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December 22, 2023

VIA ONLINE SUBMISSION

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 James McRitchie
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 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") received from James McRitchie (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 2024 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:** Bank of America (BAC) shareholders request our Company prepare a report on the feasibility of offering customized proxy voting preferences for BAC clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.[1] The report shall be available to stockholders and investors by October 1, 2024, prepared at reasonable cost, consistent with fiduciary duties and other legal obligations, and omitting proprietary information.
>
> [1] https://www.routledge.com/Moving-Beyond-Modern-Portfolio-Theory-Investing-That-Matters/Lukomnik-Hawley/p/book/9780367760823, chapter 5.

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

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal;
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company; and
- Rule 14a-8(i)(5) because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

BACKGROUND

The Company serves the core financial needs of three groups of customers—people, companies and institutional investors—through eight lines of business. The Company offers individual retail customers a range of wealth management solutions, including personalized investment solutions, through two of those eight lines of business—Merrill and Bank of America Private Bank (the "Private Bank"). Merrill's investment solutions and financial advisor relationships allow the Company to help individual investors and their families plan for and achieve their unique financial goals. The Private Bank provides comprehensive

wealth and estate planning, investment management and banking and lending solutions to ultra-high net worth clients with investable assets of more than $3 million. For the Company's financial reporting purposes, Merrill and the Private Bank are combined as Global Wealth & Investment Management ("GWIM"). Both Merrill and the Private Bank offer clients a spectrum of choices on how to manage the voting of equity securities in their accounts that includes clients retaining proxy voting authority themselves (unless such voting authority rests with a trustee or other named fiduciary, such as the Private Bank, that is authorized to control share voting) and voting their shares however they wish, including employing any voting strategy they desire to address particular topics or concerns.

Merrill operates under Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") and Managed Account Advisors LLC ("MAA" and together with MLPF&S "Merrill"). Merrill does not make any voting decisions for clients, clients cannot delegate to Merrill and Merrill does not accept or assume from clients, proxy voting authority for any securities held in their advisory accounts. As described in the Form ADV 2A brochures of MLPF&S and MAA as filed with the Commission, Merrill clients enrolled in Merrill's investment advisory programs can retain proxy authority and vote proxies themselves. In addition, under certain program arrangements, Merrill clients can elect to delegate their proxy voting authority to a proxy advisory firm that is unaffiliated with Merrill and the Company and, as part of that delegation, can select from among certain of the proxy advisory firm's voting policies, such as the proxy advisory firm's socially responsible, faith-based or general investing guidelines. Under other programs, Merrill clients can elect to delegate voting authority to third-party investment managers or investment advisers that are unaffiliated with Merrill and the Company.

The Private Bank operates under the Company's nationally chartered bank, Bank of America, National Association ("BANA"). Private Bank clients may elect to vote their own proxies. In those cases, clients can mandate that proxies be voted in accordance with any voting strategy they desire to address particular topics or concerns. Under certain programs, Private Bank clients delegate voting authority to third-party investment managers or investment advisers that are unaffiliated with the Private Bank and the Company. Generally, though, Private Bank clients delegate authority to BANA's Private Bank to vote proxies on their behalf for the securities held in their Private Bank accounts.

The Company does not have any subsidiary or operation that is a traditional asset manager, mutual fund manager or mutual fund asset manager. Instead, the Company offers its GWIM clients a wide range of mutual funds operated by investment advisers that are neither owned nor controlled by the Company. As such, neither the Company nor Merrill or the Private Bank has any input into the voting of the equity securities that comprise the mutual funds held in clients' accounts.

As noted above, proxy voting is an integral part of the Company's relationship with our GWIM clients. The Company's GWIM clients have a variety of choices to determine how shares in their accounts are voted, both by selecting among the various investment solution offerings available through Merrill and BANA, and in all cases by electing to retain and exercise voting authority themselves. Accordingly, the Company engaged with the Proponent after the Proposal had been submitted and explained that the Company had already determined "the feasibility of offering customized proxy voting preferences for [Company] clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." As the Company described to the Proponent, the outcome of its feasibility analyses led to the development of the "customized proxy voting preferences" described above, consistent with the language in the Supporting Statement about "facilitating the client's ability to [incorporate the client's views into voting/engagement practices] themselves." However, the Proponent indicated that he is not satisfied with the Company's voting alternatives provided to clients and that he believes the Company should be offering other specific vendors and services for client voting. These alternative vendors and services may be what the Proponent had in mind with the Supporting Statement's comment that the Company should consider "approaches and technologies that provide clients with granular control over voting, like the configurable options offered by [the Company] for constructing portfolios."

In light of the foregoing, contrary to the language in the Supporting Statement, the Proponent is not satisfied with "granular control over voting" in the form of complete client self-directed voting where clients direct voting themselves using whatever guidelines, technologies, or sources they wish to guide that voting. And the Proponent is not satisfied with the various alternatives offered to clients by Merrill and BANA that provide for voting in accordance with certain unaffiliated third-party proxy advisory firm guidelines designed to address social and environmental externalities. Instead, the Proponent wants to direct the Company and GWIM clients to select other vendors and services that the Proponent prefers, which appears to swap the GWIM clients' "granular control over voting" for the Proponent's "granular control over voting." As such, the Proposal is excludable under Rule 14a-8. It is well established that a proposal can be substantially implemented for purposes of Rule 14a-8(i)(10) even if implemented in a manner different than a proponent would have preferred. As well, a proposal is excludable under Rule 14a-8(i)(7) where, as here, it does not raise significant policy issues that transcend a company's ordinary business, but instead relates to customer relations and choices of product and service offerings and seeks to micromanage a company's business. And finally, the Proposal is excludable under Rule 14a-8(i)(5) because it relates to a concern that is not economically or otherwise significant to the Company's operations, given that the Company (in contrast to other companies mentioned in the Supporting Statement) is not a traditional asset manager, investment company or investment company manager.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal.

A. Background On Substantial Implementation Under Rule 14a-8(i)(10).

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has "substantially implemented" the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976) ("July 1976 Release"). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) ("1983 Release"). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented," and the Commission codified this revised interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998) ("1998 Release").

Applying this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the shareholder proposal has been "substantially implemented" and may be excluded as moot. The Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff had not required that a company implement the action requested in a proposal exactly in all details but had been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the proposal had been satisfied. The company further argued, "[i]f the mootness requirement [under the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice." Therefore, if a company has satisfactorily addressed both the proposal's underlying concerns and its

"essential objective," the proposal will be deemed "substantially implemented" and, therefore, may be excluded. *See, e.g.*, *Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

The Staff has concurred that, when substantially implementing a shareholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. Of particular relevance here, the Staff has concurred with the exclusion of proposals seeking a report on the feasibility of undertaking certain actions when a company has already addressed the essential objective of the proposal by undertaking the action. For example, in *Dunkin Brands Group, Inc.* (avail. Mar. 6, 2019), the proposal requested that the board issue a report assessing the feasibility of integrating sustainability metrics into the performance quotas of senior executive compensation plans. The company's no-action request explained that the company had already addressed both the underlying concern and the essential objective of the proposal by integrating sustainability goals and metrics into its executive compensation programs and reporting on that action in its proxy statements and biannual corporate sustainability report. The Staff concurred that the company had substantially implemented the proposal, and thus that it could be excluded under Rule 14a-8(i)(10). *See also eBay Inc.* (avail. Mar. 29, 2018) (same, where the proponent argued among other things that the proposal sought a future-looking report and the company's actions had only occurred in the past); *Target Corp. (Stephen Johnson and Martha Thompson)* (avail. Mar. 26, 2013) (concurring with exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board of directors study the feasibility of adopting a policy prohibiting the use of treasury funds for any direct or indirect political contributions when the company had already reported the board's determination that such a policy was not advisable, even though the proponents objected that the company's past actions did not constitute the type of feasibility study contemplated by the proposal); *Covance Inc.* (avail. Feb. 22, 2008) (proposal requesting a report on the feasibility of establishing environmental enrichment committees at the company's laboratories to foster quality standards of care for animals was substantially implemented for purposes of Rule 14a-8(i)(10) when the company had established an institutional animal care and use committee at each of its laboratories).

In Exchange Act Release No. 95267 (July 13, 2022), the Commission proposed to amend Rule 14a-8(i)(10) to provide that proposals would be excludable if a company has already implemented the "essential elements" of the proposal. While the Commission has not yet adopted that proposed amendment, and it is therefore not applicable to the Staff's review of this letter, it is notable the Commission stated that even under the proposed standard, "a proposal need not be rendered entirely moot, or be fully implemented in exactly the way a proponent desires, in order to be excluded. A company may be permitted to exclude a proposal it has not implemented precisely as requested if the differences between the proposal and the company's actions are not essential to the proposal." Therefore, the Company has also substantially implemented the Proposal under the proposed standard the Commission has yet to adopt.

B. The Company's Existing Client Voting Policies and Procedures Substantially Implement The Proposal.

The Company's businesses already offer individual GWIM clients a number of choices on how to manage voting of equity securities in their accounts, including client self-directed voting where clients retain proxy voting authority themselves and vote their shares however they wish, and client-delegated voting under which the client can choose from multiple voting guidelines offered by an unaffiliated third-party proxy advisor or delegate voting authority to unaffiliated third-party investment managers or investment advisers. These alternatives are already communicated to clients through various account agreements and service materials provided by the Company's GWIM businesses. In addition, as part of its ongoing business operations and based on clients' input, the Company assesses the feasibility of providing clients with different or additional choices on how to manage the voting of equity securities in their accounts.

Thus, there is no need for the Company to further study the "feasibility of offering customized proxy voting preferences for clients wishing to pursue social and environmental voting strategies" as the Company's clients are already able to pursue such voting strategies. Although the "granular control" offered by the Company that provides clients the ability to pursue such voting strategies themselves may differ from what the Proponent had in mind, and the customized voting strategies available may not be those the Proponent may prefer, the Company's current offerings reflect the Company's careful consideration of how to address clients' voting preferences, and thereby address the underlying concern and essential objective of the Proposal. As a result, the Company's already available products and services implement the Proposal and present precisely the scenario contemplated by the Commission when it adopted the predecessor to Rule 14a-8(i)(10) "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." July 1976 Release. The Company's policies and procedures related to client voting therefore substantially implement the Proposal and, consistent with the well-

established precedent cited above, the Proposal may properly be excluded under Rule 14a-8(i)(10).

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

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 providing management with flexibility in directing certain core matters involving the company's business and operations." 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*." 1998 Release (emphasis added). 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) ("November 1976 Release")).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. See 1983 Release; *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers, Including How The Company Handles Its Customer Relations.

The Proposal requests that the Company prepare a report on "the feasibility of offering customized proxy voting preferences for [Company] clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." The Company's decisions in terms of the policies and procedures for the products and services that it offers, including those related to its customers' individual portfolios and how it handles its customer relations, implicate routine management decisions encompassing legal, regulatory, operational and financial considerations, among others. For example, as a global financial institution, the Company is subject to significant federal, state and local laws and regulations that govern its GWIM businesses, including, among other things, requirements on the procedures for managing customers' wealth management portfolios. As a result, the Company has developed a set of policies and procedures encompassing a customer's use of its wealth management products and services. These policies and procedures guide GWIM's decisions regarding the services offered to clients, including its decision-making regarding the suite of alternatives available for client voting selection, which is driven by a number of complex business considerations, such as demonstrated client interest in a particular type of proxy vote guideline, available proxy voting guidelines at unaffiliated third-party proxy advisors and the operational and technology changes and related costs involved to support any additional proxy voting guidelines. The Proposal impermissibly seeks to override the Company's ordinary business decisions in this respect and inappropriately substitute shareholders' (or at least, the Proponent's) views for management's judgment of what services are best offered to clients.

The Staff has consistently determined that proposals relating to the products and services that a company offers to its customers can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company's ordinary business operations. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that a financial services company prepare a report specifying 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." The company sought exclusion of the proposal under Rule 14a-8(i)(7) and contended that the proposal addressed issues that were ordinary business matters for the company by attempting to dictate the disclosure of the company's policies surrounding the offering of its products and services and the management of the company's customer accounts and customer relations. The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting that "the Proposal relates to, and does not transcend, ordinary business matters." *Wells Fargo & Co.* (avail Mar. 2, 2023) ("*Wells Fargo 2023*"). In two

other recent instances, the Staff also concurred with the exclusion under Rule 14a-8(i)(7) of proposals requesting that the boards of financial services companies complete a report evaluating each company's consumer deposit account policies and practices and the impacts those have on customers. In each case, the proposal raised concerns that certain deposit account 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); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019); *see also JPMorgan Chase & Co.* (avail. Mar. 16, 2010) (concurring with the exclusion of a proposal regarding the company's decision to issue refund anticipation loans to customers, noting that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)"); *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").

The Staff also has consistently concurred with the exclusion of proposals relating to how a company handles its customer accounts and any associated policies and procedures. For instance, in *PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021), 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). This was also the Staff's conclusion in *Zions Bancorporation* (avail. Feb. 11, 2008, *recon. denied* Feb. 29, 2008), where the proposal requested that the company implement a mandatory adjudication process prior to the termination of certain customer accounts. The Staff concurred that the proposal related to "ordinary business operations (i.e., procedures for handling customers' accounts)."

The Staff also has consistently concurred with the exclusion of proposals relating to customer relations. For instance, in *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail Feb. 27, 2019) ("*Wells Fargo 2019*"), the Staff concurred with the exclusion of a proposal requesting that the board commission an independent study and then report to shareholders on "options for the board . . . to amend [the] [c]ompany's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction" because the proposal "relate[d] to decisions concerning the [c]ompany's customer relations." Similarly, in *Prudential Financial, Inc.* (avail. Jan. 10, 2013), the Staff concurred that a proposal directing the company to state "the fees and charges and the investment performance" in the quarterly statements provided to the company's annuity participants was excludable because it "concern[ed] customer relations" and "account information provided to customers." *See also The Coca-Cola Co.* (avail. Jan. 21, 2009, *recon. denied* Apr. 21, 2009) (concurring with the exclusion of a proposal concerned about the "company's reputation with consumers" requesting that the company prepare a report evaluating new or expanded policy options to further enhance transparency of information to consumers of bottled beverages produced by the company with the Staff noting that it "relat[ed] to [the company's] ordinary business operations (i.e., marketing and consumer relations)"); *Bank of America Corp.* (avail. Feb. 27, 2008) (concurring with the exclusion of a proposal requesting the preparation of a report detailing, in part, the company's policies and practices regarding the issuance of credit cards and lending of mortgage funds to individuals without Social Security numbers as relating to the company's "credit policies, loan underwriting and customer relations"); *Wells Fargo & Co. (The Community Reinvestment Assoc. of North Carolina, et al.)* (avail. Feb. 16, 2006) (concurring with the exclusion of a proposal requesting that the company not provide its services to payday lenders as concerning "customer relations"); *Bank of America Corp. (The Community Reinvestment Assoc. of North Carolina)* (avail. Mar. 7, 2005) (same).

As well, the Staff has repeatedly concurred that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)" as relating to ordinary business matters. *FirstEnergy Corp.* (avail. Mar. 8, 2013). *See also AT&T Inc.* (avail. Jan. 4, 2017) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's progress toward providing Internet service and products for low-income customers); *PG&E Corp.* (avail. Mar. 10, 2014) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal advocating that the company make analog electrical meters available instead of "smart" meters); *AT&T Inc.* (avail. Feb. 13, 2012) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently consumed electricity); *CSX Corp.* (avail. Jan. 24, 2011) (concurring with the exclusion of a proposal requesting that the company develop a kit to convert its fleet to fuel cell power, noting that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)").

In addition, the Staff has been clear in expressing its view that the retention of suppliers of goods and services, as well as the standards and considerations used to select suppliers generally, is considered part of the ordinary business of a company. As noted above, the 1998 Release specifically provides that "retention of suppliers" is an example of a task "fundamental to management's ability to run a company on a day-to-day basis." In *International Business Machines Corp.* (avail. Dec. 29, 2006), the Staff concurred that the company could exclude a proposal requesting that it update its competitive evaluation process to only accept late quotes from a supplier if the supplier provides documented proof of a situation that only the late supplier experienced and that the situation was unforeseen and not preventable as relating to the company's ordinary business operations ("i.e., decisions relating to supplier relationships"). Similarly, in *Wal-Mart Stores Inc.* (avail. Apr. 10, 1991), the Staff concurred that a proposal recommending that the board establish a program to provide information on the company's equal employment opportunity and affirmative action efforts to its shareholders and suppliers was excludable because it, in part, involved "the [c]ompany's practices and policies for selecting suppliers of goods and services."

Here, like the policies, practices and procedures at issue in *Wells Fargo 2023, PayPal*, *Zions Bancorporation*, *International Business Machines* and the other precedent cited above, the Proposal is an attempt to influence and override the Company's determinations of what proxy voting and proxy advisory products and services the Company offers its clients, including the Company's procedures for handling its customers' wealth management portfolios and customer relations, and what suppliers and vendors it selects to supply such products and services, and to urge the Company to adopt "new technologies." In particular, the Proposal asks that the Company "prepare a report on the feasibility of offering customized proxy voting preferences for [Company] clients." The Supporting Statement asserts that "[d]iversified investors are interested in ensuring companies in portfolios managed by [the Company] do not threaten the rest of their portfolios," that "[s]oliciting the diverse views of clients on issues raised in shareholder elections and incorporating them into voting/engagement practices, or facilitation the client's ability to do so themselves, can mitigate risk," and that "[n]ew technologies facilitate soliciting investor preferences efficiently to inform voting and engagement." Thus, the Proposal is focused on what products and services the Company offers its clients with respect to voting preferences for securities held in the clients' portfolios. The Company's engagement with the Proponent as described above further supports this conclusion as the Proponent expressed disapproval for the vendors the Company engaged that are already providing proxy voting alternatives to GWIM clients. Decisions regarding the policies around services and products the Company offers and on what terms, as well as the suppliers of such services and products and what technology to employ in offering such services, are a fundamental responsibility of management, requiring consideration of a number of factors such as cost, integration with

existing client account technology and services, client preferences and regulatory compliance. Balancing such considerations is a complex matter and is, in the words of the 1998 Release, "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." Consistent with Staff precedent, the Proposal, by attempting to direct the Company's product and service offerings, the management of the Company's GWIM customer wealth management portfolios and customer relations, the Company's vendors and suppliers and the Company's choice of technology, addresses issues that are ordinary business matters for the Company. Accordingly, the Proposal is 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 precedent set forth 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 the November 1976 Release). 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 precedent has established, merely referencing topics in passing that might raise significant policy issues in other contexts, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the November 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company," and noted that proposals "previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)."

Here, the Proposal does not transcend the Company's ordinary business operations. Rather, as discussed above, the Proposal is focused on the Company's product and service offerings, the Company's management of its associated customer relations, the Company's selection of vendors and suppliers, and the Company's choice of technology. Specifically, the Proposal focuses on the manner in which the Company offers granular proxy voting control to clients of voting decisions for securities held in their accounts, the type of customized voting offerings made available, and whether the Company should engage new vendors and suppliers and employ "new technologies" to offer different customized voting choices. While the Proposal and Supporting Statement provide passing references to voting strategies that are "designed to push certain companies to address social and environmental externalities," which is something GWIM clients are already able to do if they elect to exercise direct control over voting of securities held in their accounts, the central focus of the Proposal is on offering customized proxy voting preferences for Company clients. Thus, the Proposal does not implicate any significant policy issue.

Because the Proposal does not implicate any significant policy issue, it is readily distinguished from proposals related to proxy voting and policies where the proposal focused on a significant policy issue. For example, in *T. Rowe Price Group, Inc.* (avail. Mar. 13, 2020), the Staff did not concur with the exclusion of a proposal requesting that the company "initiate a review and issue a report on the proxy voting policies and practices of its subsidiaries related to climate change . . . including an assessment of any incongruities between the [c]ompany's public statements and pledges regarding climate change . . . and the voting policies and practices of its subsidiaries." In arguing that the proposal related to ordinary business matters, the company contended that "voting proxies solely in the best interest of Clients is unquestionably part of the core investment process and business operations." In rejecting the company's argument, the Staff stated that because the proposal's focus on the congruity of "public statements and pledges regarding climate change and the voting policies and practices of [the company's] subsidiaries . . . regarding climate change," the proposal transcended the company's ordinary business operations. *See also Franklin Resources, Inc.* (avail. Nov. 24, 2015) (denying the exclusion under Rule 14a-8(i)(7) of a proposal requesting "a climate change report to shareholders assessing any incongruities between the proxy voting practices of the company and its subsidiaries within the last year, and any of the company's policy positions regarding climate change" because the proposal "focuses on the significant policy issue of climate change").

As stated above, Merrill clients retain voting authority and, for certain arrangement types, can choose to delegate their voting authority to unaffiliated third-party proxy advisory firms, and Private Bank clients who have not named BANA as a trustee or other named fiduciary may retain voting authority or select the voting policies of an unaffiliated third-party proxy advisory firm. The Company is not a mutual fund asset manager nor does it operate a traditional asset management business like the companies in *T. Rowe Price Group* and *Franklin Resources*. Unlike the proposals in *T. Rowe Price Group* and *Franklin Resources*, the Proposal does not focus on climate change or on the congruity of Company statements with how the Company is voting clients' securities on issues relating to climate change. Here, the text of the Proposal makes clear that it is singularly focused on the Company's ordinary business operations (specifically, the services and products offered by the Company, its customer relations, its vendors and its choice of technologies). As such, the Proposal does not transcend the Company's ordinary business operations and, similar to the proposals in the precedent discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

D. The Proposal Is Excludable 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 micromanagement "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies." In SLB 14L, the Staff clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward 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." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, *which 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 (emphasis added).

In assessing whether a proposal seeks to micromanage a company's ordinary business operations, the Staff evaluates 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. *See Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Co.* (avail. Feb. 16, 2022) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). Moreover,

"granularity" is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

The Proposal requests that the Company prepare a report on "the feasibility of offering customized proxy voting preferences for [Company] clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." The Supporting Statement focuses on the products and services the Company offers to customers, noting that "[n]ew technologies facilitate soliciting investor preferences efficiently to inform voting and engagement," and stating that the requested report should include "technologies that provide clients with granular control over voting, like the configurable options offered by [the Company] for constructing portfolios." As noted above, in the Company's engagement with the Proponent to discuss the Proposal, the Proponent expressed dissatisfaction with the vendors the Company selected to offer the exact types of customized proxy voting alternatives purportedly requested in the Proposal. The Proposal thus delves into the details of how the Company provides its clients differing alternatives to address how clients vote shares in their portfolios, what vendors the Company selects to offer client services, and what technology the Company uses in offering such services through different account and product offerings. As such, the Proposal seeks to micromanage the Company and therefore may be excluded under Rule 14a-8(i)(7).

In this regard, the Proposal is similar to the one submitted in *Amazon.com, Inc.* (avail. Jan. 18, 2018, *recon. denied* Apr. 5, 2018) ("*Amazon 2018*"), where the proposal instructed the company to list WaterSense showerheads before the listing of other showerheads and to provide a short description of the meaning of WaterSense showerheads. The Staff concurred with the exclusion, noting that the proposal sought "to micromanage the [c]ompany 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." Similarly, in *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010), the Staff concurred with the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company's hotels because "although the proposal raise[d] concerns with global warming, the proposal …[sought] to micromanage the company to such a degree that exclusion of the proposal …[was] appropriate." In particular, the Staff in *Marriott International* noted that the proposal required the use of "specific technologies." *See also Deere & Co.* (avail. Jan. 3, 2022) (concurring with the exclusion 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 and 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 *Amazon 2018* and the other precedent cited above, the Proposal "seeks to impose specific . . . methods for implementing complex policies." SLB 14L (citing 1998 Release). The Proposal seeks to dictate specific products and services that the Company may offer to its customers. The Proposal criticizes the voting choice programs offered by asset management companies BlackRock, Vanguard and State Street, stating that the Company should assess offering "control over voting[] like the configurable options offered by [the Company] for constructing portfolios," and that in doing so it should assess "new technologies" related to soliciting investor preferences. The Proponent expressed dissatisfaction with the unaffiliated third-party proxy advisor the Company engaged to offer clients voting choice alternatives. The extent to which the Proposal seeks to override management's discretion with regard to the products and services the Company offers is comparable to the particular product presentation mandated in *Amazon 2018* and the specific technology choices prescribed in *Marriott International*. The Proposal thus micromanages the Company's fundamental day-to-day decisions and policies and procedures with respect to its products and services, selection of suppliers and vendors, customer accounts and customer relations. As a result, the Proposal may properly be excluded under Rule 14a-8(i)(7).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because The Proposal Is Not Relevant To The Company's Business.

A. Background On Rule 14a-8(i)(5).

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than five percent of the company's total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Prior to adoption of this version of Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id*. In adopting the rule, the Commission characterized it as

relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." 1983 Release.

In SLB 14L, the Staff returned to its historic approach of interpreting Rule 14a-8(i)(5) and noted that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)."

B. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(5) Because The Proposal Is Not Significantly Related To The Company's Business.

The Company does not charge GWIM clients additional fees for the proxy voting services described herein. Fees covering wealth management products and services offered through Merrill and the Private Bank are not specific to making available or offering the services of the unaffiliated third-party proxy advisory firms and their proxy voting policy choices and instead cover the overall wealth management products and services provided. As such, the fees generated by the Company for GWIM's voting services are not significant to the Company's overall business under the standards of Rule 14a-8(i)(5). The Company has confirmed that for its fiscal year 2022, the revenue, income and assets associated with the proxy voting services offered to GWIM clients represent significantly less than 5% of the Company's total revenue, net income and assets, respectively. In addition, the Company does not expect these percentages to exceed 5% for fiscal year 2023.

Moreover, the Supporting Statement does not demonstrate that the Proposal is otherwise significantly related to broad social or ethical concerns arising from the Company's business. Instead, the Supporting Statement makes generalized assertions and addresses practices or issues that are not applicable or significant to the Company. For example, the Supporting Statement notes that "[c]ontroversy over proxy voting—especially environmental, social, and governance ("ESG") proposals, increases risk," and also provides that "[i]nvestment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy." However, the Company does not determine how to vote clients' shares on such issues and does not operate an investment company or a traditional asset management business, and neither the Proposal nor the Supporting Statement demonstrates how the broad claims on potential risk are significantly related to the Company's business. Merrill clients cannot delegate to Merrill, and Merrill does not accept or assume from clients, proxy voting authority for any securities held in their advisory accounts. Moreover, only one of GWIM's businesses, the Private Bank, may accept proxy voting authority from clients for the securities held in their accounts if elected by the client, and in those cases BANA's Private Bank in practice generally abstains from voting on shareholder proposals predominantly involving social, socio-economic,

environmental, political or other similar matters. As such, the types of risk discussed in the Supporting Statement are remote and tangential to an economically insignificant portion of the Company's GWIM businesses, and thus are not "otherwise significantly related to the [C]ompany's business" within the meaning and precedents under Rule 14a-8(i)(5).Based on the foregoing, the Proposal is similar to the shareholder proposal considered in *Dunkin' Brands Group, Inc.* (avail. Feb. 22, 2018). There, the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a proposal regarding the environmental impacts of K-Cup Pods brand packaging, noting that the proposal's "significance to the [c]ompany's business is not apparent on its face" and the proponent had "not demonstrated that it is otherwise significantly related to the [c]ompany's business." Here, the Proposal relates to very limited operations within the Company's GWIM businesses that are not economically significant to the Company, and the Proposal does not otherwise demonstrate that the subject of the Proposal is significantly related to the Company's business. Instead, much of the Supporting Statement consists of sweeping assertions that are not applicable to the Company. Accordingly, the Proponent has not demonstrated that the Proposal is significant to the Company. As such, the Proposal may be properly excluded under Rule 14a-8(i)(5).

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 2024 Proxy Materials.

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

Sincerely,

Ronald O. Mueller

Enclosures

cc: Ross E. Jeffries Jr., Bank of America Corporation
James McRitchie
John Chevedden

EXHIBIT A

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Mr. Ross Jeffries <ross.jeffries@bankofamerica.com>
Corporate Secretary
Bank of America Corporation (BAC)
100 North Tryon Street
Charlotte, North Carolina 28255
PH: 704-386-5681
cc: "Perrin, Ellen - Legal" <ellen.perrin@bofa.com>

Dear Mr. Jeffries or current Corporate Secretary:

I am submitting the attached shareholder proposal, which I support, for a vote at the next annual shareholder meeting requesting Bank of America (BAC) **Ascertain Client Voting Preferences.** I pledge to continue to hold the required amount of stock until after the date of that meeting.

I will meet Rule 14a-8 requirements, including the continuous ownership of the required stock value until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. I am available to meet with the Company representative via phone on November 22, at 11:30 am or noon Pacific or at any time on any day that is mutually convenient.

I am delegating John Chevedden to act as my agent to present this proposal at the forthcoming shareholder meeting if I am unavailable to do so myself. Please copy John Chevedden (PH: [redacted]) at: [redacted] (at) earthlink.net in future communications.

Avoid the time and expense of filing a deficiency letter to verify ownership by acknowledging receipt of my proposal promptly by emailing [redacted]. That will prompt me to request the required letter from my broker and submit it to you.

Per SEC SLB 14L https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." As stated above, I so request.

Sincerely,

James McRitchie

November 3, 2023

Date

[BAC: Rule 14a-8 Proposal, November 3, 2023]
[This line and any line above it – *Not* for publication.]

Proposal [4*] - Ascertain Client Voting Preferences

Resolved: Bank of America (BAC) shareholders request our Company prepare a report on the feasibility of offering customized proxy voting preferences for BAC clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.[1] The report shall be available to stockholders and investors by October 1, 2024, prepared at reasonable cost, consistent with fiduciary duties and other legal obligations, and omitting proprietary information.

Supporting Statement:

BAC and its subsidiaries manage approximately $3.6 trillion in assets. As a fiduciary, BAC owes clients and investors duties of care and loyalty in exercising shareholder voting rights.[2]

Controversy over proxy voting - especially environmental, social, and governance ("ESG") proposals, increases risk.[3] Companies like BAC may be criticized from all sides.[4]

Diversified investors are interested in ensuring companies in portfolios managed by BAC do not threaten the rest of their portfolios[5] when individual companies prioritize their financial returns over systems critical to diversified portfolios.[6] Practically, this can mean maximizing profits by externalizing social and environmental risks to the detriment of other companies.

[1] https://www.routledge.com/Moving-Beyond-Modern-Portfolio-Theory-Investing-That-Matters/Lukomnik-Hawley/p/book/9780367760823, chapter 5.
[2] See 14 CFR 275.206(4)-6
[3] https://ssrn.com/abstract=4360428
[4] https://ssrn.com/abstract=4299462
[5] https://theshareholdercommons.com/wp-content/uploads/2022/09/Climate-Change-Case-Study-FINAL.pdf
[6] https://ssrn.com/abstract=4056602

Reliance on proxy advisors does little to mitigate this problem or shield Bank of America from controversy.[7] Such advisors generally provide advice that maximizes the value of individual companies, not the value of diversified portfolios invested in such companies.[8]

BAC offers extensive customization of portfolios based on risk tolerance, financial goals, cash flow needs, tax situation, social and environmental values. But BAC fails to offer granular control over customized proxy voting, a core advisor responsibility subject to fiduciary duty standards.[9]

Soliciting the diverse views of clients on issues raised in shareholder elections and incorporating them into voting/engagement practices, or facilitating the client's ability to do so themselves, can mitigate risk. Criticism of BlackRock, Vanguard, and State Street[10] led to programs providing investors with voting choices.

However, these programs present limited choices due to overreliance on traditional proxy advisors. New technologies facilitate soliciting investor preferences efficiently to inform voting and engagement.[11] Therefore, the report should not be limited to preset voting profiles but should include approaches and technologies that provide clients with granular control over voting, like the configurable options offered by BAC for constructing portfolios.

Investors want a voice. According to one study from Stanford Graduate School of Business, 83% of investors, irrespective of age, life stage, or ideological bent, want managers to consider their preferences when voting on environmental issues.[12]

Investment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy.

Vote For Proposal [4*] Ascertain Client Voting Preferences

[This line and any below it is *not* for publication]
Number 4* to be assigned by the Company.

The above title is part of the proposal and within the word limit. It should not be altered or misrepresented. The title should be used in all references to the proposal in the proxy

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[7] See, e.g., https://www.texasattorneygeneral.gov/sites/default/files/images/press/Utah%20%26%20Texas%20Letter%20to%20Glass%20Lewis%20%26%20ISS%20FINAL.pdf, https://www.wsj.com/articles/blackrocks-false-voting-choice-proxy-esg-ballots-iss-glass-lewis-66652357?mod=opinion_lead_pos1

[8] https://theshareholdercommons.com/wp-content/uploads/2023/09/The-Shareholder-Commons-response-to-ISS-Policy-Survey-2023.pdf

[9] https://www.privatebank.bankofamerica.com/solutions/investment-management.html

[10] https://ssrn.com/abstract=4580206

[11] https://ssrn.com/abstract=4360428

[12] https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/survey-investors-retirement-savings-esg.pdf

and on the ballot. If there is an objection to the title, please negotiate or seek no-action relief as a last resort.

The above graphic are intended to be published with the rule 14a-8 proposal. The graphics would be the same size as the largest management graphics (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2024 proxy.

The proponent is willing to discuss the mutual elimination of both shareholder graphics and management graphics in the proxy in regard to specific proposals. Issuers should not assume proponent will not insist on the inclusion of the graphic if the issuer unilaterally decides not to include their own graphic.

Reference: SEC Staff Legal Bulletin No. **14L** (CF)**[16]**

> Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

> 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(i)(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 receipt of this proposal promptly by emailing the proponent.