicate Proposal properly may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company by the National Legal and Policy Center (“NLPC”) that the Company intends to include in the 2023 Proxy Materials.

This supplemental letter responds to subsequent correspondence from John Chevedden (“Chevedden”).

The Subsequent Correspondence.

On January 3, 2023, January 8, 2023 and January 12, 2023, Chevedden submitted responses to the No-Action Request (each a “Response” and together the “Responses”), copies of which are attached hereto as Exhibit S-1. In the Responses, Chevedden alleges that NLPC may not have submitted sufficient proof of ownership and demands that the Company forward the proof of ownership provided by NLPC to the Staff to demonstrate that NLPC satisfied the requirements of Rule 14a-8.

Office of Chief Counsel
Division of Corporation Finance
January 12, 2023
Page 2

Response and Analysis

First, we note that the Responses, which relate to a proposal purportedly submitted by Steiner, were submitted directly to the Company by Chevedden, who separately submitted a proposal in his own name to the Company. As reflected in the cover emails for each Response, which are included in Exhibit S-1, Steiner was not shown as actually being copied on the submission of any of the Responses. While Steiner requested that Chevedden be copied on all correspondence regarding the Duplicate Proposal because Chevedden is “assisting me on my representing my proposal,”^[sic] Steiner did not authorize Chevedden to submit additional correspondence or engage with the Company on his behalf regarding the Duplicate Proposal. *See* Exhibit S-2. Accordingly, the direct submission of the Responses by Chevedden raises the question of whether Steiner was functioning as Chevedden’s alter ego with respect to the Duplicate Proposal.¹ In light of this question, we believe Chevedden should demonstrate in what capacity he is corresponding with the Staff regarding the Duplicate Proposal and demonstrate that he is not the true proponent of the Duplicate Proposal.

Second, Chevedden alleges in the Responses that NLPC, whose proposal was submitted to the Company prior to the Duplicate Proposal, may not have provided the Company with sufficient proof of ownership to satisfy the requirements of Rule 14a-8. In support of his unfounded assertion, Chevedden cites *The Boeing Company* (avail. Dec. 20, 2022), which he claims suggests that NLPC is “having a big problem with broker letters.” However, the proponent whose proposal was at issue in *Boeing* was the National Center for Public Policy Research, not NLPC.² Accordingly, *Boeing* has no factual bearing on Chevedden’s unfounded allegations regarding the sufficiency of NLPC submission materials or his unreasonable demand that the Company forward NLPC’s submission materials to the Staff.

¹ We note that similar questions were at issue in *Bank of America Corp.* (avail. Mar. 1, 2022) in which the Staff concurred with the exclusion under Rule 14a-8(c) of both a proposal submitted by Chevedden in his own name and a second proposal initially submitted by Steiner.

² We note that in his January 12 Response, Chevedden suggests that the No-Action Request is “a backup no-action request in case the December 16, 2022 no-action request regarding the Policy Center proposal fails.” However, the no-action request submitted by the Company on December 16, 2022 relates to a proposal submitted by the National Center for Public Policy Research, not NLPC. As he has done in his analysis of *Boeing*, Chevedden appears to have confused NLPC with the National Center for Public Policy Research. As explained in the No-Action Request, the Company intends to include NLPC’s proposal in the 2023 Proxy Materials.

Office of Chief Counsel
Division of Corporation Finance
January 12, 2023
Page 3

While we disagree with Chevedden's premise that a company should provide the Staff with submission materials relating to a previously submitted proposal when relying on Rule 14a-8(i)(11) to exclude a subsequently received proposal, we are nonetheless providing the Staff with the documentation Chevedden requests. Attached as Exhibit S-3 hereto is the proof of ownership that NLPC provided to the Company in response the Company's notice of deficiency. Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Duplicate Proposal from its 2023 Proxy Materials. 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

Enclosures

cc: Ross E. Jeffries Jr., Bank of America Corporation
John Chevedden
Kenneth Steiner

EXHIBIT S-1

From: John Chevedden [REDACTED] PII
Date: Tuesday, Jan 03, 2023 at 9:08 PM
To: Office of Chief Counsel <shareholderproposals@SEC.GOV>
Cc: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>
Subject: # 1 Counterpoint to No Action Request `(BAC) [Sent To: ross.jeffries@bankofamerica.com]

1 Counterpoint to No Action Request `(BAC)

Ladies and Gentlemen,
Please see the attached counterpoint to the no action request.

Sincerely,
John Chevedden

JOHN CHEVEDDEN

January 3, 2023

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

1 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

The Boeing Company (December 20, 2022) suggests that the National Legal and Policy Center is having a big problem with broker letters.

I do not believe that management can overlook a defective broker letter and thereby include the proposal of Proponent A in its annual meeting proxy in preference to Proponent B, who has a valid broker letter.

Management should promptly forward to the Staff the National Legal and Policy Center broker letter submitted to Bank of America.

Sincerely,


John Chevedden

cc: Ross Jeffries

From: John Chevedden [REDACTED] PI
Date: Sunday, Jan 08, 2023 at 11:52 PM
To: Office of Chief Counsel <shareholderproposals@SEC.GOV>
Cc: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>
Subject: # 2 Counterpoint to No Action Request `(BAC) [Sent To: ross.jeffries@bankofamerica.com]

2 Counterpoint to No Action Request `(BAC)

Ladies and Gentlemen,
Please see the attached counterpoint to the no action request.

Sincerely,
John Chevedden

January 8, 2023

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

2 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

If a company need not show that a duplicate proposal is supported by a proper broker letter, the company could logically chose to include a rule 14a-8 proposal in its proxy that is not even supported by a broker letter.

And the next easy downhill step is a company could chose to publish a poorly drafted rule 14a-8 proposal by a non shareholder in order defeat a qualified shareholder.

Management should promptly forward to the Staff the National Legal and Policy Center broker letter submitted to Bank of America.

Sincerely,


John Chevedden

cc: Kenneth Steiner

Ross Jeffries

From: John Chevedden [REDACTED] PII
Sent: Thursday, January 12, 2023 10:54 AM
To: Office of Chief Counsel <shareholderproposals@SEC.GOV>
Cc: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>
Subject: # 3 Counterpoint to No Action Request `(BAC) [Sent To: ross.jeffries@bankofamerica.com]

3 Counterpoint to No Action Request `(BAC)

Ladies and Gentlemen,
Please see the attached counterpoint to the no action request.

Sincerely,
John Chevedden

JOHN CHEVEDDEN

January 12, 2023

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

3 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

It appears that this is a backup no action request in case the December 16, 2022 no-action request regarding the Policy Center proposal fails.

Sincerely,


John Chevedden

cc: Kenneth Steiner

Ross Jeffries

EXHIBIT S-2

Kenneth Steiner

PII

Mr. Ross Jeffries
Corporate Secretary
Bank of America Corporation (BAC)
100 North Tryon Street
Charlotte, North Carolina 28255
PH: 704-386-5681
FX: 704-625-4463

Dear Mr. Jeffries,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I intent to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

Please copy
John Chevedden

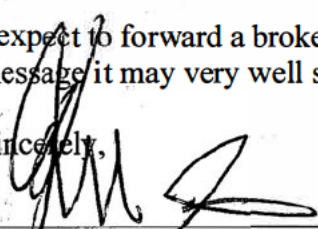
PII

on all communication regarding this proposal.

Mr. Chevedden is assisting me on my representing my proposal.

I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from requesting a broker letter from me.

Sincerely,



Kenneth Steiner

10/8/22
Date

cc: Ross Jeffries <ross.jeffries@bankofamerica.com>
Kristen Gest <kristen.gest@bofa.com>

EXHIBIT S-3

National Legal and Policy Center

"promoting ethics in public life"



October 28, 2022

Mr. Ronald O. Mueller
Legal Counsel, Bank of America Corporation
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue NW
Washington, DC 20036

VIA EMAIL: rmueller@gibsondunn.com, GWalter@gibsondunn.com,
bac_corporate_secretary@bofa.com, ross.jeffries@bofa.com

Dear Mr. Mueller/Corporate Secretary:

This letter responds to your Oct. 19 letter alleging a deficiency in our Oct. 10, 2022 submission of our "Request for Board of Directors to Adopt Policy for an Independent Chair" proposal. As promised, I have attached a verification letter from Fidelity Investments of our holdings.

I can be reached at 662-374-0175 or at pchesser@nlpc.org if you have any questions. Further correspondence can also be sent to me at 2217 Matthews Township Parkway, Suite D-229, Matthews, NC 28105.

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser".

Paul Chesser
Director
Corporate Integrity Project

Enclosure: Fidelity Investments shareholder verification letter

Nat'l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

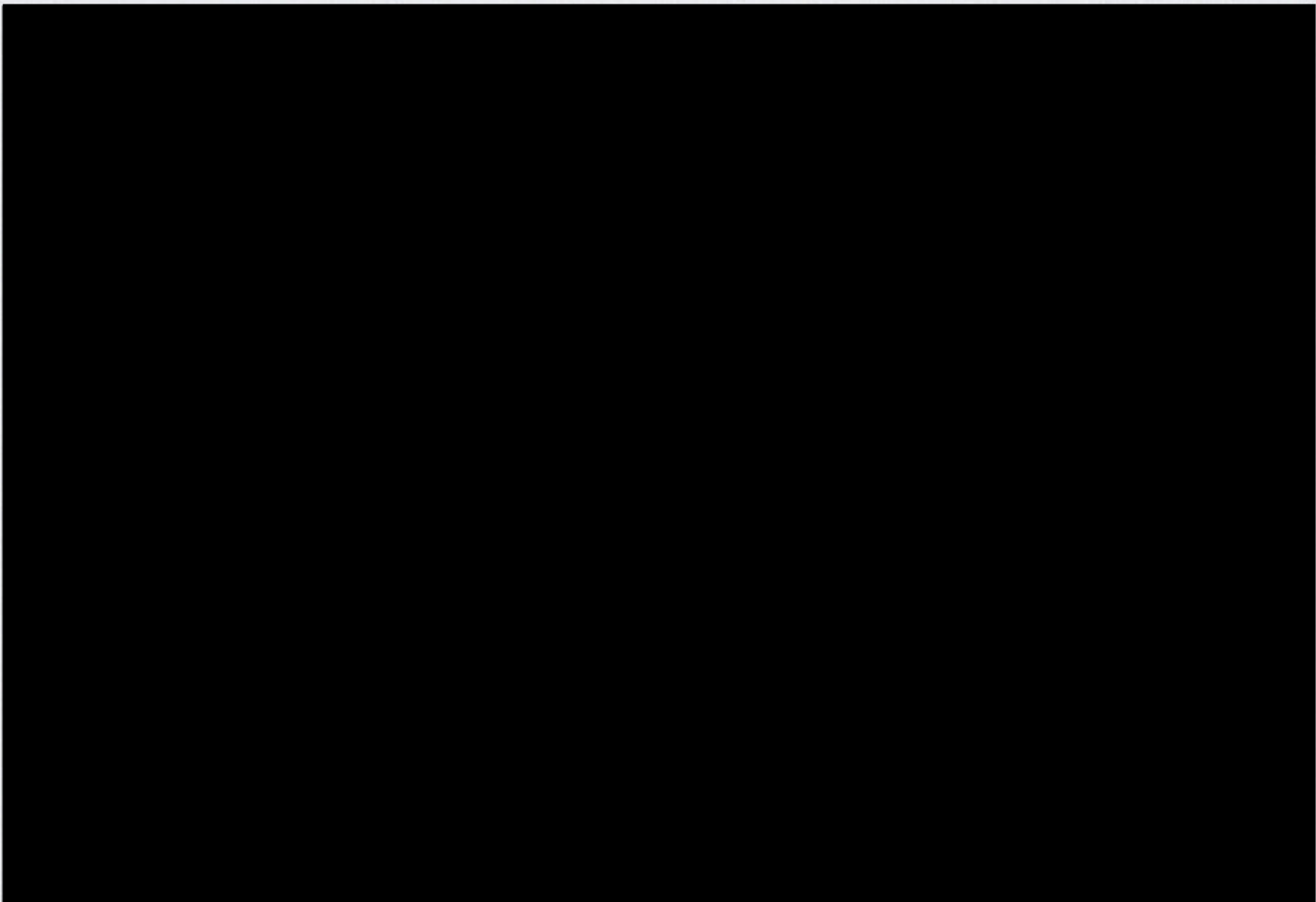
Phone: (703) 237-1970 Email: pchesser@nlpc.org

Fidelity Brokerage Services LLC
100 Crosby Parkway, Covington, KY 41015



October 24, 2022

Corporate Secretary
Bank of America Corporation
Shareholder Proposal October 10, 2022
Re: Shareholder Resolution of National Legal and Policy Center



JOHN CHEVEDDEN

January 12, 2023

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

3 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

It appears that this is a backup no action request in case the December 16, 2022 no-action request regarding the Policy Center proposal fails.

Sincerely,


John Chevedden

cc: Kenneth Steiner

Ross Jeffries

JOHN CHEVEDDEN

January 15, 2023

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

4 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

Perhaps Bank of America is happy with the National Legal and Policy Center sponsorship. According to the attachment the organization has a number of controversial political positions that will drive shareholder to vote against a worthy rule 14a-8 proposal topic.

Sincerely,


John Chevedden

cc: Kenneth Steiner

Ross Jeffries

NOTICE OF EXEMPT SOLICITATION

Pursuant to Rule 14a-103

Name of the Registrant: Visa Inc.

Name of persons relying on exemption: National Legal and Policy Center

Address of persons relying on exemption: 107 Park Washington Court, Falls Church, VA 22046

Written materials are submitted pursuant to Rule 14a-6(g) (1) promulgated under the Securities Exchange Act of 1934. Submission is not required of this filer under the terms of the Rule but is made voluntarily in the interest of public disclosure and consideration of these important issues.



**NATIONAL LEGAL
AND POLICY CENTER**

PROXY MEMORANDUM

TO: Shareholders of Visa Inc.

RE: The case for voting YES on Shareholder Proposal No. 5 on the 2023 Proxy Ballot (“To vote on a stockholder proposal requesting an independent board chair policy”)

This is not a solicitation of authority to vote your proxy. Please DO NOT send us your proxy card; National Legal and Policy Center is not able to vote your proxies, nor does this communication contemplate such an event. NLPC urges shareholders to vote for Proposal No. 5 following the instructions provided on management's proxy mailing.

The following information should not be construed as investment advice.

National Legal and Policy Center (“NLPC”) urges shareholders to **vote YES** on Proposal No. 5, which it sponsors, on the 2023 proxy ballot of Visa Inc. (“Visa” or the “Company”). The Resolved clause states:

Shareholders request the Board of Directors adopt as policy, and amend the bylaws as necessary, to require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time.

As has been long recognized under the American form of government, separation of powers and checks and balances are healthy practices. When it comes to leadership of public corporations, which are owned by a broad ideological and economic spectrum of shareholders, those practices also enhance accountability and self-examination. While not perfectly analogous to a representative republic form of democracy, the separation of responsibilities between a chief executive officer and a chair of the board enables each to focus on critical matters that fall under their respective purviews.

At the same time, one person occupying both the Chair and CEO roles infuses that leader with an inordinate amount of insufficiently-checked power. As we cite from the Council of Institutional Investors in our proposal's supporting statement, "A CEO who also serves as chair can exert excessive influence on the board and its agenda, weakening the board's oversight of management. Separating the chair and CEO positions reduces this conflict, and an independent chair provides the clearest separation of power between the CEO and the rest of the board."

As the legendary late ITT Corporation CEO Harold Geneen wrote in his 1984 book *Managing*:¹

If the board of directors is really there to represent the interests of the stockholders, what is the chief executive doing on the board? Doesn't he have a conflict of interest? He's the professional manager. He cannot represent the shareholders and impartially sit in judgment of himself.

And as two business law professors argued in the *Harvard Business Review*, "letting the CEO chair the board can compromise board discussion quality, weakening the corporation's risk management ability."²

The *HBR* co-authors, Joseph Mandato of Stanford University and William Devine of Menlo College, cite as examples "debacles" from recent years at Boeing, WeWork and Facebook (now Meta), in which they argue that a board of directors might be less willing to challenge a Chair and CEO, if both are the same person.

"A CEO feedback session whose import is underscored by having the CEO's organizational equal—i.e., the board chair—conduct it is not possible, of course, when the board chair is the CEO," the co-authors wrote. "This makes it harder to check a top exec steering the corporation astray."

¹ Geneen, Harold. *Managing*, Doubleday, Jan. 1, 1984.

² Mandato, Joseph and Devine, William. "Why the CEO Shouldn't Also Be the Board Chair," *Harvard Business Review*, March 4, 2020. See <https://hbr.org/2020/03/why-the-ceo-shouldnt-also-be-the-board-chair>.

Visa's Response to Our Resolution

In their proxy statement of opposition, the Company board of directors cite the need for “flexibility” in their ability to design a leadership structure, characterizing our proposal as “rigid” and “prescriptive.”

To that we plead: “Guilty as charged.” Looking at the United States government example, is our constitutional form of government too “rigid” and “prescriptive?” Or should elected (or even appointed) leaders have elastic rules to play by – like Visa’s – so the preferences of a few powerful elites can be accommodated, dependent on shifting priorities like personal relationships, politics, peer acceptance, Twitter favorability, and other irrelevant subjectivisms beyond fiduciary duties?

Speaking of that, the Visa directors also argue that it is their “fiduciary duty” to “routinely evaluate and determine the most appropriate Board leadership structure for the Company and our stockholders in light of the needs of the Board and the Company at any given time.”

This is nonsense. Returning to our U.S. government example, would national oversight by our elected leaders be better served if, say, Congress decided it would be best if the roles of Speaker of the House and the President of the United States were held by the same person – but at another random “given time,” decided it was not the best practice? Such determinations are more subject to flawed, personal human opinions than to what’s best for the “needs of the Board and the Company.” Shareholders depend on consistency in knowing the rules that leadership plays by.

The Board also contends – like every other company with a similar set-up – that separation of the Chair and CEO roles is not necessary, because the Company has “a strong Lead Independent Director” who has “robust, well-defined leadership powers and responsibilities.” These “powers” include:

- The ability to call meetings!
- Chairing board meetings when the Chair/CEO is too busy managing the Company!
- Providing feedback and acting as a liaison to the Chair/CEO!
- ‘Facilitating communication’!
- Doing things the rest of the Board asks him or her to do!

In reality, the “Lead” Independent Director sounds more like a secretary than a “strong” or “robust” counter to the Chair/CEO.

Enabling Al Kelly’s ‘Execution’

When it comes to leadership structure, the concentration of power in a one-person Chair/CEO redounds little, if any, innate benefit to a Company and its shareholders, that a separated Chair and CEO structure could not also accomplish. On the other hand, Chair and CEO responsibilities are more likely to dilute the effectiveness and fulfillment of each role, if both are held by one person.

In the Boeing example cited by Mandato and Devine, the co-authors cite former Chair/CEO Dennis Muilenburg’s three-year tenure, during which the company successfully lobbied to ease government oversight of new airplane designs.³ A subsequent series of events “is suspected to have led to two plane crashes and the tragic loss of 346 lives, the grounding of almost 500 planes worldwide, and company losses that will exceed \$18 billion” (as of March 2020).

The two professors noted that during Muilenburg’s reign, he sought to remake the company as a “global industrial champion,” who debated openly with SpaceX founder/CEO Elon Musk over whose rocket would carry the first person to Mars. Meanwhile, he allegedly fostered an employee culture that disrespected and mocked regulators, among whom the twice-crashed 737 MAX was referred to as “a joke.”

“Boeing might have benefitted from a board chair initiating a closed executive session that considered Muilenburg’s fixation on global and interplanetary aspirations,” Mandato and Devine wrote. “Perhaps those aspirations could have been identified as what they turned out to be: signals that the corporation’s priorities had veered dangerously out of alignment.”

Even now Boeing is trying to recover from the disastrous 737 MAX “cascade of errors, shortcuts and management failures”⁴ that marked the Muilenburg era – but is still losing ground to rival Airbus.⁵

In the current case with Visa, the Board argues in its opposition to our proposal that the combined Chair/CEO arrangement has allowed Mr. (Al) Kelly to “effectively manage the business” and to “execute on our strategic priorities.” But the Board does not specify what constitutes the “business” or “strategic priorities,” that could not have been managed and executed by a separate Chair and CEO.

Questioning Mr. Kelly’s Leadership as Chairman and CEO

However, there are several examples where we call into question Mr. Kelly’s leadership, with his powerful combined positions. Consider:

³ Ibid.

⁴ Cohn, Scott. “One year after the 737 Max’s return, Boeing is still trying to get back on course,” CNBC, Jan. 24, 2022. See <https://www.cnbc.com/2022/01/24/the-737-max-may-be-back-but-boeing-is-still-trying-to-get-back-on-course.html>.

⁵ Jolly, Jasper. “Boeing 737 Max disaster casts long shadow as planemaker tries to rebuild fortunes,” *The Guardian*, June 25, 2022. See <https://www.theguardian.com/business/2022/jun/25/max-disaster-casts-long-shadow-as-boeing-tries-to-rebuild-its-fortunes>.

- He continued the Company’s quite-visible sponsorship of the 2022 Beijing Winter Olympics, despite a diplomatic boycott by the U.S. “There is no way around it,” wrote U.S. Sen. Marco Rubio of Florida. “By supporting the Winter Olympic Games, [sponsors, including Visa] are helping the [Communist Chinese Party] whitewash slavery and genocide.”⁶
- He capitulated to the violent, anti-police,⁷ “Black Lives Matter” riots of 2020, decrying “social injustice and racial inequality,” implying that the thousands of employees who represent the Company are insufficiently respectful and sensitive to minorities.⁸ “These corporations in America...they’ll blow a gasket, you know, for these small issues in the United States,” said Florida Gov. Ron DeSantis. “But yet they’re willing to underwrite games of the country that’s committing genocide.”⁹
- In his response¹⁰ to the fraudulent BLM movement,¹¹ Mr. Kelly pledged to institute quotas at Visa for “under-represented” racial groups among executives and in overall hiring. “We want to achieve these goals for Black and African American people, and for Latinx people,” said Mr. Kelly, ignorant of the fact that the virtue-signaling term “Latinx” offends¹² many Latin Americans and Hispanics. “Our initial emphasis will be on Black and African American talent,” he added.
- A federal judge in California ruled in a child pornography lawsuit against Visa, and against Pornhub’s parent company MindGeek, that “Visa knew that MindGeek’s websites were teeming with monetized child porn”; that there was a “criminal agreement to financially benefit from child porn that can be inferred from [Visa’s] decision to continue to recognize MindGeek as a merchant despite allegedly knowing that MindGeek monetized a substantial amount of child porn”; and that “the court can comfortably infer that Visa intended to help MindGeek monetize child porn” by “knowingly provid[ing] the

⁶ Rubio, Sen. Marco. “In Olympics coverage, NBC should stand for 'National Beijing Corporation',” FoxNews.com, Feb. 11, 2022. See <https://www.foxnews.com/opinion/olympics-nbc-china-national-beijing-corporation>.

⁷ “Police Widow Blames BLM-Supporting ‘Woke’ Companies for Husband’s Murder,” National Legal and Policy Center, July 20, 2022. See <https://www.nlpc.org/corporate-integrity-project/police-widow-blames-blm-supporting-woke-companies-for-husbands-death/>.

⁸ Kelly, Al. “Black Lives Matter: Visa commits to further action and accountability,” Visa.com, July 16, 2020. See <https://usa.visa.com/visa-everywhere/blog/bdp/2020/07/15/a-message-from-1594835009150.html>.

⁹ Laco, Kelly. “DeSantis slams Big Tech and media for 'whitewashing' the 'genocide Olympics,' says Biden is weak on China, FoxNews.com, Feb. 9, 2022. See <https://www.foxnews.com/politics/desantis-interview-biden-weakness-china-big-tech-genocide-olympics>.

¹⁰ Kelly, op cit.

¹¹ Flaherty, Peter. “BLM Tax Return Confirms Self-Dealing, High Living,” National Legal and Policy Center, May 19, 2022. See <https://www.nlpc.org/corporate-integrity-project/blm-tax-return-confirms-self-dealing-high-living/>.

¹² Lopez Terregrosa, Luisita. “Many Latinos say ‘Latinx’ offends or bothers them. Here’s why.,” NBCNews.com, Dec. 14, 2021. See <https://www.nbcnews.com/think/opinion/many-latinos-say-latinx-offends-or-bothers-them-here-s-ncna1285916>.

tool used to complete the crime.”¹³ An influential activist investor said, “Visa’s conduct here is inexcusable, likely to cause the company incalculable financial and reputational damage,” and will “create serious... personal liability and potential criminal liability for the board.”

- He succumbed to pressure from progressive political leaders to adopt a specific purchase code for firearms merchants,¹⁴ making it easier for anti-Second Amendment rights advocates in political power to flag gun sales. “This new system is ripe for abuse and brings to mind similar policies of Big Tech companies and payment processors that have targeted law-abiding Americans for engaging in constitutionally protected activities. I urge you to immediately reverse course,” wrote U.S. Sen. Josh Hawley of Missouri, in a letter to Mr. Kelly and other major payment processing company CEOs.¹⁵ Two dozen state attorneys general also wrote to Mr. Kelly, warning that the new code may violate state consumer protection laws.¹⁶
- Rather than hear shareholders’ legitimate concerns at annual meetings as they choose to address them, instead Mr. Kelly and his team avoid such discomfort, and hold “sham question and answer session(s) with planted softball questions.”¹⁷

Conclusion

As these several examples show, the Company has made multiple missteps and poor judgments under Chairman/CEO Kelly, that the “strong” and “robust” Lead Independent Director – and the Board overall – failed to mitigate or prevent. A separate chair, with an outside perspective and clearly designated powers, has more implied authority to help avoid such risks.

These all present a strong case for permanently changing Visa’s structural policy to require an independent chair.

Thus we urge you to vote FOR Shareholder Proposal No. 5 on the 2023 Proxy, requesting an independent board chair policy, at the Visa Inc. Annual Meeting on January 24, 2023.

¹³ Spangler, Todd. “Visa ‘Intended to Help’ Pornhub and Its Parent Company Monetize Child Porn, Judge Finds in Allowing Case to Move Forward,” *Variety*, July 31, 2022. See <https://variety.com/2022/digital/news/pornhub-visa-child-pornography-court-ruling-1235330052/>.

¹⁴ Sweet, Ken. “Visa, Mastercard, AmEx to start categorizing gun shop sales,” Associated Press, Sept. 10, 2022. See <https://apnews.com/article/gun-violence-shootings-new-york-city-politics-4aae50c67e40f9683f604a8683acc391>.

¹⁵ Hawley, Josh. “Hawley Blasts Visa, MasterCard, AmEx for Plans to Track Gun Purchases” Sept. 13, 2022. See <https://www.hawley.senate.gov/hawley-blasts-visa-mastercard-amex-plans-track-gun-purchases>.

¹⁶ Thornberry, Max. “Tennessee, Montana AGs lead effort questioning credit card CEOs about tracking gun purchases,” *FoxBusiness.com*, Sept. 20, 2022. See <https://www.foxbusiness.com/politics/tennessee-montana-ags-lead-effort-questioning-credit-card-ceos-tracking-gun-purchases>.

¹⁷ “Visa Slammed for Sponsoring the Upcoming Beijing Olympics,” National Center for Public Policy Research, Jan. 25, 2022. See <https://nationalcenter.org/ncppr/2022/01/25/visa-slammed-for-sponsoring-the-upcoming-beijing-olympics/>.

THE FOREGOING INFORMATION MAY BE DISSEMINATED TO SHAREHOLDERS VIA TELEPHONE, U.S. MAIL, E-MAIL, CERTAIN WEBSITES AND CERTAIN SOCIAL MEDIA VENUES, AND SHOULD NOT BE CONSTRUED AS INVESTMENT ADVICE OR AS A SOLICITATION OF AUTHORITY TO VOTE YOUR PROXY.

THE COST OF DISSEMINATING THE FOREGOING INFORMATION TO SHAREHOLDERS IS BEING BORNE ENTIRELY BY THE FILERS.

PROXY CARDS WILL NOT BE ACCEPTED BY US. PLEASE DO NOT SEND YOUR PROXY TO US. TO VOTE YOUR PROXY, PLEASE FOLLOW THE INSTRUCTIONS ON YOUR PROXY CARD.

For questions regarding Visa Inc. – Proposal #5 – the Shareholder Proposal Requesting the Board of Directors to Adopt a Policy for an Independent Chair submitted by National Legal and Policy Center, please contact Paul Chesser, director of NLPC's Corporate Integrity Project, via email at pchesser@nlpc.org.

January 19, 2023

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

5 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 16, 2022 no-action request.

A proposal by the National Legal and Policy Center on the long established topic of an independent board chairman might be described as a proposal that is intended to be against an independent board chairman.

The January 4, 2023 National Legal and Policy Center Notice of Exempt Solicitation in regard to Visa, Inc. (V) boldly injects divisive political views into the issue of improved corporate governance and thus has the potential to alienate about 50% of shareholders.

Accordingly the National Legal and Policy Center proposal may not stand a chance of obtaining the same level of support as a proposal on the same topic by a proponent that does not digress into a disruptive discourse on divisive political issues.

Proposals on established governance improvement topics by the National Legal and Policy Center could be called poaching proposals because they steal the topic from a proponent that does not dump divisive political views into the discussion.

Certain National Legal and Policy Center proposals seem to be self-defeating by blasting shareholders with divisive political views and thereby rob shareholders, management and the Board from a realistic view on the level of support for an established governance improvement proposal topic.

Sincerely,



John Chevedden

cc: Kenneth Steiner

Ross Jeffries

NLPC Highlights 1993 – 2022

2022 – Activision Blizzard CEO Bobby Kotick declined to run for re-election to the Coca-Cola board after NLPC demanded that Coca-Cola CEO James Quincey seek his removal in the wake of a sexual misconduct scandal at Activision Blizzard.

2022 – Charmain Bogue, a top official of the Department of Veterans Affairs (VA), resigned rather than answer questions from the VA's Inspector General about conflicts of interest that were uncovered and publicized by NLPC

2021- NLPC exposed that Hunter Biden's art dealer received an inordinate amount of COVID "loans" after Biden became president, and filed a Complaint with the Small Business Administration.

2021- Following NLPC's exposé that Black Lives Matter (BLM) cofounder Patrisse Cullors owned four homes, she was forced to resign from the group.

2020- NLPC exposed that the University of Pennsylvania, home of the Biden Center for Diplomacy and Global Engagement, received \$67 million in donations from China, including \$22 million that were anonymous, which the University failed to disclose.

2019- NLPC alleged in a Federal Election Commission Complaint that Rep. Ilhan Omar (D-MN) directed most of her campaign spending to a political consultant she would soon marry, and used campaign funds for personal travel.

2019– In a Complaint to the Internal Revenue Service, NLPC detailed how a nonprofit headed by Maya Rockey Moore Cummings, wife of Rep. Elijah Cummings (D-MD), served as conduit for private benefits of the Cummings. Mrs. Cummings lost the election to replace her husband following his death.

2019- NLPC filed a Complaint with the Federal Election Commission, currently pending, alleging that Rep. Alexandria Ocasio-Cortez (D-NY) secretly funneled hundreds of thousands of dollars to Congressional candidates to circumvent disclosure.

2018 – NLPC initiated a constitutional challenge to Special Counsel Robert Mueller. Rejected by U.S. Court of Appeals for the District of Columbia, the suit nonetheless raised questions about Mueller's actions and legitimacy.