



DIVISION OF
CORPORATION FINANCE

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

February 29, 2024

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Bank of America Corporation (the "Company")
Incoming letter dated December 22, 2023

Dear Ronald O. Mueller:

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

The Proposal requests that the board of directors conduct and publish a review of whether and to what extent the Company requested that its clients deny their products or services to certain customers or categories of customers or has demanded such restrictions as a condition of the Company's continuing to do business with said clients, including the grounds for such requests or demands and business justification for those grounds.

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 ordinary business matters. 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).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

December 22, 2023

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 the National Center for Public Policy Research
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 the National Center for Public Policy Research (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 the Proposal (including correspondence regarding the status of any negotiations with the Company), a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

Resolved: Shareholders request that the Board of Directors conduct and publish a review within the next year (at reasonable cost, omitting proprietary information) of whether and to what extent Bank of America requested that Company clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of Company's continuing to do business with said clients. The Board of Directors should report on the grounds for such requests or demands and the business justification for those grounds.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations, specifically the terms upon which the Company offers its products and services to clients and the Company's customer relations.

ANALYSIS

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

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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, minimum levels of capital and liquidity, compliance risk management, consumer products and sales practices, anti-money laundering and anti-corruption, government sanctions, privacy, data protection and executive compensation, among others.

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, are essential to the operation of the Company’s business as a financial services institution. A vital aspect of that client account relationship management is the Company’s ongoing compliance 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 and CFPB. Decisions regarding client accounts, including terms on which the Company offers its products and services to clients, and its customer relations¹ involve legal, regulatory, operational and financial considerations that are so fundamental to the Company’s day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. As a result, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

¹ In this regard, while the Supporting Statement raises a handful of alleged actions, some of which do not relate to the terms upon which the Company engages with clients, we are not addressing the Proponent’s characterization of the Company’s relationships with its clients because such statements are not germane to the analysis under Rule 14a-8. However, it is important to note that the Company strongly disagrees with the Proposal’s claims and characterization of the alleged actions. Without addressing all the statements in the Proposal and Supporting Statement with which the Company disagrees, there is no substance to or factual basis for the assertion that the Company “is pressuring or requiring some of its clients to restrict the parties with which they do business on the grounds of the personal policy preferences of Company directors and executives.”

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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) (“1998 Release”).

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” 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 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976) (“1976 Release”).) While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered 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).

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* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of

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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).

In the instant case, the Proposal relates to the Company’s procedures and policies with respect to client accounts and specifically the terms upon which the Company offers its products and services to clients, as well as the Company’s customer relations. As such, similar to the well-established precedent described in greater detail below and consistent with the Commission and Staff guidance cited above, the Proposal involves matters related to the Company’s ordinary business and, along with the Supporting Statement, may be excluded under Rule 14a-8(i)(7).

B. The Proposal May Be Excluded Because Its Subject Matter Relates to the Terms Upon Which The Company Offers Its Products and Services to Clients and the Company’s Customer Relations.

The Proposal seeks to require that the Company report “whether and to what extent [the Company] requested that Company clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of Company’s continuing to do business with said clients.” The Company’s decisions regarding any terms on which it will engage with clients and offer its products and services to clients, and how the Company addresses its customer relations, implicate routine management decisions encompassing legal, regulatory, operational, and financial considerations, among others. As a global financial institution, the Company and its banking subsidiaries are subject to significant federal, state and local laws and regulations, which, among other things, include requirements relating to appropriate procedures for opening, reviewing, monitoring and closing client accounts. For example, laws and regulations require that the Company report unusual or suspicious activity to government entities or agencies as part of its obligations to monitor for activities such as transactions that potentially implicate international sanctions or money laundering. As a result, the Company has extensive policies and procedures encompassing engagement and disengagement with clients, including the circumstances under which it will or will not offer its products and services to clients, and the communication mechanisms in place to assist clients when necessary. Some of these policies and procedures are necessary to comply with the laws, rules and regulations referenced above, and others are based upon the Company’s ordinary business decisions on how to optimally produce long-term shareholder value. The Proposal impermissibly seeks to probe into the Company’s ordinary business decisions and activities in these respects.

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The Staff has recently concurred with exclusion under Rule 14a-8(i)(7) of shareholder proposals very similar to the Proposal relating to a company's relationships with its clients. In *JPMorgan Chase & Co. (National Center for Public Policy Research)* (avail. Mar. 21, 2023, *recon. denied* Apr. 3, 2023), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on risks "created by [c]ompany business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue client relationships." The proposal alleged that the company had a "history of cancelling the accounts of those who hold opinions and political views that deviate from hard-left political orthodoxy" and that such alleged practices place the company "at great reputational, financial, and legislative and related risk." The company argued that the proposal focused primarily on the company's customer relations and decisions with regard to the handling of client accounts. The Staff concurred that the proposal related to, and did not transcend, ordinary business matters. Similarly, in *JPMorgan Chase & Co. (National Legal and Policy Center)* (avail. Mar. 21, 2023), the Staff concurred with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's policies regarding government-issued requests to close customer accounts.

These precedents are consistent with a long line of precedent in which the Staff has concurred that decisions regarding the terms on which products and services are offered to clients, and customer relations in general, are ordinary business matters, even when such matters are asserted to have an adverse effect on some clients. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the boards of directors of financial services companies complete reports evaluating each company's customer deposit account policies and practices and the impacts those have on clients. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain clients more than others and that the provision of such services exposed the companies to increased litigation and reputational risks. The Staff nonetheless concurred that 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 clients, 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"); *J.P. Morgan Chase & Co.* (avail. Feb. 26, 2007) (concurring with the exclusion of a proposal requesting a report

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about company policies to safeguard against the provision of financial services to clients that enabled capital flight and resulted in tax avoidance as relating to 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 has consistently determined that proposals regarding the terms on which a company offers its products and services to its clients as well as associated customer relations considerations can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company’s ordinary business operations. *See, JPMorgan Chase & Co.* (avail. Feb. 21, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board of directors complete a report on the impact to customers of the company’s overdraft policies); *Anchor BanCorp Wisconsin Inc. (Anne Yakes)* (avail. May 13, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board of directors adopt a new policy for the lending of funds to borrowers and the investment of assets after taking preliminary actions specified in the proposal, noting that the proposal related to the company’s “ordinary business operations (i.e., credit policies, loan underwriting and customer relations)”); *JPMorgan Chase & Co.* (avail. Feb. 21, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company not issue first mortgage home loans, except as required by law, no greater than four times the borrower’s gross income, noting that the proposal related to the company’s “ordinary business operations (i.e., credit policies, loan underwriting and customer relations)”).

In particular, the Staff has concurred with exclusion under Rule 14a-8(i)(7) of proposals relating to a company’s decisions on the handling of customer accounts, including setting the terms of ongoing customer relationships. For instance, 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). Similarly, 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 communications with customers, and the company’s processes regarding customer

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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). In *Wells Fargo & Co.* (avail. Jan. 17, 2017), the proposal likewise requested that the company's CEO "assume for the company, the responsibility in cost and time to correctly cash checks and assure its brokerage customers that it will obtain their permission before placing securities into their accounts, unless [the company] has received previous customer authority." The Staff concurred with the exclusion under Rule 14a-8(i)(7), noting that "the proposal relates to procedures for handling customer accounts." See also *TD Ameritrade Holding Corp.* (avail. Nov. 20, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's shareholders have the right to be clients of the company because it related to the company's ordinary business operations (i.e., "policies and procedures for opening and maintaining customer accounts"))).

Here, like the policies, practices and procedures at issue in *JPMorgan Chase & Co.* (*National Center for Public Policy Research*), *Comcast* and the other precedent cited above, the Proposal is squarely focused on matters related to the Company's ordinary business operations because it relates to the terms upon which the Company offers its products and services to clients and the Company's customer relations. Such considerations involve complex evaluations and legal compliance determinations about which shareholders are not in a position to make an informed judgment. Balancing such considerations 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. By focusing on the Company's policies, practices and procedures surrounding the offering of its products and services and the management of customer relations, the Proposal 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 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

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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, 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 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.” In addition, the Staff stated that in administering Rule 14a-8(i)(7), the Staff “will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal” and “consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” *Id.*

Here, the Proposal does not transcend the Company’s ordinary business operations. Rather, as discussed above, the Proposal’s principal focus is on the terms upon which the Company offers its products and services to clients as well as management of its customer relations. Furthermore, while the Supporting Statement makes assertions regarding alleged actions based on “social and political preferences,” those assertions are all tied to the Company’s relationships with customers. The central focus of the Proposal and Supporting Statement is on the Company’s policies, practices and procedures for determining the terms on which it engages with clients and how to manage its customer relations. Thus, neither the Proposal nor the Supporting Statement implicates significant policy issues that transcend the Company’s ordinary business operations. *See, e.g., JPMorgan Chase & Co.* (avail. Feb. 21, 2019) (concurring with the exclusion of a proposal requesting that the company’s board of directors complete a report evaluating each company’s overdraft policies and practices and the impacts those have on clients where the proponent argued that “[o]verdraft fees have been a matter of widespread public attention and discussion”); *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 clients despite the proposal’s characterization of refund anticipation loans as predatory and allegations that these loans “do not constitute responsible lending” and have been “subject to successful lawsuits for false and deceptive lending practices”).

Accordingly, because the text of the Proposal makes clear that it is primarily focused on the Company’s ordinary business operations (specifically, the terms upon which the Company offers its products and services to clients and the Company’s customer relations),

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the Proposal does not transcend the Company's ordinary business operations and does not focus on any significant policy issue. As such, consistent with the precedent described above, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 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: Scott Shepard, National Center for Public Policy Research

EXHIBIT A



November 6, 2023

Via FedEx to

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

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Bank of America Corporation (the “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 United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2024 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal November 27, 2023 or November 28, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED]@nationalcenter.org so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [REDACTED]@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Shepard
FEP Director

Enclosures: Shareholder Proposal

Personal-Policy-Based Restrictions on Clients' Businesses

Supporting Statement: It appears likely that Bank of America (the Company) is pressuring or requiring some of its clients to restrict the parties with which they do business on the grounds of the personal policy preferences of Company directors and executives.

As Senator Ted Cruz revealed in a September 25, 2023 letter, Intuit had been denying its services to “gun manufacturers and sellers,” including basic payment and payroll services. Intuit alleges it had been forced into denying these services by its bankers – JPMorgan Chase and the Company.¹ Chase admitted its role in proceedings; the Company denied involvement.

This denial lacks credibility given the Company’s track record. The Company declared its intention to stop lending to certain legal gun manufacturers on personal-policy-preference grounds in 2018.² It *voluntarily* shares customers’ lawful gun-purchase information “all the time” with the FBI.³ CEO Brian Moynihan has clearly stated his intention to deny Company services to businesses and industries at odds with his personal social and political preferences about significant social policy issues, though he claims that his preferences are really those of “society” or “the world.”⁴ Recently it debanked a Christian ministry without coherent contemporaneous explanation,⁵ took the hard-left position on abortion issues while harassing mothers-to-be,⁶ shared customer information about the January 6 “insurrection” while, it appears, failing to share similar information about leftwing rioters,⁷ actively discriminated on the basis of race and sex in accord with highly partisan and likely illegal “equity” goals,⁸ and otherwise demonstrated that it is run according to the personal policy preferences of Moynihan and other directors and executives rather than on business grounds.

This renders deeply suspect the Company’s claim not to have pressured Intuit in the way Intuit has indicated, and suggests that its demands to Intuit were not a one-off incident.

It is difficult to see any business justification for secretly requiring that customers *reduce* their client base and therefore their financial sustainability. In just the last year the U.S. has seen the

¹ <https://www.commerce.senate.gov/2023/9/sen-cruz-s-investigation-leads-intuit-to-end-discriminatory-policy-against-firearms-businesses>

² <https://fortune.com/2018/04/11/bank-of-america-guns/>

³ <https://thefederalist.com/2023/03/06/whistleblower-fbis-d-c-office-tried-to-sic-local-agents-on-innocents-after-bank-of-america-volunteered-gun-records/>; <https://www.zerohedge.com/markets/bank-america-other-companies-share-customer-records-fbi-without-warrant-all-time-director>

⁴ <https://www.cnbc.com/2023/01/18/bank-of-america-ceo-says-capitalism-needs-cleaning-up-with-new-global-esg-rules.html>; <https://fortune.com/2022/11/07/bank-of-america-ceo-brian-moynihan-2/>

⁵ <https://youtu.be/T3MpGaSUW0E>

⁶ <https://www.cbsnews.com/news/roe-v-wade-abortion-bank-of-america-ceo-brian-moynihan/>;

<https://www.courthousenews.com/bofa-bank-of-america-or-bank-of-abortion/>;

<https://news.bloomberglaw.com/daily-labor-report/bank-of-america-accused-of-bias-by-fired-pregnant-muslim-worker-1>

⁷ <https://www.theepochtimes.com/us/bank-of-america-gave-fbi-access-to-jan-6-bank-records-with-customers-knowledge-whistleblowers-5276671>

⁸ <https://www.reuters.com/business/finance/bank-america-commits-500-mln-funds-led-by-minority-women-entrepreneurs-2023-06-15/>

second-, third- and fourth-largest bank collapses in its history.⁹ Experts believe that hundreds more are technically insolvent and could collapse, in part because of the massive unrealized losses that they carry on their books.¹⁰ Under these circumstances, a bank credibly accused of working to shrink its clients' revenues and assets must explain to its shareholders the extent of and grounds for such behavior.

Resolved: Shareholders request that the Board of Directors conduct and publish a review within the next year (at reasonable cost, omitting proprietary information) of whether and to what extent Bank of America requested that Company clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of Company's continuing to do business with said clients. The Board of Directors should report on the grounds for such requests or demands and the business justification for those grounds.

⁹ <https://www.usatoday.com/story/money/personalfinance/real-estate/2023/03/19/svb-collapse-new-banks-could-fail/11504269002/>

¹⁰ <https://www.marketwatch.com/story/most-u-s-banks-are-technically-near-insolvency-and-hundreds-are-already-fully-insolvent-roubini-says-18b89f92>; <https://www.bloomberg.com/graphics/2023-svb-exposed-risks-banks/>



January 19, 2024

Via Online Shareholder Proposal Form

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

Re: No-Action Request from Bank of America Corporation Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Ronald O. Mueller on behalf of Bank of America Corporation (the "Company" or "Bank of America") dated December 22, 2023, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY'S CLAIMS

Our Proposal asks the Company to:

conduct and publish a review ... of whether and to what extent Bank of America requested that Company clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of Company's continuing to do business with said clients. The Board of Directors should report on the grounds for such requests or demands and the business justification for those grounds.

The Company seeks to exclude the Proposal under Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

I. The Proposal Does Not Improperly Deal with Matters Relating to the Company's Ordinary Business Operations

In Staff Legal Bulletin No. 14L (November 3, 2021) ("SLB 14L"), the Staff noted that "Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8."¹ Specifically, it "permits a company to exclude a proposal that 'deals with a matter relating to the company's ordinary business operations.'" SLB 14L notes that the purpose of the exception 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."

Relatedly, the Company argues that the issue raised by the Proposal "cannot, as a practical matter, be subject to shareholder oversight." However, the Proposal merely asks the Company to conduct a review and report on its findings. Nowhere does the Proposal shift any ordinary business decision-making to shareholder oversight.

The Staff provides further guiding principles in SLB 14L relevant to the applicability of the ordinary business exclusion to our Proposal. Generally, "the policy underlying the ordinary business exception rests on two central considerations." The first "relates to the proposal's subject matter; the second relates to the degree to which the proposal 'micromanages' the company."

Micromanagement, the Staff noted, occurs when shareholders probe "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."² Whether "a proposal probes matters 'too complex' for shareholders, as a group, to make an informed judgment" may turn on "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." Focusing on these issues preserves "management's discretion on ordinary business matters" but does not "prevent shareholders from providing high-level direction on large strategic corporate matters."

Here, the Proposal does not implicate ordinary business problems that are "impracticable for shareholders to decide how to solve ... at an annual shareholders meeting." Nor does the Proposal require shareholders to probe "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." Rather, the Proposal merely asks shareholders to vote in favor of increasing transparency when it comes to the Company's attempts to direct the business activities of the Company's clients.

The Company argues the Proposal may be excluded under the ordinary business exclusion of Rule 14a-8(i)(7) because the Proposal's subject matter "relates to the terms upon which the company offers its products and services to clients and the company's customer relations."

The Company provides no citations to any regulation or Staff Legal Bulletin using the word "terms" or the phrase "terms upon which the company offers its products and services." Furthermore, while the Company claims "a long line of precedent in which the Staff has concurred that decisions regarding the terms on which products and services are offered to clients, and customer relations in general, are ordinary business matters," none of the Company's parenthetical summaries of cited no-action letters

¹ All quotations in this section are from SLB 14L unless otherwise indicated.

² Quoting Release No. 34-40018 (May 21, 1998) (the "1998 Release").

quote or even use that term or phrase. One would expect the Company to be able to provide at least one quote from the Staff stating the rule that the Company claims provides for the basis its exclusion of the Proposal. The fact that it has not done so undermines the entire foundation of its argument.

Beyond that, the Proposal is not seeking a report on “the products and services offered for sale” by the Company, but rather the extent to which the Company is attempting to dictate what products and services are offered by third parties. This arguably distinguishes the Proposal from those addressed in most or all of the no-action decisions cited in support of exclusion by the Company.

II. The Proposal Focuses on Significant Policy Issues That Transcend the Company’s Ordinary Business Operations

The Proposal raises at least two significant policy issues that transcend the Company’s ordinary business. First, the Proposal deals with Second Amendment rights under the U.S. Constitution. Second, the Proposal deals with the issue of the adoption of a social credit system within the U.S., whereby access to needed capital is restricted as a means of social engineering.³ The significance of the first issue is easily demonstrated by the fact that it led Senator Ted Cruz, then Ranking Member of the Senate Committee on Commerce, Science, and Transportation, to write the letter cited in our Proposal wherein he stated that: “My staff will continue their investigation to ensure that no financial services firm unnecessarily limits the firearm industry’s access to accounting or banking products.”⁴ The significance of the second issue is amply demonstrated by the following excerpt from the Proposal:

CEO Brian Moynihan has clearly stated his intention to deny Company services to businesses and industries at odds with his personal social and political preferences about significant social policy issues, though he claims that his preferences are really those of “society” or “the world.”⁵ Recently it debanked a Christian ministry without coherent contemporaneous explanation,⁶ took the hard-left position on abortion issues while harassing mothers-to-be,⁷ shared customer information about the January 6 “insurrection” while, it appears, failing to share similar information about leftwing rioters,⁸ actively discriminated on the

³ Cf. Kristin Tate, *Coming soon: America’s own social credit system*, THE HILL (Aug. 30, 2021) (“Some banking platforms already have announced a ban on certain legal purchases, such as firearms. The growth of such restrictions ... could create a system in which individuals who do not hold certain political views could be blocked from polite society and left unable to make a living.”), available at <https://thehill.com/opinion/finance/565860-coming-soon-americas-own-social-credit-system/>.

⁴ <https://www.commerce.senate.gov/services/files/1725E5EC-442C-4C38-8F85-6E0C5BA76B2C> (available via <https://www.commerce.senate.gov/2023/9/sen-cruz-s-investigation-leads-intuit-to-end-discriminatory-policy-against-firearms-businesses>).

⁵ <https://www.cnbc.com/2023/01/18/bank-of-america-ceo-says-capitalism-needs-cleaning-up-with-new-global-esg-rules.html>; <https://fortune.com/2022/11/07/bank-of-america-ceo-brian-moynihan-2/>

⁶ <https://youtu.be/T3MpGaSUW0E>

⁷ <https://www.cbsnews.com/news/roe-v-wade-abortion-bank-of-america-ceo-brian-moynihan/>;
<https://www.courthousenews.com/bofa-bank-of-america-or-bank-of-abortion/>;

<https://news.bloomberglaw.com/daily-labor-report/bank-of-america-accused-of-bias-by-fired-pregnant-muslim-worker-1>

⁸ <https://www.theepochtimes.com/us/bank-of-america-gave-fbi-access-to-jan-6-bank-records-with-customers-knowledge-whistleblowers-5276671>

basis of race and sex in accord with highly partisan and likely illegal “equity” goals,⁹ and otherwise demonstrated that it is run according to the personal policy preferences of Moynihan and other directors and executives rather than on business grounds.

III. Conclusion

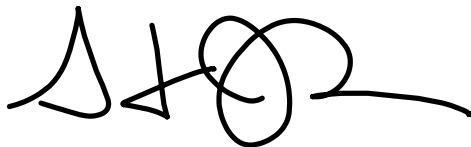
The Company has failed to meet its burden under Rule 14a-8(g) of persuading the Staff that it may omit our Proposal. Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company’s request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,



Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Ronald O. Mueller ([REDACTED])

⁹ <https://www.reuters.com/business/finance/bank-america-commits-500-mln-funds-led-by-minority-women-entrepreneurs-2023-06-15/>