



DIVISION OF  
CORPORATION FINANCE

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

March 5, 2025

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP

Re: Bank of America Corporation (the "Company")  
Incoming letter dated December 20, 2024

Dear Ronald O. Mueller:

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

The Proposal requests the Company's board of directors issue a report evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to the Company's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfm/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer  
Bowyer Research, Inc.

December 20, 2024

**VIA ONLINE SUBMISSION**

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

Re: *Bank of America Corporation*  
*Shareholder Proposal of Leonard E. Crumpler*  
*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 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from Bowyer Research, Inc. on behalf of Leonard E. Crumpler (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 2025 Proxy Materials with the Commission; and
- concurrently sent a copy 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 furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

**Resolved:** Shareholders request the Board of Directors of Bank of America issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.

A copy of the Proposal and the Supporting Statement 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 2025 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company.
- Rule 14a-8(i)(11) because the Proposal substantially duplicates another shareholder proposal received by the Company before the Proposal (the "Prior Proposal"), and if the Staff does not concur with the exclusion of the Prior Proposal pursuant to a separate no-action request, the Company expects to include the Prior Proposal in the 2025 Proxy Materials.

## ANALYSIS

### I. **The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.**

The Company is a global financial institution serving individual consumers, small- and middle-market businesses, institutional investors, large corporations and governments with a full range of banking, investing, wealth management and other financial and risk management products and services. Through its various bank and nonbank subsidiaries throughout the U.S. and in international markets, the Company provides a diversified range of banking and nonbank financial services and products through eight lines of business. For financial reporting purposes, the Company's eight lines of business align into the following business segments: Consumer Banking, Global Wealth & Investment Management, Global Banking and Global Markets.

The Company is subject to an extensive regulatory framework. Of particular relevance here, U.S. federal regulation of banks, bank holding companies and financial holding companies is intended primarily for the protection of depositors and the Federal

Deposit Insurance Fund. As a registered financial holding company and bank holding company, the Company is subject to the supervision of, and regular inspection by, the Board of Governors of the Federal Reserve System (“Federal Reserve”), while its U.S. bank subsidiaries, organized as national banking associations, are subject to regulation, supervision and examination by the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Consumer Financial Protection Bureau (“CFPB”) and the Federal Reserve. Additionally, the Company and its bank and broker dealer subsidiaries are subject to a significant number of laws, rules and regulations that govern their businesses in the U.S. and in the other jurisdictions in which they operate, which set forth requirements on permissible activities, compliance risk management, consumer products and sales practices, anti-money laundering and anti-corruption, compliance with government sanctions, privacy and data protection, among others, including those promulgated by the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

This regulatory framework is discussed extensively in an interim staff report of the U.S. House of Representatives Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (the “Interim Staff Report”),<sup>1</sup> which is cited in the Supporting Statement, as well as in a more recent report by the same House subcommittee, issued on December 6, 2024 (the “December Staff Report”).<sup>2</sup> However, the Proposal and the Supporting Statement misrepresent or misconstrue statements in the Interim Staff Report and conflate various actions of federal law enforcement agencies with those of the Company. For example, the Interim Staff Report and the December Staff Report address alleged financial surveillance by federal government agencies, not by financial institutions,<sup>3</sup> and the Company, as a financial institution, does not control whether a customer is “placed on a government watchlist” or “wrongly prosecuted.”

Setting aside the inflammatory references in the Proposal and Supporting Statement to the Company “surveilling or monitoring customers,”<sup>4</sup> the subject of the Proposal is the Company’s management and handling of customer accounts and account information,

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<sup>1</sup> See *Financial Surveillance in the United States: How Federal Law Enforcement Commandeered Financial Institutions to Spy on Americans* (Mar. 6, 2024), available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/How-Federal-Law-Enforcement-Commandeered-Financial-Institutions-to-Spy.pdf>

<sup>2</sup> Available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-05-Financial-Surveillance-in-the-United-States.pdf>

<sup>3</sup> For example, the December Staff Report states, “The reporting requirements of the Bank Secrecy Act turn financial institutions into confidential informants that are required to secretly report Americans’ financial activities to the federal government.” *Id.* at 6.

<sup>4</sup> While they are not germane to the analysis under Rule 14a-8, both the Proposal and Supporting Statement include other inflammatory and unfounded allegations against the Company. For example, the Supporting Statement alleges that the Interim Staff Report “singled out Bank of America as the worst private actor.” The Proposal provides no citation in support of this statement and nowhere in the Interim Staff Report is the Company identified as “the worst private actor.”

particularly in the context of closing accounts or providing information to government authorities, which the Proposal alleges is based on political or religious status, viewpoint, or activities. The Company's relationship with its clients and the handling of client accounts, including the terms upon which it does business with clients across its operations and how it manages and protects customer account information, are essential to the operation of the Company's business as a financial services institution. In managing customer accounts and customer account information, the Company is required to comply with the vast array of laws, rules and regulations applicable to the Company and its subsidiaries, including those promulgated by the Federal Reserve, OCC, FDIC, CFPB and FinCEN. Decisions regarding customer accounts, including the handling of customer information, involve legal, regulatory, operational, risk management and financial considerations that implicate detailed and extensive policies and procedures and are fundamental to the Company's day-to-day operations. Because the Proposal addresses the Company's handling of customer relations, it is precisely the type of shareholder proposal that companies are permitted to exclude under Rule 14a-8(i)(7).

#### *A. Background On The Ordinary Business Standard.*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission's 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 [of] 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. The first 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." Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, *decisions on production quality and quantity*, and the retention of suppliers" (emphasis added). 1998 Release. The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. See Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves

a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”). Moreover, in Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. See, e.g., *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

In the instant case, the Proposal relates to the Company’s relationships with customers and its management and handling of customer accounts and account information, particularly in the context of closing accounts or providing information to government authorities, all of which are subject to the Company’s obligation to comply with laws, rules and regulations, and involve other core business operations. The Proposal also seeks to micromanage the Company by requesting intricate detail regarding its policies and procedures governing customer accounts and management of customer accounts and account information, including those governing the dissemination of customers’ personal information to government agencies, which would include all federal, state, and local agencies. In order to evaluate how the Company’s management of customer accounts, including providing certain customer account information to government agencies, could “impact[] individuals’ exercise of their constitutionally protected civil rights”, the Proposal would require the Company to collect information from customers that it does not currently collect and obtain information from government agencies regarding how the agencies use any information provided by the Company. For example, in order to comply with the Proposal, the Company would have to ask its customers to provide the Company with information about their “political or religious status, views, or activities”—an intrusive process the Company does not currently undertake, and one that is not necessary for the Company to continue to comply with its existing policies and the laws, rules and regulations governing customer accounts and customer account information. As such, similar to the well-established precedents described in greater detail below and consistent with the Commission guidance and Staff precedents, the Proposal involves matters related to the Company’s ordinary business and may be excluded under Rule 14a-8(i)(7).

*B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers, Including How The Company Manages Customer Relations, Customer Accounts and Customer Account Information.*

The Proposal seeks to require the Company to issue a report “evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities . . . .” The Supporting Statement frames this issue primarily with concerns regarding policies and procedures around responses to government inquiries and, to a lesser degree, regarding account closures. The Company’s decision-making regarding the policies and procedures that govern the Company’s handling of customer accounts, including handling of customer information, implicates routine management decisions that encompass legal, regulatory, operational, risk management and financial considerations, among others. For example, as a global financial institution organized under the laws of the United States, the Company is subject to significant federal, state, and local laws and regulations, which, among other things, include requirements relating to appropriate procedures for the protection of customer information. In addition, laws and regulations require that the Company report unusual or suspicious activity to agencies or government entities as part of its obligations to monitor for particular criminal activity, such as money laundering. As a result, the Company has developed a detailed set of policies and procedures encompassing the handling of customer accounts and information, including policies and procedures, consistent with applicable federal, state, and local regulatory requirements, relating to protecting customer account information and providing certain information to government agencies. The Proposal impermissibly seeks to interject shareholders into this aspect of the Company’s ordinary business.

The Staff consistently has concurred with the exclusion of proposals relating to financial institutions’ handling of customer accounts and customer information, even where the proposal has implicated policies and procedures related to government inquiries. For instance, in *American Express Co.* (avail. Mar. 9, 2023), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting an evaluation and report “describing if and how the [c]ompany intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.” The supporting statement, like the Supporting Statement, raised concerns regarding providing information about customer purchases with “law enforcement or other governmental entities,” including by raising “concerns over the privacy of gun ownership” and “the dangers associated with sharing any information gathered with government representatives whose use of the information can only be to surveil and harass those who exercise their lawful right to keep and bear Arms.” Similarly, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting each company’s “policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government,” including “an itemized listing of such requests . . . and a reason or rationale for the [c]ompany’s response, or lack thereof.” In each case, the supporting statements, like the Supporting Statement, raised concerns about “unconstitutional law

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enforcement activities and censorship” and each company’s “cooperat[ion] with the government in the unconstitutional program.” Consistent with well-established precedents, the Staff concurred with exclusion under Rule 14a-8(i)(7). See *JPMorgan Chase & Co. (National Legal and Policy Center)* (avail. Mar. 21, 2023); *Wells Fargo & Co.* (avail. Mar. 2, 2023).

Similarly, the Staff has consistently concurred with the exclusion of proposals relating specifically to procedures for handling customer information, even when those proposals touched upon concerns over the exercise of constitutionally protected rights. In *AT&T Inc.* (avail. Jan. 30, 2017) (“*AT&T 2017*”), the proposal requested that the board “review and publicly report . . . on the consistency between AT&T’s policies on privacy and civil rights and the [c]ompany’s actions with respect to U.S. law enforcement investigations.” The supporting statements, like the Supporting Statement, raised concerns regarding “how cooperation between U.S. law enforcement entities and telecommunications companies affects Americans’ privacy and civil rights” and cited a company program that reportedly provided law enforcement access to certain data. The Staff nonetheless concurred with the proposal’s exclusion under Rule 14a-8(i)(7), noting it “relate[d] to procedures for protecting customer information.” This was also the Staff’s conclusion in *AT&T Inc.* (avail. Feb. 5, 2016) (“*AT&T 2016*”), where the proposal requested that the company “issue a report . . . clarifying the [c]ompany’s policies regarding providing information to law enforcement and intelligence agencies, domestically and internationally, above and beyond what is legally required . . . , whether and how the policies have changed since 2013, and assessing risks to the [c]ompany’s finances and operations arising from current and past policies and practices.” The Staff concurred that the proposal related to “procedures for protecting customer information and [did] not focus on a significant policy issue.” See also *AT&T Inc.* (Feb. 7, 2008) (“*AT&T 2008*,” and together with *AT&T 2017* and *AT&T 2016*, the “*AT&T Precedent*”) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s board of directors prepare a report discussing, from technical, legal, and ethical standpoints, the policy issues that pertain to disclosing customer records and the content of customer communications to governmental agencies without a warrant, as well as the effect of such disclosures on privacy rights of customers because it related to the ordinary business matter of procedures for protecting customer information); *Verizon Communications Inc.* (Feb. 22, 2007) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report describing “the overarching technological, legal and ethical policy issues surrounding the disclosure of customer records and communications content” to government and non-government agencies because the proposal related to the company’s “ordinary business operations (*i.e.*, procedures for protecting customer information),” even where the proposal also emphasized the importance of these issues in terms of customers’ freedom of expression).

The Staff also has consistently concurred with the exclusion of proposals relating to how a company handles closure of customer accounts and any associated procedures, even when those proposals touched upon concerns over the exercise of constitutionally protected rights. For instance, in *PayPal Holdings, Inc. (Laurent Ritter)* (avail. Apr. 10, 2023) (“*PayPal (Ritter)*”), the proposal requested that the board of directors revise its reporting to “provide clear explanations of the number and categories of account

suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services” and the supporting statement requested that the report include the “external legal or policy basis and internal company criteria for removals” as well as “[a]ny efforts by the company to mitigate the harmful effects” of such account closures. The Staff concurred with the proposal’s exclusion under Rule 14a-8(i)(7). More generally, in *Comcast Corp. (Leonard J. Grossman)* (avail. Apr. 13, 2022), the proposal requested that the company follow certain procedures and provide certain information “in advance of any termination, suspension or cancellation of any service to the customer named on the account” where the proponent raised concerns about the company’s decision to suspend the proponent’s service and the procedures the company followed in doing so. The Staff concurred with the proposal’s exclusion under Rule 14a-8(i)(7). This was also the Staff’s conclusion in *PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021), where the proposal requested that the company ensure “that [the company’s] users do not have accounts frozen or the use of [company] services terminated without giving specific, good and substantial reasons to the user for so doing.” The company argued that the proposal “attempt[ed] to dictate the [c]ompany’s management of its customer accounts, including the design and administration of [c]ompany policies and procedures” and related to communications with customers and the company’s processes related to customer accounts, which are both fundamental to day-to-day operations and matters of ordinary business operations. The Staff concurred with the proposal’s exclusion under Rule 14a-8(i)(7). See also *Zions Bancorporation* (avail. Feb. 11, 2008, *recon. denied* Feb. 29, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company implement a mandatory adjudication process prior to the termination of certain customer accounts where the Staff concurred that the proposal related to “ordinary business operations (i.e., procedures for handling customers’ accounts”).

The foregoing precedents are all consistent with the Staff’s long-held position that proposals relating to a company’s practices for handling customer accounts and customer information can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company’s ordinary business operations, even when the practices are alleged to discriminate against certain customers. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the boards of financial services companies complete a report evaluating each company’s overdraft policies and practices and the impacts those have on customers. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain customers more than others and that the provision of such services exposed the companies to increased litigation and reputational risks. The Staff nonetheless concurred with exclusion under Rule 14a-8(i)(7) as the proposals related to “ordinary business operations,” and specifically, “the products and services offered for sale” by those companies. See *Bank of America Corp. (Worcester County Food Bank and Plymouth Congregational Church of Seattle)* (avail. Feb. 21, 2019); *Bank of America Corp.* (avail. Jan. 6, 2010) (concurring with the exclusion of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which effectively sought “to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants,” because the proposal sought to control the company’s “customer relations or the sale of particular services”); *Banc One Corp.* (avail. Feb. 25, 1993) (concurring with the exclusion of a proposal requesting that the corporation publish “a

report reviewing the [c]ompany's lending practices" as they pertained to specifically identified groups of people, noting that the proposal involved "a description of special technical assistance and advertising programs[,] lending strategies and data collection procedures").

Here, like the policies, practices, and procedures at issue in the *AT&T Precedent*, *American Express*, and the other precedents cited above, the Proposal relates to the Company's day-to-day management and handling of customer accounts and account information. The Proposal thus involves the Company's policies and procedures relating to the products and services the Company offers to its customers and the Company's procedures for handling customer accounts, customer relations, and protecting customer information. In particular, the Proposal asks that the Company provide a report "evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities." As in the *AT&T Precedent*, where the proposal was concerned with "how cooperation between U.S. law enforcement entities and telecommunications companies affects Americans' privacy and civil rights," the Proposal similarly focuses on the Company's disclosure of customer information to law enforcement agencies and alleges that the Company "colluded with the FBI and U.S. Treasury Department to surveil transactions of ordinary citizens." In this way, the Proposal is also similar to that in *American Express*, as both proposals concern providing certain customer financial information to law enforcement agencies and express privacy concerns, which here the Proposal characterizes as "surveilling or monitoring" of customers.

Decisions regarding the Company's policies and procedures related to handling customer accounts and customer information are a fundamental responsibility of management, requiring consideration of a number of factors. Such considerations involve complex evaluations, including designing systems that allow the Company to comply with laws, rules and regulations, about which shareholders are not in a position to make an informed judgment. Balancing such considerations is a complex matter and is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Specifically, customer accounts and customer information maintained by the Company, a global financial institution, are subject to policies and procedures that are influenced by various legal, regulatory, operational, risk management and financial considerations, among others, across a variety of jurisdictions. As such, consistent with Staff precedents, the Proposal, by attempting to subject the Company's policies and procedures surrounding the management of the Company's customer accounts and customer information to shareholder oversight and a shareholder vote, addresses issues that are ordinary business matters for the Company, and is therefore properly excludable under Rule 14a-8(i)(7).

*C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.*

The well-established precedents discussed above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters

from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Moreover, as Staff precedents have established, the fact that a proposal may touch upon topics that implicate significant policy issues, or that take such issues as their starting point, does not transform an otherwise ordinary business proposal into one that transcends ordinary business when the proposal does not otherwise focus on those topics.

The Staff most recently discussed how it evaluates whether a proposal “transcends the day-to-day business matters” of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), noting that it is “realign[ing]” its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. In addition, the Staff stated that it will “no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)” but rather will consider only “whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.”

The Staff consistently has concurred in the exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters. For example, the proposal in *PetSmart, Inc.* (avail. Mar. 24, 2011) requested that the board require its suppliers to certify they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents” which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) because the proposal addressed but did not focus on significant policy issues, stating “[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” Recent precedent where the Staff concurred with exclusion of a proposal that referenced or arose in the context of a significant policy matter but that address or focus on ordinary business matters include *Fox Corp.* (avail. Sept. 19, 2024). There, the company received a proposal requesting a report on the social impact and risks to the company from inadequately distinguishing between news content and opinion content and the viability and benefits of such public differentiation, and the company argued that “potential social policy implications in a proposal does not qualify as ‘focusing’ on such issues, even if the social policies happen to be the subject of substantial public focus.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7).

The Proposal does not transcend the Company’s ordinary business operations. Rather, as discussed above, the Proposal’s principal focus is on the policies and procedures relating to the Company’s management and handling of customer accounts and customer

information, including the Company's policies and procedures that are designed to allow it to comply with a broad panoply of laws, rules and regulations related thereto. Furthermore, while the Proposal is premised on the (incorrect) assertion that the Company is "surveilling or monitoring customers based on their political or religious status, views or activities"<sup>5</sup> and mentions concerns about actions taken by government agencies that allegedly "put millions of Americans at risk for having their accounts frozen, being de-banked, placed on a government watchlist, or even wrongly prosecuted, all for exercising their First and Second Amendment rights," the central focus of the Proposal is on the Company's management of customer accounts in the context of responses to government inquiries and, to a lesser degree, account closures.<sup>6</sup> Thus, the Proposal does not implicate any significant policy issue. See, e.g., *AT&T 2017* (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board of directors review and publicly report the consistency between the company's policies on privacy and civil rights and the company's alleged actions with respect to law enforcement investigations where the supporting statement raised concerns regarding "how cooperation between U.S. law enforcement entities and telecommunications companies affects Americans' privacy and civil rights" and cited a company program that reportedly provided law enforcement access to certain data); *PayPal (Ritter)* (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board of directors revise its reporting to "provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services" where the supporting statement alleged that the company "routinely targets users for speech protected by the First Amendment" and raised concerns about "accountability on human rights, civil liberties, and sound technology policy" including "the contradiction between [the company's] human rights policy and account suspensions and other potential violations of freedom of speech"); *JPMorgan Chase & Co. (National Legal and Policy Center)* (avail. Mar. 21, 2023)

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<sup>5</sup> The Proposal also alleges that the Company engages in "viewpoint discrimination" and the Supporting Statement alleges that the Company is "targeting free speech and religious freedom." The Company strongly disagrees with these claims, and there is no substance to or factual basis for the assertion that the Company has engaged in the activities alleged in the Proposal and Supporting Statement.

<sup>6</sup> The Supporting Statement alleges that the Company has a "track record of de-banking religious ministries." The only citations provided to support this false and inflammatory allegation are (i) a highly-publicized advocacy letter to the Company from Kansas Attorney General Kris Kobach and (ii) a Fox News article that describes the same letter. The Company strongly denies the allegations of de-banking religious ministries made in the Supporting Statement, which have no actual basis in fact. The letter cited by the Supporting Statement as the basis for these allegations describes three instances in which the Company has, in fact, closed a business account that was maintained by a religious-affiliated organization, which do not constitute "a track record" of activity, considering that the Company's clients include thousands of churches, mosques, synagogues and other religious-affiliated organizations. More significantly, the Company has repeatedly explained (as acknowledged in the letter cited in the Supporting Statement) that the three accounts in question were closed for reasons entirely unrelated to the religious affiliation of the account holders, and the Company has confirmed that religious beliefs are not a factor in any account-closing decisions at the Company.

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(concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting details on the company's "policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government," where the supporting statement raised concerns about "unconstitutional law enforcement activities and censorship" and the company's "cooperat[ion] with the government in the unconstitutional program"); *PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company ensure "that [the company's] users do not have accounts frozen or the use of [company] services terminated without giving specific, good and substantial reasons to the user for so doing" when the supporting statement briefly alleged that the company's fraud modeling system was "unethical and un-American" because it "put[] people out of business to save the company money by not using proper human oversight").

Here, the Proposal focuses on risks of the Company's management and handling of customer accounts (which the Proposal characterizes as "surveillance or monitoring customers"). The Supporting Statement indicates that the goal of the Proposal is "to rebuild trust by providing transparency around these policies and actions" and to "assure customers, shareholders, and others." As such, the Proposal is focused on customer relations and is distinguishable from proposals that directly focused on significant policy issues, such as identifying potential factors in a company's operations that may contribute to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views (see, for example, *JPMorgan Chase & Co. (The Bahnsen Family Trust)* (avail. Mar. 21, 2023)); conducting operations in countries that raise human rights concerns (*Alphabet Inc. (Mari Fennel-Bell et al.)* (avail. Apr. 12, 2022)); providing support for military and militarized policing agency activities (*Alphabet Inc. (Edward Feigen et al.)* (avail. Apr. 12, 2022)); assisting in the enforcement of state laws criminalizing abortion access (*American Express Co.* (avail. Mar. 6, 2023)); or establishing a merchant category code for standalone gun and ammunition stores (*Mastercard Inc.* (avail. Apr. 25, 2023)). In each of those no-action requests, the Staff rejected the companies' argument and did not concur with exclusion of the proposal under Rule 14a-8(i)(7) because, in the Staff's view, the companies had not met their burden to demonstrate that the proposals focused on a topic that did not transcend ordinary business matters.

In contrast, the Proposal is more comparable to the proposals addressed in part II.B. of this letter above, such as the proposal in *AT&T 2016*. As discussed above, the Staff there concurred that a proposal focused on its customer account policies—specifically, "a report . . . clarifying the [c]ompany's policies regarding providing information to law enforcement and intelligence agencies, domestically and internationally, above and beyond what is legally required . . . , whether and how the policies have changed since 2013, and assessing risks to the [c]ompany's finances and operations arising from current and past policies and practices" "[did] not focus on a significant policy issue" and was excludable under Rule 14a-8(i)(7) because it related to "procedures for protecting customer information." Accordingly, because the text of the Proposal makes clear that it is primarily focused on the Company's ordinary business operations, the Proposal does not transcend the Company's ordinary business operations and does not focus on any significant policy

issue. As such, similar to the proposals in the precedents discussed in part II.B. above, the Proposal may be excluded under Rule 14a-8(i)(7).

*D. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.*

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” In addition, SLB 14L stated that in considering arguments for exclusion based on micromanagement, the Staff “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” In assessing whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, the Staff “may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” Furthermore, the Staff noted that the ordinary business exclusion “is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters.” SLB 14L.

In assessing the “granularity” of a proposal and the extent to which a proposal seeks to micromanage a company’s ordinary business operations, the precedents focus on not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. As a result, in precedents where proposals seek a report but would require granular and complex reviews of information drawn from companies’ ordinary business operations, the Staff has concurred that the proposals are excludable under Rule 14a-8(i)(7) because they seek to micromanage the companies. For example, in *Delta Air Lines, Inc.* (avail. Apr. 24, 2024), the Staff concurred that a proposal asking the company to “issue a report on [the company’s] expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions” could be excluded because it sought to micromanage the company, where the company pointed out that the proposal would require it to dig into granular detail to evaluate the costs of numerous routine management actions related to management of its workforce. In *Delta Air Lines*, although the proposal called for a report, the company argued that the information required by the proposal would delve deeply into ordinary business operations, noting that workforce management matters are “multi-faceted, complex and based on a range of considerations, and they are the subject of laws of multiple states and foreign countries.” See also, *Air Products and Chemicals, Inc.* (avail. Nov. 29, 2024) (concurring in exclusion of a proposal seeking extensive information, including a description of management’s decision-making process and the board’s oversight of actions taken in the course of managing the company’s

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business); *Amazon.com, Inc.* (Apr. 1, 2024) (permitting exclusion of proposal calling for a highly detailed living wage report).

Likewise, the Staff has concurred in exclusion of proposals that seek to micromanage a company's decisions regarding specific aspects of their ordinary business operations. For example, in *Tesla, Inc. (Michael R. Stephen)* (avail. Mar. 27, 2024), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company redesign its vehicle tires "to avoid pollution from harmful chemicals such as 6PPD-Q," noting that "[i]n our view, the [p]roposal seeks to micromanage the [c]ompany." There, the company argued that proposals "concern[ing] the design, product development or product offerings of a company" are excludable, "even when the design, development or product touches on a social issue." Similarly, in *The Home Depot, Inc. (Green Century Capital Management, Inc.)* (avail. Mar. 21, 2024), the Staff concurred with the exclusion of a proposal on the basis of micromanagement where the company argued that the proposal focused on decisions to sell a particular product containing particular materials, even though the proposal, as described by the company attempted to implicate significant social policy issues "[b]y referring to the climate, regulatory and legal and reputational risks." In *Deere & Co.* (avail. Jan. 3, 2022), the Staff concurred with the exclusion under the micromanagement prong of Rule 14a-8(i)(7) of a proposal requesting that the company's board publish "the written and oral content of any employee-training materials offered to any subset of the company's employees" where the supporting statement focused on the company's diversity, equity, and inclusion efforts. In its no-action request, the company argued that the proposal "intend[ed] for shareholders to step into the shoes of management and oversee the 'reputational, legal and financial' risks to the [c]ompany" and thus did not "afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion."

As in *Delta Air Lines* and the other precedents cited above, the Proposal would require a report on complex issues that would require gathering and assessing extensive information involving granular and "intricate detail" on the Company's management of customer accounts and account information. The Proposal seeks disclosure regarding risks related to the alleged "surveilling or monitoring [of] customers based on their political or religious status, views, or activities." The Company does not currently request information from customers on their political or religious status, views, or activities. Thus, implementation of the Proposal would require the Company to establish policies, procedures and protocols for assessing all of the approximately 70 million Company customer accounts and all Company policies and procedures relating to customer accounts, and even to pursue external data sources, to search for information that might indicate customers' political or religious status, views, or activities. The Proposal also requests that the report address how "such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights." Implementing this aspect of the Proposal would require the Company to review any instance where the Company shared any information about any customer with any government agency, at the federal, state, or local level. It also would require the Company to assess how each government agency, at the federal, state, or local level, uses any information provided by the Company in carrying out its core public function, including whether the agency is using such information in any manner that may "impact[] individuals'

exercise of their constitutionally protected rights.” Even if the Company were indeed able to obtain such information from these government agencies, the Company would then still have to carry out the necessary analysis, diligence, and preparation of extensive disclosures required by the Proposal. Such Orwellian undertakings are exactly the type of excessive detail that SLB 14L recognizes as indicative of proposals that seek to micromanage a company’s operations.

The Proposal seeks to interject shareholders into complex determinations and evaluations on how the Company oversees customer accounts and manages customer account information, which involve complex considerations regarding customer relations and compliance with applicable federal, state and local laws. As discussed above, decisions about customer accounts and the management of customer account information, even if limited to the context of information provided to government agencies, are multifaceted and require management to evaluate complex issues. The Company has gone to great lengths to develop customer policies and procedures, and, as discussed above, the implementation of those policies and procedures, including the handling of customer accounts, customer relations, and protection of customer information, are fundamental to the management of the Company’s day-to-day operations. These policies and procedures require judgments and considerations that draw on management’s day-to-day business experience, legal compliance, and assessment of numerous possible consequences and impacts. In addition, the Proposal would call for the Company to gather information about customers that the Company does not currently collect, both as to its customers and as to government agencies to which it provides information. Accordingly, it is inappropriate to seek to have shareholders assess how management addresses the many considerations relevant with respect to oversight of customer accounts and management of customer account information. The Proposal thus micromanages the Company’s fundamental day-to-day decisions and policies and procedures with respect to its customer accounts, customer relations, and protecting customer information. As a result, the Proposal may be excluded under Rule 14a-8(i)(7).

## **II. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company Expects To Include In Its Proxy Materials.**

### *A. Overview Of Rule 14a-8(i)(11).*

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) (the “1976 Release”). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be

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excluded. See, e.g., *Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request 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); *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained that “the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany’s expressed policy positions” despite the proposals requesting different actions); *Exxon Mobil Corp.* (avail. Mar. 9, 2017) (concurring with the exclusion of a proposal requesting a report on the company’s political contributions as substantially duplicative of a proposal requesting a report on lobbying expenditures); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring with the exclusion of a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations as substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates the Prior Proposal, Which Was Received Earlier.*

The Proposal substantially duplicates the Prior Proposal (together with the Proposal for the purposes of this Section B, the “Proposals”). See Exhibit B.

The Prior Proposal states in relevant part:

**Resolved:** Shareholders request the Company Board of Directors issue a public report, omitting proprietary and privileged information, concerning the legality and judgment of management’s decision-making, and insufficient disclosure specificity, regarding the dissemination to government agencies of customers’ personal information.

The Company received the Prior Proposal on September 20, 2024, which is before the Company received the Proposal on October 18, 2024. For reasons similar to those cited in Section I of this letter, the Company is requesting the Staff to concur that the Company may omit the Prior Proposal from its 2025 Proxy Materials. However, if the Staff does not concur in the view that the Prior Proposal may be so excluded, the Company intends to include the Prior Proposal in its 2025 Proxy Materials.

Although phrased differently, the core concern and principal focus of the Proposals is the same: additional information from the Company regarding its handling of customer

accounts particularly in the context of providing customer information to law enforcement and other government agencies.

This duplication is demonstrated by the following chart:

The Prior Proposal	The Proposal
<p><i>The Proposals are both concerned with the U.S. Government’s use of information provided by the Company to allegedly target individuals based on religious or political views.</i></p>	
<p>“In March 2024 the U.S. House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government released a damning report that revealed Bank of America Corporation (“BofA” or “Company”) maliciously conspired with government agencies to violate the civil liberties of customers the Company promised to protect.”</p>	<p>“But a recent Congressional report revealed that the Company and many other of the largest financial institutions colluded with the FBI and U.S. Treasury Department to surveil transactions of ordinary citizens, flagging them as potential domestic violent extremists if they made purchases at Dick’s Sporting Goods, Bass Pro Shops, and Cabela’s, or bought ‘religious texts’ like Bibles.”</p>
<p><i>Both Proposals quote extensively from and rely on the Interim Staff Report as the basis for their claims regarding the Company’s oversight of customer accounts and the Company’s policies and procedures for managing customer account data.</i></p>	
<p>“[T]he Company: ‘[v]oluntarily and without legal process, provided the FBI with a list of names of all individuals who used a [BofA] credit or debit card in the Washington, D.C. region between the dates of January 5 and January 7, 2021’”</p> <p>“One of the [list’s] criteria . . . in terms of Bank of America’s data . . . was related to purchases that had been made at either gun shops or . . . stores that would sell firearms.”</p>	<p>“Bank of America (BoA), voluntarily and without legal process, provided the FBI with a list of names of all individuals who used a BoA credit or debit card in the Washington, D.C. region between the dates of January 5 and January 7, 2021’ or ‘who had ever used a BoA credit or debit card to purchase a firearm, regardless of when or where it was purchased.’”</p>
<p>“Federal law enforcement and [the Company] used January 6, 2021, as a pretext for surveilling potentially thousands of Americans without a warrant . . . show[ing] a pattern of financial</p>	<p>“In its fishing expedition, the federal government also flagged many mainstream conservative and religious organizations . . . .”</p>

The Prior Proposal	The Proposal
surveillance aimed at millions of Americans who hold conservative viewpoints . . . .”	
“The Company’s customer privacy and security disclosures are weak and vague as they pertain to release of data to authorities, stating only that it shares personal information with ‘Government Agencies as required by laws and regulations.”	“As the oversight report stated, ‘This raises serious concerns and doubts about federal law enforcement’s and financial institutions’ commitment to respecting Americans’ privacy rights and fundamental civil liberties.”
“As a result, the Company deceived its customers and betrayed their trust.”	“Bank of America needs to rebuild trust by providing transparency around these policies and actions.”
Shareholders request the [Board] issue a public report . . . concerning the legality and judgment of management’s decision-making, and insufficient disclosure specificity, regarding the dissemination to government agencies of customers’ personal information.	Shareholders request the [Board] issue a report . . . evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals’ exercise of their constitutionally protected civil rights.

As demonstrated above, the differences in scope and wording do not change the conclusion that the Proposals relate to the same assertions and concerns and therefore substantially duplicate one another.

The Staff has frequently concurred with the exclusion of a proposal that was substantially similar to a prior proposal. For example, in *Exxon Mobil Corp.* (avail. Mar. 9, 2017), the proponent requested a report on the policies and procedures relating to the company’s political contributions and expenditures while a prior proposal requested a report relating to, among other related things, the company’s policies and procedures “governing lobbying . . . and grassroots lobbying communications.” The company argued that the later proposal substantially duplicated the prior proposal because “its real target [was] disclosure of contributions to third parties that are used for political purposes.” The proponent conceded that there may have been some overlap between the proposals but argued that its proposal was “far broader than the [prior] [p]roposal and request[ed] vastly more information” and even admitted that had the proposals been submitted in the opposite order, then the narrower proposal relating solely to lobbying disclosures might have been excludable. The Staff concurred that the broader proposal was substantially duplicative of the earlier, narrower prior proposal and agreed with exclusion under Rule 14a 8(i)(11). See

*also McDonald's Corporation (John Chevedden)* (avail. Apr. 3, 2023) (concurring with the exclusion of a later proposal when both proposals seek the preparation of a report regarding the company's lobbying policy, procedures, payments and oversight processes); *Pfizer Inc. (Tara Health Foundation)* (avail. Feb. 22, 2022) (concurring with the exclusion of a later proposal when both proposals seek an analysis of the congruency of the company's political and electioneering expenditures during the preceding year against the company's publicly stated values and policies); *Chevron Corp. (Benta B.V.)* (avail. Mar. 30, 2021) (concurring with the exclusion of a later proposal requesting the company to "devis[e] a method to set emission reduction targets" as substantially duplicative of an earlier proposal, requesting a report addressing how certain Scope 3 emissions will be addressed to "meet [the company's] post 2050 Paris Accord carbon emission reduction goals") (emphasis added); *General Electric Co.* (avail. Jan. 17, 2013, *recon. denied* Feb. 27, 2013) (concurring with the exclusion of a later proposal requesting executive compensation be limited to "a competitive base salary, an annual bonus of not more than fifty per cent of base salary, and competitive retirement benefits" as substantially duplicative of an earlier proposal requesting the "cessation of all Executive Stock Option Programs[] and Bonus Programs," despite the proponent's assertion that the later proposal was "more broad and inclusive"); *Bank of America Corp. (AFL-CIO Reserve Fund)* (avail. Feb. 14, 2006) (concurring with the exclusion of a proposal as substantially duplicative of a prior political contributions proposal despite the proponent's assertion that the subsequent proposal was "much broader in scope" and "would capture a much wider array of political contributions than the [prior] [p]roposal").

Likewise, the Staff has concurred that two proposals were substantially duplicative despite differences in their scope and breadth. Specifically, in *Ford Motor Co.* (avail. Feb. 19, 2004) the Staff concurred that Ford could exclude a proposal requesting that the company "adopt (as internal corporate policy) goals concerning fuel mileage or [GHG] emissions reductions similar to those which would be achieved by meeting or exceeding the highest standards contained in recent congressional proposals" because it substantially duplicated a prior proposal requesting that the company:

report to shareholders . . . (a) performance data from the years 1994 through 2003 and ten-year projections of estimated total annual [GHG] emissions from its products in operation; (b) how the company will ensure competitive positioning based on emerging near and long-term GHG regulatory scenarios at the state, regional, national and international levels; (c) how the [c]ompany can significantly reduce [GHG] emissions from its fleet of vehicle product (using a 2003 baseline) by 2013 and 2023.

Ford successfully argued that "[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce [GHG] emissions in order to enhance competitiveness." See *also General Motors Corp.* (avail. Mar. 13, 2008) (concurring with the exclusion of a proposal requesting "that a committee of independent directors . . . assess the steps the company is taking to meet new fuel economy and [GHG] emission standards for its fleets of cars and trucks, and issue a report to shareholders" as

substantially duplicating a prior proposal requesting that “the [b]oard of [d]irectors publicly adopt quantitative goals, based on current and emerging technologies, for reducing total [GHG] emissions from the company’s products and operations; and that the company report to shareholders”); *Cooper Industries Ltd.* (avail. Jan. 17, 2006) (concurring with the exclusion of a proposal requesting that the company “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings” to shareholders as substantially duplicating a prior proposal requesting “that the company commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations’ Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights”).

Here, notwithstanding some differences in language and scope, the Proposals have the same principal thrust and focus: requesting the Company prepare and issue a report regarding the Company’s policies and procedures for managing customer accounts and complying with requests for customer account information from government authorities. Both Proposals:

- raise concerns regarding the Company’s cooperation with law enforcement;
- allege that the Company “conspired” or “colluded” with the U.S. Government in an attempt to engage in “financial surveillance” of individuals allegedly based on viewpoint discrimination; and
- raise concerns regarding the impact of the Company’s actions with respect to customers’ rights and liberties under the U.S. Constitution.

As demonstrated in the precedents cited above, this is not changed by differences in the nature of each request or the fact that the Proposal requests more extensive information than the Prior Proposal.

Finally, because the Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its proxy materials, there is a risk that the Company’s shareholders would be confused when asked to vote on both. 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.” 1976 Release. Accordingly, the Company believes that, unless the Staff concurs that the Company can exclude the Prior Proposal for the reasons set forth in the no-action request submitted separately, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the Prior Proposal.

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## 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 2025 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](mailto: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, Bank of America Corporation  
Leonard E. Crumpler  
Jerry Bowyer, Bowyer Research  
Susan Bowyer, Bowyer Research

**EXHIBIT A**



Bowyer Research

October 17, 2024

Corporate Secretary at Bank of America Corporation  
Bank of America Corporate Center  
100 North Tryon Street, NC1-007-56-06  
Charlotte, North Carolina 28255

**Re: Report on Risks of Financial Surveillance**

Dear Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Bank of America Corporation's (the "Company") 2025 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2025 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations. The resolution at issue relates to the subject described below.

Proponent: Leonard E. Crumpler  
Company: The Bank of America Corporation  
Subject: Report on Risks of Financial Surveillance

I submit the Proposal on behalf of, and with the permission of, Leonard E. Crumpler ("Shareholder"), who respectfully requests to remain unnamed in the Company proxy statement in question. He has continuously owned more than \$3,000 worth of Bank of America securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from Leonard Crumpler authorizing us to submit this proposal on his behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder's ownership of the shares as of the date of this proposal's submission is forthcoming. Copies of correspondence or any request for a "no-action" letter may be sent to Jerry Bowyer, Bowyer Research, [REDACTED] or emailed to me at [REDACTED], copying [REDACTED].

Sincerely,

Jerry Bowyer  
Bowyer Research

[REDACTED]

10/16/2024

Corporate Secretary at Bank of America  
Bank of America Corporate Center  
100 North Tryon Street, NC1-007-56-06  
Charlotte, North Carolina 28255

**Re: Report on Risks of Financial Surveillance**

Dear Secretary,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Proponent") authorizes Bowyer Research, Inc. to file a shareholder proposal on the Proponent's behalf with the Bank of America Corporation ("the Company") for inclusion in the Company's 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: Leonard E. Crumpler  
Company: Bank of America Corporation  
Subject: Report on Risks of Financial Surveillance

The Proponent gives Bowyer Research, Inc. the authority to address, on the Proponent's behalf, any and all aspects of the shareholder proposal, including drafting and editing the proposal, representing the Proponent in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the Proponent. The Proponent understands that the Proponent's name may appear on the company's proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent's name in relation to the proposal.

The Proponent supports this proposal and authorizes *Bowyer Research* to write a more detailed statement of support of the proposal on the Proponent's behalf.


Leonard Crumpler (the "Proponent") has continuously owned more than \$2,000 worth of Bank of America securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders.

Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

Thursday, November 7, 2024: 12PM ET  
Thursday, November 14, 2024: 12PM ET

If these times prove inconvenient, please suggest some other times to speak. Feel free to contact me at [REDACTED] copying [REDACTED] and [REDACTED], so that we can determine the mode and method of that discussion.

Sincerely,

DocuSigned by:  
  
0BF79F4602124A3...  
Leonard E. Crumpler

## Report on Risks of Financial Surveillance

**Whereas:** Financial institutions control access to the marketplace. Because of their pivotal role, banks are subject to a wide variety of federal and state regulations and anti-discrimination laws. This is particularly true for federally chartered banks like Bank of America — bank consolidation has resulted in the top 6 banks, including Bank of America, controlling over 50% of all deposited money in the United States, up from 11% three decades ago.<sup>1</sup> It is therefore essential for the Company to provide financial services on an equal basis without regard to factors such as political/religious views.

But a recent Congressional report revealed that the Company and many other of the largest financial institutions colluded with the FBI and U.S. Treasury Department to surveil transactions of ordinary citizens, flagging them as potential domestic violent extremists if they made purchases at Dick's Sporting Goods, Bass Pro Shops, and Cabela's, or bought "religious texts" like Bibles.<sup>2</sup> In its fishing expedition, the federal government also flagged many mainstream conservative and religious organizations, like Alliance Defending Freedom, the Family Research Council, and the Ruth Institute, and their donors for the same treatment.

The report singled out Bank of America as the worst private actor: "Bank of America (BoA), voluntarily and without legal process, provided the FBI with a list of names of all individuals who used a BoA credit or debit card in the Washington, D.C. region between the dates of January 5 and January 7, 2021" or "who had ever used a BoA credit or debit card to purchase a firearm, regardless of when or where it was purchased."

Fifteen state attorneys general and 15 state financial officers followed up with separate letters to Bank of America highlighting this egregious activity, its track record of de-banking religious ministries, its radical Net Zero commitments, and the Bank's low score on the Viewpoint Diversity Score Business Index.<sup>3</sup>

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<sup>1</sup> <https://dojmt.gov/wp-content/uploads/WF-debanking-letter-Final.pdf>

<sup>2</sup> <https://judiciary.house.gov/media/press-releases/new-report-exposes-massive-government-surveillance-americans-financial-data>; [https://www.warren.senate.gov/newsroom/press-releases/warren-omar-lawmakers\\_seek-information-from-big-banks-on-account-closure-practices-that-discriminate-against-muslim-americans](https://www.warren.senate.gov/newsroom/press-releases/warren-omar-lawmakers_seek-information-from-big-banks-on-account-closure-practices-that-discriminate-against-muslim-americans)

<sup>3</sup> <https://ag.ks.gov/media-center/news-releases/2024/04/17/kobach-leads-15-ag-coalition-demanding-bank-of-america-cease-debanking-conservatives>; <https://www.foxnews.com/politics/state-financial-officers-put-bank-of-america-on-notice-for-allegedly-de-banking-conservatives>

Bank of America's actions betrayed its customers' privacy and put millions of Americans at risk for having their accounts frozen, being de-banked, placed on a government watchlist, or even wrongly prosecuted, all for exercising their First and Second Amendment rights. As the oversight report stated, "This raises serious concerns and doubts about federal law enforcement's and financial institutions' commitment to respecting Americans' privacy rights and fundamental civil liberties."

Bank of America's actions also create significant legal exposure under anti-discrimination laws.

Bank of America needs to rebuild trust by providing transparency around these policies and actions. This will assure customers, shareholders, and others that it is protecting, not targeting, free speech and religious freedom and is respecting its customers' privacy.

**Resolved:** Shareholders request the Board of Directors of Bank of America issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.

**EXHIBIT B**



September 20, 2024

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: [REDACTED] bac\_corporate\_secretary@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 216 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 requesting the Board of Directors to issue a report on protecting customers’ civil liberties and privacy. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal on October 1 at 10:00 a.m. or October 3 at 10:00 a.m., in the Eastern Time Zone (U.S.). While we can potentially accommodate other dates and times that would align with Company representatives’ availability, NLPC will *not* be able to meet with the Company outside the time window of 10 to 30 days from the date of the Proposal’s submission, as specified by SEC guidelines.

Nat’l Headquarters: [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

While on the topic of discussions about investor concerns, we take this opportunity to object to the Company's consistent practice in its proxy statements of impugning proponents' motives because they did not "reach out to us before" submitting proposals. As you well know, the SEC designates this period specifically for discussion between the parties, and withdrawal of proposals is always an option well before annual meetings. Thus the Company's disclaimer in advance of the proposals in the proxy statement only comes across as unnecessary, and perhaps even malicious.

If you have any questions, please contact me at [REDACTED] or at [REDACTED]. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at [REDACTED].

Sincerely,



Paul Chesser  
Director  
Corporate Integrity Project

Enclosure: "Protecting Customers' Civil Liberties and Privacy" proposal

## Protecting Customers' Civil Liberties and Privacy

**Whereas:** Financial institutions increasingly intrude on the privacy rights of United States citizens with questionable justification, claiming they must comply with requirements under laws such as the Right to Financial Privacy Act, the Bank Secrecy Act, and the USA Patriot Act. As stewards of the most personal of their customers' information and assets, these institutions are still ethically and constitutionally bound to take great care in how information is shared.

**Supporting Statement:** In March 2024 the U.S. House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government released a damning report that revealed Bank of America Corporation ("BofA" or "Company") maliciously conspired with government agencies to violate the civil liberties of customers the Company promised to protect.<sup>1</sup>

The 56-page report revealed, in part, that the Company:

- "Voluntarily and without legal process, provided the FBI with a list of names of all individuals who used a [BofA] credit or debit card in the Washington, D.C. region between the dates of January 5 and January 7, 2021," according to a now-retired FBI analyst;
- Used Merchant Category Codes "to comb through transactions... [of] Americans doing nothing other than shopping or exercising their Second Amendment rights ... despite ... having no criminal nexus;"
- "Federal law enforcement and [the Company] used January 6, 2021, as a pretext for surveilling potentially thousands of Americans without a warrant ... show[ing] a pattern of financial surveillance aimed at millions of Americans who hold conservative viewpoints..."

According to officials with the FBI's intelligence and domestic terrorism operations, BofA "data-mined its customer base," despite no directive from the agency to do so. The Company provided information that the FBI never asked for. "One of the [list's] criteria . . . in terms of Bank of America's data . . . was related to purchases that had been made at either gun shops or...stores that would sell firearms." The information "was sent to other FBI field offices across the country."

The Company's customer privacy and security disclosures are weak and vague as they pertain to release of data to authorities, stating only that it shares personal information with "Government Agencies as required by laws and regulations."<sup>2 3</sup>

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<sup>1</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/How-Federal-Law-Enforcement-Commandeered-Financial-Institutions-to-Spy.pdf>

<sup>2</sup> <https://www.bankofamerica.com/security-center/privacy-overview/>

<sup>3</sup> <https://www.bankofamerica.com/security-center/overview/>

As BofA's release of customer data relate to the findings in the Weaponization Subcommittee report, the evidence shows *no* firearms were used at the Jan. 6, 2021 incident, and no one at the U.S. Capitol was injured or killed with one, except one woman protester by an officer. Thus the Company's actions fall outside the scope of U.S. disclosure laws, and are incongruent with BofA's assurances that it keeps customer information private. As a result, the Company deceived its customers and betrayed their trust.

**Resolved:** Shareholders request the Company Board of Directors issue a public report, omitting proprietary and privileged information, concerning the legality and judgment of management's decision-making, and insufficient disclosure specificity, regarding the dissemination to government agencies of customers' personal information.