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

DIVISION OF
CORPORATION FINANCE

February 24, 2025

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

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

Dear Ronald O. Mueller:

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

The Proposal requests that the Company report annually to shareholders on its net zero activities including the Company's memberships in organizations advocating net zero goals and policies and corporate commitments and agreements involving net zero goals and policies.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's public disclosures substantially implement the Proposal. 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)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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

Sincerely,

Rule 14a-8 Review Team

cc: Steven J. Milloy
New Breeze

GIBSON DUNN

Ronald O. Mueller
Partner
T: +1 202.955.8671
rmueller@gibsondunn.com

December 20, 2024

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

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

Ladies and Gentlemen:

This letter is to inform you that our client, Bank of America Corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the "2025 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from New Breeze (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request that, beginning in 2026, Bank of America report annually to shareholders on its net zero activities, including: (1) Memberships in organizations advocating net zero goals and policies; and (2) Bank of America's corporate commitments and agreements involving net zero goals and policies. The report should omit proprietary and/or confidential business information.

A copy of the Proposal and the Supporting Statement is 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 2025 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal. As detailed below, the Company already publishes comprehensive annual disclosures regarding its sustainability-related activities, goals, and affiliations, including those related to its Net Zero activities. These were most recently addressed in the Company's September 2024 "Sustainability at Bank of America" disclosure (the "2024 Sustainability Disclosure"),[1] which complements and supplements the Company's 2023 Task Force on Climate-related Financial Disclosures Report[2] (the "2023 TCFD Report" and, together with the 2024 Sustainability Disclosure, the "Sustainability Disclosures").

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[1] *See* Sustainability at Bank of America (Sept. 30, 2024), available at https://about.bankofamerica.com/content/dam/about/report-center/esg/2024/Sustainability_at_Bank_of_America_2024_Report.pdf. The 2024 Sustainability Disclosure, which updates the 2023 TCFD Report, was prepared following the generally accepted disclosure frameworks that have been widely adopted and endorsed, including the disclosure frameworks established by International Sustainability Standards Boards' IFRS S2 Climate-related Disclosure standards (which incorporates the TCFD framework) and Global Reporting Initiative.

[2] *See* 2023 Task Force on Climate-related Financial Disclosures Report (Nov. 16, 2023), available at https://about.bankofamerica.com/content/dam/about/report-center/esg/2023/2023_TCFD_Report.pdf. The 2023 TCFD Report updates the Company's 2022 TCFD Report, available at https://about.bankofamerica.com/content/dam/about/report-center/esg/2022/BOA_TCFD_2022%209-22-2022-VOX220929%20split%20paragraph%20Secured.pdf.

OVERVIEW

As discussed in the Sustainability Disclosures, the Company has engaged in climate-related sustainability activities and reporting for more than 20 years, reducing operational impacts and scaling finance. The Company's approach to managing the risks and opportunities stemming from climate change and the associated transition to a low-carbon economy is set forth in the Company's three-pronged approach to climate—(1) minimizing the Company's own impact on the environment; (2) supporting and enabling the Company's clients to achieve Net Zero; and (3) assessing and managing climate-related risks.[3] The Company provides shareholders and stakeholders robust information about its Net Zero activities in the Sustainability Disclosures, including its memberships in organizations advocating Net Zero goals and policies, and its targets, commitments and agreements involving Net Zero goals, as well as its policies, strategy, methodologies and progress.

As discussed in greater detail below, in 2021 the Company set a goal to achieve Net Zero before 2050 in its financing activities, operations and supply chain. In 2022, the Company released its Net Zero framework, under which it set, and continues to set, interim 2030 greenhouse gas ("GHG") emission reduction targets. The Company has set and disclosed milestone targets, is engaging with clients to support their own transition objectives, has developed and reports decision-useful metrics to drive progress, and provides significant transparency.[4]

The Company shares the Proponent's perspective on the importance of providing shareholders with informative and comprehensive disclosures about progress on its Net Zero goal. To that end, the Company has devoted significant resources to building out a market-leading environmental reporting program. As pertinent here, the Sustainability Disclosures provide detailed information regarding the Company's Net Zero activities, including membership in organizations that advocate Net Zero goals and policies as well as the Company's Net Zero goal and related policies. As such, the Company has already substantially implemented the Proposal's specific requests for a report on the Company's Net Zero activities.

ANALYSIS

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

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

Rule 14a-8(i)(10) permits the exclusion of a shareholder proposal "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that

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[3] *See* 2023 TCFD Report at 16.

[4] *See id*.

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." *See* Exchange Act Release No. 12598 (July 7, 1976) (the "1976 Release"). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when shareholder 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 convincing the Staff to deny no-action relief by submitting shareholder proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "1983 Release"). Therefore, in 1983, the Commission adopted a revised interpretation to the rule to permit the omission of shareholder proposals that had been "substantially implemented." 1983 Release. The 1998 amendments to the proxy rules codified this position. *See* Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"), at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objective 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.* (avail. Mar. 28, 1991).

In applying this standard, a company need not implement a shareholder proposal in the manner that a shareholder may prefer. *See* 1998 Release at n.30 and accompanying text. The Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action relief under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the proposal had been satisfied. *See General Motors Corp.* (avail. Mar. 4, 1996) (concurring with the exclusion of a proposal where the company argued, "[i]f the mootness requirement of paragraph (c)(10) [of 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"). Thus, differences between a company's actions and a shareholder proposal are permitted as long as the company's actions satisfactorily address the proposal's essential objectives.

As a result, the Staff has concurred with the exclusion under Rule 14a-8(i)(10) of numerous shareholder proposals related to climate change where the disclosures made by the company compared favorably with the requested disclosures and addressed the proposal's essential objectives. For example, in *Chevron Corp. (Stewart Taggart)* (avail. Mar. 30, 2021) ("*Chevron 2021*"), a shareholder proposal requested that the Company issue a report "on Scope Three emissions from Chevron's Liquid Natural Gas operations and how the company plans to offset, pay carbon taxes on or eliminate via technology these emissions to meet post-2050 Paris Accord carbon emission reduction goals." The company

asserted that the disclosures published on its website substantially implemented the proposal because the disclosures addressed the proposal's essential objective by providing additional information on the company's Scope 3 Liquid Natural Gas emissions and directly addressed the two elements requested in the proposal's resolved clause. The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(10).

Similarly, in *Hess Corp.* (avail. Apr. 9, 2020), the shareholder proposal requested that the company issue a report regarding its plans to reduce climate change and align its investments with the Paris Agreement. The company asserted that the disclosures in its 2018 Sustainability Report, its response to the 2019 CDP Climate Change Questionnaire and an investor presentation satisfied the essential objective of the proposal and "adequately described [the company's] plans to, and how it plans to, continue to reduce its contribution to climate change and align its operations and investments with the well below 2° C Goal." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(10). *See also Chevron Corp.* (avail. Mar. 20, 2020) (concurring with the exclusion of a shareholder proposal requesting the company issue a report "describing if, and how, it plans to reduce its total contribution to climate change and align its operations and investments with the Paris Agreement" where the company addressed the proposal's essential objective); *Exxon Mobil Corp.* (avail. Apr. 3, 2019) (concurring with the exclusion of a shareholder proposal requesting that the company issue a report "on how it can reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreement's goal of maintaining global warming well below 2 degrees Celsius" where the company addressed the proposal's essential objective even if it did not do so in the format requested (*i.e.*, the company's report did not appear to clearly identify "benefits" and "drawbacks" for each of the actions identified in the supporting statement)); *Anthem, Inc.* (avail. Mar. 19, 2018) (concurring with the exclusion of a shareholder proposal requesting "a sustainability report describing the company's ESG performance including GHG reduction targets and goals" as substantially implemented by the company's existing disclosures).

B. *The Company's Sustainability Disclosures Substantially Implement The Proposal.*

The Proposal's essential objective is for the Company to annually disclose activities related to its Net Zero goal. The Supporting Statement indicates that the objective is to allow shareholders to know the extent that the Company has committed itself to Net Zero policies. As set forth in the Resolved clause, the Proposal specifically requests that such disclosure include information relating to (1) the Company's memberships in organizations that advocate for Net Zero goals and policies, and (2) the Company's corporate commitments and agreements involving Net Zero goals and policies.

As in *Chevron 2021*, *Hess* and the other precedent cited above, the Company has substantially implemented the Proposal here through its annual publication of the

Sustainability Disclosures, which are directly responsive to the specific requests set forth in the Resolved clause and fulfill the Proposal's essential objective.

i. *The Sustainability Disclosures Report On The Company's Net Zero Activities.*

As requested in the Proposal, the Sustainability Disclosures (in addition to addressing other sustainability-related issues) provide annual reporting on the Company's "net zero activities." The Sustainability Disclosures provide context for the Company's Net Zero goals as part of a clearly articulated roadmap of the Company's climate actions since 2003,[5] including disclosure of its GHG emissions,[6] its adoption of comprehensive environmental operations goals,[7] its goal of Net Zero emissions before 2050 for the Company's financing activities, operations and supply chain,[8] and the Company's establishment of key Net Zero-related memberships.[9]

With respect to the Company's "net zero activities," the Sustainability Disclosures provide robust and transparent annual disclosure of the Company's Net Zero goal, the related policies, goals and targets it has adopted in support of the Net Zero goal and the Company's progress toward achievement of its Net Zero-related goals and targets.[10] As part of the Company's commitment to providing shareholders and other stakeholders with regular updates of its Net Zero-related activities and achievements, the Sustainability Disclosures clearly identify new updates and information that supplement the Company's prior reporting.[11] In addition, in April 2024, the Company published an addendum to the

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[5] *See* 2023 TCFD Report at 9; 2024 Sustainability Disclosure at 7.

[6] As disclosed in the Sustainability Disclosures, the Company first began disclosing its Scopes 1 and 2 GHG emissions through CDP in 2003 and subsequently began disclosing Scope 3 GHG emissions in 2010. *See* 2023 TCFD Report at 9.

[7] As disclosed in the Sustainability Disclosures, the Company announced its first set of comprehensive environmental operations goals in 2011. *See* 2024 Sustainability Disclosure at 7.

[8] *See id.*

[9] For example, in 2020, the Company became a founding partner of Rocky Mountain Institute's Center for Climate-Aligned Finance and joined the Partnership for Carbon Accounting Financials as a core member. And in 2021 the Company became a member of the Sustainable Aviation Buyers Alliance. *See* 2023 TCFD Report at 9.

[10] 2024 Sustainability Disclosure at 7.

[11] For example, under "Key Environmental Achievements Since Last Publication," the 2024 Sustainability Disclosure provides a summary of new goals and targets set by the Company and progress made toward existing goals and targets, as well as enhancements made to the Company's internal processes to manage toward existing goals. 2024 Sustainability Disclosure at 8.

2023 TCFD Report, providing updated disclosure regarding the establishment of the interim 2030 targets for the iron and steel and maritime shipping sectors.[12]

The Sustainability Disclosures provide extensive details on the Company's strategy for achieving its interim 2030 targets and long-term Net Zero goal, including the three prongs of the Company's clean energy strategy, time horizons for achievement of the Company's targets and Net Zero goal and how the Company intends to achieve them.[13] The disclosure regarding the Company's Net Zero strategy includes detailed information about Company activities such as how the Company determines and measures its performance against the Company's Net Zero-related targets and goals[14] and how the Company works with clients to support their achievement of their own Net Zero goals,[15] as well as a detailed timeline for the key actions the Company is taking to achieve its Net Zero goal and related targets.[16] In addition, to promote accountability and provide shareholders and other stakeholders with regular updates on the Company's activities as it progresses toward its goals and other performance metrics, the Sustainability Disclosures include detailed year-over-year summaries of the Company's performance across a wide-array of climate-related goals and targets.[17] The Sustainability Disclosures also provide extensive detail about the Company's enterprise-wide governance and execution of the Company's climate-related risks and opportunities[18] and how the Company's board of directors[19] and management[20] oversee the Company's activities relating to its Net Zero goals.

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[12] *See* Addendum to the 2023 Task Force of Climate-Related Financial Disclosures (TCFD) Report (Apr. 2024), available at https://about.bankofamerica.com/content/dam/about/report-center/esg/2023/Bank_of_America_Addendum_to_the_2023_TCFD.pdf.

[13] *See* "Strategy" in the 2024 Sustainability Disclosure at 16-49.

[14] For example, in addition to disclosing the Company's 2030 targets for each of the Company's operations, supply chain and financing activity, the 2024 Sustainability Disclosure explains key elements to the Company's approach for developing and measuring performance against those targets. *See* 2024 Sustainability Disclosure at 19-26.

[15] *See* "Understanding Client Transitions" in the 2024 Sustainability Disclosure at 27-47.

[16] *See* "Actions and Dependencies Toward Achieving our Goals" in the 2024 Sustainability Disclosure at 48.

[17] *See* "Metrics and Targets" in the 2024 Sustainability Disclosure at 68-90.

[18] *See* 2024 Sustainability Disclosure at 10.

[19] *See id.* at 11.

[20] *See id.* at 12-14.

By addressing the Proposal's essential objective of "reporting annually to shareholders on its net zero activities," the Company's shareholders are informed of the Company's Net Zero policies, substantially implementing the Proposal for purposes of Rule 14a-8(i)(10). In addition, as discussed below, the Sustainability Disclosures also address the specific disclosures requested in the Resolved clause.

ii. *The Sustainability Disclosures Satisfy The Proposal's Request To Report The Company's "Memberships In Organizations Advocating Net Zero Goals And Policies."*

The Sustainability Disclosures provide detailed annual disclosure regarding the Company's memberships in and public engagement with organizations and initiatives supporting Net Zero-related goals by sharing expertise, working on common challenges and reporting methodologies, and advancing transparency. Specifically:

- The 2024 Sustainability Disclosure provides tabular disclosure identifying key organizations and initiatives, an overview of each organization's or initiative's background and focus and a description of the Company's involvement.[21]
- The 2024 Sustainability Disclosure also provides tabular disclosure identifying key environmental partners with whom the Company works to support science-based environmental research and other climate-related initiatives.[22]
- The 2024 Sustainability Disclosure also provides detailed tabular disclosure identifying trade associations with which the Company collaborates to encourage policy action, explaining each association's climate position and describing the Company's role in each organization.[23]
- To complement the extensive disclosure in the 2024 Sustainability Disclosure, the 2023 TCFD Report includes a detailed list of 38 key partnerships related to the Company's sustainability efforts, including its Net Zero goal and related policies.[24]

The foregoing disclosure clearly identify the Company's relationship to each organization and describes the work and purpose of each organization. Accordingly, the Sustainability Disclosures address the Proposal's request for disclosure regarding the Company's "memberships in organizations advocating net zero goals and policies."

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[21] *See id.* at 49-50.

[22] *Id*. at 50-51.

[23] *Id*. at 53-55.

[24] *See* "Appendix 4-Key Partnerships" in the 2023 TCFD Report at 68-72.

iii. The Sustainability Disclosures Satisfy The Proposal's Request To Report The Company's "Corporate Commitments And Agreements Involving Net Zero Goals And Policies."

As discussed above and addressed in detail in the Sustainability Disclosures, the Company has set a range of goals and targets to reduce the environmental impact, including GHG emissions, of the Company's operations and supply chain, and the Sustainability Disclosures report on those goals and commitments. As the Company has acknowledged in the Sustainability Disclosures, the Company's Net Zero goal reflects an objective that is "based on some factors within [the Company's] control and some that [the Company does] not control."[25] The Sustainability Disclosures provide detailed annual disclosure regarding these corporate goals and agreements involving Net Zero-related policies, which address the risks and opportunities related to the climate. Specifically:

- In 2021, the Company set a target to achieve Net Zero before 2050 in its financing activities, operations and supply chain.[26]
- Also in 2021, the Company announced its intention to deploy $1.5 trillion in sustainable financing by 2030.[27]
- In 2022, the Company released its Net Zero framework, under which it first set interim 2030 GHG emission reduction targets for high-emitting sectors,[28] and the Sustainability Disclosures provide detailed disclosure regarding the Company's progress toward the achievement of its interim 2030 targets:
    - In 2022, the Company announced 2030 targets for reducing GHG emissions associated with financing activities related to three high GHG emitting sectors—auto manufacturing, energy and power generation.[29]
    - In 2023, the Company set additional 2030 targets for reducing GHG emissions related to the aviation and cement sectors.[30]
    - In 2024, the Company added targets for maritime shipping and iron and steel sectors.[31]

[25] 2024 Sustainability Disclosure at 5.

[26] *See id.* at 7.

[27] *See id*.

[28] *See id.* at 7; 72-80.

[29] *See id.* at 7; 73-79.

[30] *See id.* at 7; 73-77.

[31] *See id.* at 7; 73-75; 77-78.

- The 2024 Sustainability Disclosure provides detailed disclosure regarding the Company's sustainable financing goal, including its progress toward its achievement.[32]
- In 2024, the Company announced its intention to become an early adopter of the Task Force on Nature-Related Financial Disclosures (TNFD) reporting framework, under which it intends to increase the nature content in its annual disclosures.[33]

In addition to clearly describing each goal and target that the Company has committed to, the Sustainability Disclosures provide detailed explanations of how the Company developed and measures its performance against each goal and target.[34] The 2024 Sustainability Disclosure also explains how performance against the Company's sustainability metrics, including those related to the Company's Net Zero goal and related targets, is considered as part of the Company's annual performance and remuneration evaluations.[35] As such, the Sustainability Disclosures clearly describe the Company's goals and agreements involving its Net Zero policies, as requested in the Proposal, and provide shareholders and other stakeholders with detailed information to evaluate the nature and extent of the Company's commitments.

C. Conclusion

Based on the information provided in the Sustainability Disclosures, which information the Company updates annually, the Company has substantially implemented the Proposal's essential objective of providing annual disclosure of activities related to its Net Zero goal so that shareholders can know the extent that the Company has committed itself to Net Zero policies, including the two specific disclosures requested by the Proposal—the Company's "memberships in organizations advocating Net Zero goals and policies" and the Company's "commitments and agreements involving Net Zero goals and policies." As a result, the Company's actions have already implemented 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." 1976 Release. Accordingly, the essential objective of the Proposal has been satisfied and, for the reasons set forth above, the Proposal may properly be excluded from the 2025 Proxy Materials under Rule 14a-8(i)(10).

* * *

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 Proxy Materials.

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[32] *See id.* at 70-71.

[33] *See id.* at 8.

[34] *See id.* at 19-26.

[35] *See id.* at 15.

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, Bank of America Corporation
Steve Milloy, New Breeze

EXHIBIT A

Net Zero Audit

Resolved:

Shareholders request that, beginning in 2026, Bank of America report annually to shareholders on its net zero activities, including: (1) Memberships in organizations advocating net zero goals and policies; and (2) Bank of America's corporate commitments and agreements involving net zero goals and policies. The report should omit proprietary and/or confidential business information.

Supporting Statement:

Bank of America states on its web site that: "Building on our longstanding support for the Paris Climate Agreement, we have a goal to achieve net zero greenhouse gas (GHG) emissions in our financing activities, operations and supply chain before 2050."

But there are significant problems associated with "net zero" goals and policies:

- The utility industry has determined that economy-wide "net zero" is not possible. https://lcri-netzero.epri.com/
- The most recent United Nations "Emission Gap" report indicates that emissions have steadily increased on global basis since 1990. https://www.unep.org/resources/emissions-gap-report-2024
- The United Nations World Meteorological Organization recently concluded that there "no end in sight to the rising trend" of greenhouse gas emissions. https://news.un.org/en/story/2023/11/1143607
- The financial sector has now begun questioning the validity of current net zero policies and advocacy. https://www.iif.com/portals/0/Files/content/Regulatory/32370132_iif_staff_position_paper_on_net_zero_transition_final_publication.pdf
- The state of New York has sued companies for allegedly making false "net zero" claims. https://ag.ny.gov/press-release/2024/attorney-general-james-sues-worlds-largest-beef-producer-misrepresenting
- The attorneys general for Iowa, Kansas, Nebraska and Tennessee are investigating whether corporate "net zero" claims amount to consumer fraud.
- Activist groups have sued corporations for false "net zero" claims. https://www.reuters.com/sustainability/climate-energy/green-group-sues-tyson-foods-allegedly-false-climate-claims-2024-09-18/
- Corporations are abandoning "net zero" pledges. https://www.telegraph.co.uk/business/2024/09/08/ftse-100-companies-ditch-jeff-bezos-funded-climate-pledge/

Shareholders have the right to know the extent that Bank of America has committed itself to "net zero" policies that may be viewed by governments and others as actionable corporate misconduct and/or consumer/investor fraud.

From: Steve Milloy [redacted]
Sent: Monday, November 11, 2024 11:02 AM
To: Jeffries, Ross E. - Legal <[redacted]>
Cc: Ross Jeffries - Bank of America Corporate Secretary <bac_corporate_secretary@bofa.com>
Subject: Shareholder proposal submission from New Breeze re Net Zero Audit

Dear Mr. Jeffries,

On behalf of New Breeze, a not-for-profit corporation that has held the requisite amount of Bank of America common stock for the requisite amount of time, I am submitting this shareholder proposal (below and attached) for inclusion in the 2025 proxy statement.

Proof of ownership will be provided upon request. We are willing to meet at your convenience to discuss the proposal with you. We intend to attend the shareholder meeting to present the proposal in person.

Please let me know if you have any questions or needs.

Sincerely,

Steve Milloy
President, New Breeze
[redacted]
[redacted]
Tel: [redacted]

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Net Zero Audit

Resolved:

Shareholders request that, beginning in 2026, Bank of America report annually to shareholders on its net zero activities, including: (1) Memberships in organizations

advocating net zero goals and policies; and (2) Bank of America's corporate commitments and agreements involving net zero goals and policies. The report should omit proprietary and/or confidential business information.

Supporting Statement:

Bank of America states on its web site that: "Building on our longstanding support for the Paris Climate Agreement, we have a goal to achieve net zero greenhouse gas (GHG) emissions in our financing activities, operations and supply chain before 2050."

But there are significant problems associated with "net zero" goals and policies:

- The utility industry has determined that economy-wide "net zero" is not possible. https://lcri-netzero.epri.com/
- The most recent United Nations "Emission Gap" report indicates that emissions have steadily increased on global basis since 1990. https://www.unep.org/resources/emissions-gap-report-2024
- The United Nations World Meteorological Organization recently concluded that there "no end in sight to the rising trend" of greenhouse gas emissions. https://news.un.org/en/story/2023/11/1143607
- The financial sector has now begun questioning the validity of current net zero policies and advocacy. https://www.iif.com/portals/0/Files/content/Regulatory/32370132_iif_staff_position_paper_on_net_zero_transition_final_publication.pdf
- The state of New York has sued companies for allegedly making false "net zero" claims. https://ag.ny.gov/press-release/2024/attorney-general-james-sues-worlds-largest-beef-producer-misrepresenting
- The attorneys general for Iowa, Kansas, Nebraska and Tennessee are investigating whether corporate "net zero" claims amount to consumer fraud.
- Activist groups have sued corporations for false "net zero" claims. https://www.reuters.com/sustainability/climate-energy/green-group-sues-tyson-foods-allegedly-false-climate-claims-2024-09-18/
- Corporations are abandoning "net zero" pledges. https://www.telegraph.co.uk/business/2024/09/08/ftse-100-companies-ditch-jeff-bezos-funded-climate-pledge/

Shareholders have the right to know the extent that Bank of America has committed itself to “net zero” policies that may be viewed by governments and others as actionable corporate misconduct and/or consumer/investor fraud.

January 16, 2025

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 New Breeze
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter responds to the Bank of America Corporation ("Bank of America" or the "Company") letter of December 20, 2024 ("No Action Request") informing you that the Company intends to exclude the shareholder proposal (the "Proposal") submitted by New Breeze.

Bank of America's No Action Request is false and misleading, and does not provide an adequate basis for excluding the Proposal.

1. Overview of the Proposal and No Action Request

Bank of America seeks to omit New Breeze's shareholder proposal, claiming that it has already "substantially implemented the Proposal."[1] New Breeze's proposal asks Bank of America to issue an annual report disclosing its "net zero activities," "[m]embership" in net zero organizations, and its "corporate commitments and agreements" involving net zero matters.[2] New Breeze argues that this information is crucial to shareholders because other companies have been investigated and sued for similar "net zero activities."[3]

2. Bank of America's existing disclosures are partial and omit material information that should be disclosed to shareholders.

Bank of America seeks to omit New Breeze's shareholder proposal, claiming that it has already "substantially implemented the Proposal."[4] New Breeze's proposal asks Bank of America to issue an annual report disclosing its "net zero activities," "[m]embership" in net zero organizations, and its "corporate commitments and agreements" involving net zero matters.[5]

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[1] Bank of America's No Action Request on New Breeze Proposal at 2 (hereinafter "New Breeze No-Action Letter") (citing to 17 CFR 240.14a-8(i)(10)).
[2] New Breeze No-Action Letter at 2, 13.
[3] New Breeze No-Action Letter at 13.
[4] Bank of America's No Action Request on New Breeze Proposal at 2 (hereinafter "New Breeze No-Action Letter") (citing to 17 CFR 240.14a-8(i)(10)).
[5] New Breeze No-Action Letter at 2, 13.

New Breeze argues that this information is crucial to shareholders because other companies have been investigated and sued for similar "net zero activities."[6]

In its No Action Request, Bank of America argues that it already provides "detailed annual disclosure" of its net zero memberships, commitments, and agreements in its Sustainability Report.[7] However, Bank of America admits that it only discloses its "*key*" memberships in net zero "organizations," "initiatives," and "trade associations" and its "*key* environmental partners."[8] Indeed, Bank of America's 2024 Sustainability Report expressly states that it only discloses "key" memberships and a "partial list" of environmental partnerships.[9]

These partial disclosures are inadequate. Shareholders need information on *all* of Bank of America's memberships, commitments, and agreements, because participation in net zero trade associations and organizations can be evidence of illegal collusion and other unlawful trade practices. Indeed, three of Bank of America's peers were recently sued on seven counts of antitrust violations for their membership in net zero organizations.[10] The lawsuit alleges that the defendants' net zero memberships and agreements provide "substantial evidence" of an antitrust violation.[11]

Bank of America's complete lists of net zero memberships and agreements constitute *material* information, as any of those memberships or agreements could result in litigation exposure. For example, a federal court recently considered BlackRock's involvement in Climate Action 100+. The court stated that Climate Action 100+ "conflict[ed] with United States law requiring money managers to act solely in their clients' long-term economic interests."[12] It also found BlackRock's recent departure from the group on this basis to be "essentially a confession that its involvement in that particular initiative and related pursuits" had not been undertaken solely in the economic interests of its clients.[13] As the court put it, "it is not possible ... to conclude that BlackRock's investment strategy maximized the financial benefits" to its clients, and it does not

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[6] New Breeze No-Action Letter at 13.
[7] New Breeze No-Action Letter at 8, 9; *see* New Breeze No-Action Letter at 2.
[8] New Breeze No-Action Letter at 8 (emphases added).
[9] *See* Bank of Am., Sustainability at Bank of America, 47 (Sept. 30, 2024), https://about.bankofamerica.com/content/dam/about/report-center/esg/2024/Sustainability_at_Bank_of_America_2024_Report.pdf (hereinafter "Sustainability Report") (including a list of "key" organizations that it partners with to push "the decarbonization of high-emitting sectors"); Sustainability Report at 49-50 (listing "a number of organizations/initiatives ... including" some organizations and initiatives, that it participates in to push "a sustainable future"); Sustainability Report at 50-51 (including a "*partial* list" (emphasis added) of its net zero partnerships with other companies).
[10] Complaint at 91-96, Texas v. BlackRock Inc., No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf.
[11] *See* Complaint at 39-52, Texas v. BlackRock Inc., No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf.
[12] Findings of Fact and Conclusions of Law, 36, *Spence v. American Airlines, et al.*, 4:23-cv-00552-O (N.D. Tex. Jan. 10, 2025).
[13] Findings of Fact and Conclusions of Law, 36, *Spence v. American Airlines, et al.*, 4:23-cv-00552-O (N.D. Tex. Jan. 10, 2025).

"make any rational economic sense" to encourage energy companies "to act in a manner that directly undermines the company's profits."[14]

Notably, Bank of America appears to have recently made a "confession" of its own—Bank of America left the Net-Zero Banking Alliance (NZBA) on December 31, 2024, less than two weeks after it submitted the No Action Request.[15] This decision demonstrates awareness of at least some of the risks Bank of America's memberships, commitments, and agreements have created. Shareholders should know what other memberships, commitments, and agreements Bank of America continues to maintain, so that they can properly evaluate the risks of those memberships, commitments, and agreements.

There is a significant difference between partial, company-selected lists of key memberships, commitments, and agreements, and a full list of all memberships, commitments, and agreements. In 2023, Altria asked the SEC for permission to exclude a proposal asking for a third-party racial equity audit, claiming that it had already "substantially implemented" the proposal by undertaking a civil rights assessment which involved third-party review and assurance, but was led by Altria.[16] The SEC denied the request, concluding that a "Company-led civil rights assessment will not substantially implement the request for a third-party audit."[17] The No Action Request here presents a similar question: Bank of America would like to pick and choose which memberships, commitments, and agreements to disclose, but the proposal asks for *all* of those memberships, commitments, and agreements to be revealed. Bank of America's cherry-picked disclosures do not "substantially implement" the proposal.

Bank of America also does not reveal its existing commitments and agreements. Bank of America claims that its annual Sustainability Report "address[es] in detail ... a range of goals and targets" and provides "comprehensive annual disclosures" related to net zero,[18] but this is incorrect for three primary reasons.

First, Bank of America's disclosures are not "comprehensive"—as noted above, the Report itself indicates that it is providing "partial" lists of "key" partnerships.[19]

Second, Bank of America's No Action Request equivocates fundamentally different concepts. The equivocation begins almost immediately: Bank of America correctly quotes the proposal as seeking information on "*memberships, ... commitments and agreements*," but then claims to have substantially implemented the proposal through "comprehensive annual disclosures regarding its

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[14] Findings of Fact and Conclusions of Law, 65–66, *Spence v. American Airlines, et al.*, 4:23-cv-00552-O (N.D. Tex. Jan. 10, 2025).
[15] ESG News, *Morgan Stanley, Citi, Bank of America Join Others in Exiting Net Zero Banking Alliance* (Jan. 2, 2025), https://esgnews.com/morgan-stanley-citi-bank-of-america-join-others-in-exiting-net-zero-banking-alliance/.
[16] SEC Letter to Altria Group (Mar. 27, 2023), https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/sfphila0032723-14a8.pdf.
[17] SEC Letter to Altria Group (Mar. 27, 2023), https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/sfphila0032723-14a8.pdf.
[18] New Breeze No-Action Letter at 9.
[19] *See* Sustainability Report at 49.

sustainability-related *activities, goals, and affiliations*."[20] Bank of America then claims that the proposal is merely seeking information about "progress on its Net Zero goal."[21] But Bank of America's publicly-stated corporate "activities, goals, and affiliations," and progress on those goals, are fundamentally different than its public and private *memberships, commitments, and agreements*. For instance, a goal, activity, target can be announced, altered, or dropped unilaterally—for example, Bank of America notes that it has publicly pledged to deploy $1.5 trillion in sustainable financing by 2030.[22] In contrast, the proposal clearly asks for "memberships" and "commitments and agreements involving net zero goals and policies," which typically involve a third party, raising the chances that the third party may attempt to enforce that agreement, either legally or through the court of public opinion. Bank of America simply reiterating its own public "goals and targets" does not provide investors with sufficient information about what "commitments or agreements" it has made to third parties.

Third, as Bank of America admits, it only provides "an overview of each organization's or initiative's *background*" and Bank of America's "involvement,"[23] rather than information about the more relevant question of what commitments or agreements Bank of America has made to each organization or initiative. For example, as an NZBA member, Bank of America was *required* to use the United Nations Environment Programme Financial Initiative's (UNEP FI) Guidelines to set 2030 targets, and regularly report to UNEP FI on the bank's progress.[24] But Bank of America's Report only briefly mentions the NZBA, omits any mention of UNEP FI or the Guidelines, and misleadingly claims that the NZBA merely develops "*voluntary* considerations."[25] Given that Bank of America admits to being a part of literally dozens of net zero organizations or partnerships (and that is not a complete list),[26] the Sustainability Report leaves investors with significant questions about Bank of America's net zero commitments and agreements.

Bank of America's Sustainability Report is insufficient. Shareholders deserve an exhaustive list of Bank of America's net zero commitments and agreements. In the antitrust lawsuit against Bank of America's peers, parties have used several different net zero commitments and agreements against the corporate defendants.[27] Without a complete report on Bank of America's net zero commitments, shareholders cannot assess whether Bank of America is vulnerable to similar claims.

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[20] New Breeze No-Action Letter at 2 (emphasis added); *see* New Breeze No-Action Letter at 9 (equating "corporate commitments and agreements" to "a range of goals and targets").
[21] New Breeze No-Action Letter at 2 (emphasis added); *see* New Breeze No-Action Letter at 9 (equating "corporate commitments and agreements" to "a range of goals and targets").
[22] New Breeze No-Action Letter at 9 (emphasis added).
[23] New Breeze No-Action Letter at 9.
[24] NZBA, *Commitment Statement*, https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/UNEP-FI-NZBA-Commitment-Statement.pdf.
[25] *See* Sustainability Report at 72-80.
[26] New Breeze No-Action Letter at 8.
[27] *See* Complaint at 39-52, *Texas v. BlackRock Inc., et. al.*, No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf.

Furthermore, several states have begun investigating corporations with net zero commitments for consumer fraud.[28] New York has even initiated a consumer fraud suit against a beef producer for falsifying "their commitment to sustainability" by setting net zero targets that the New York Attorney General's Office considers to be "not feasible."[29] In New York's lawsuit, the substance of the commitments and agreements made by the corporations has been crucial for determining whether companies are "greenwashing." Bank of America's shareholders deserve access to material information about the commitments that Bank of America has made in order to determine the bank's exposure to similar "greenwashing" lawsuits. Indeed, as the proposal's supporting statement points out, there are serious questions about the technical and financial viability of net zero targets.[30] Those targets may become even more difficult to meet given that the federal policy environment is undergoing a significant shift, and is likely to move away from policies that favor net zero goals.[31] In light of these issues, disclosure of *all* net zero commitments and agreements is material information that is not covered by the Report.

3. Bank of America's No Action Request should be rejected.

As current events demonstrate, Bank of America's net zero-related activities give rise to substantial and material corporate risk and liability, both criminal and civil. Shareholders have the absolute right to be fully informed, not partially informed about these risks and liabilities. Bank of America's representation of its partial disclosures in its No Action Request as having "substantially implemented the Proposal" is false and misleading. Bank of America's No Action Request should be rejected.

We would be happy to provide you with any additional information that you may have regarding this subject. Correspondence should be sent to milloy@me.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (240) 205-1243. A copy of this letter has been sent to Bank of America and its counsel.

Sincerely,

Steven J Milloy
President, New Breeze

cc: Ross E. Jeffries, Bank of America Corporation
Ronald O. Mueller, Gibson Dunn

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[28] *See, e.g.*, James Lynch, *Republican Attorneys General Warn Companies That Grandiose Climate Promises May Violate the Law*, Nat'l Rev. (Sept. 27, 2024), https://www.nationalreview.com/news/republican-attorneys-general-warn-companies-that-grandiose-climate-promises-may-violate-the-law/.

[29] Press Release, Letitia James, N.Y. Att'y Gen., *Attorney General James Sues World's Largest Beef Producer for Misrepresenting Environmental Impact of Their Products* (Feb. 28, 2024), https://ag.ny.gov/press-release/2024/attorney-general-james-sues-worlds-largest-beef-producer-misrepresenting.

[30] New Breeze No-Action Letter, Exhibit A.

[31] *See, e.g.*, WFYI.com, *How Will Donald Trump Handle U.S. Climate Policy During His Second Term?* (Nov. 11, 2024), https://www.wfyi.org/news/articles/how-will-donald-trump-handle-us-climate-policy-during-his-second-term.

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February 21, 2025

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*
Supplemental Letter Regarding Shareholder Proposal of New Breeze
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 20, 2024, we submitted a letter (the "No-Action Request") on behalf of our client, Bank of America Corporation (the "Company"), to inform the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that the Company intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the "2025 Proxy Materials") a shareholder proposal entitled "Net Zero Audit" (the "Proposal") and statement in support (the "Supporting Statement") thereof received from New Breeze (the "Proponent"). The No-Action Request sets forth the basis for our view that the Proposal properly may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

This supplemental letter responds to a letter received from the Proponent in response to the No-Action Request dated January 16, 2025 (the "Response Letter"), a copy of which is attached hereto as Exhibit S-1.

I. The Response Letter Mischaracterizes The Proposal And Misinterprets Rule 14a-8(i)(10).

As discussed in the No-Action Request and below, the Company has already addressed the essential objective of the Proposal by reporting annually on its net zero activities as requested in the Proposal, so that shareholders can know the extent to which the Company has committed itself to net zero policies. Despite the Company's extensive disclosures regarding its net zero activities, the Response Letter asserts that because the Company has not disclosed *all* of its memberships in organizations advocating net zero goals and policies and *all* of its commitments and agreements involving net zero goals and policies, the Company has not substantially implemented the Proposal and the Staff should therefore deny the No-Action Request. In making that assertion, the Response Letter not only mischaracterizes the scope of disclosures requested by the Proposal, but it misinterprets Rule 14a-8(i)(10) in a number of respects.

First, the Response Letter mischaracterizes the Proposal by arguing that the Company's "partial disclosures are inadequate" because "the proposal asks for *all* of [the Company's] memberships, commitments, and agreements." This assertion is not supported by a plain reading of the Proposal, which requests simply that the Company "report annually to shareholders on its net zero activities, including: (1) Memberships in organizations advocating net zero goals and policies; and (2) Bank of America's corporate commitments and agreements involving net zero goals and policies." The Supporting Statement indicates that the objective of the Proposal is for shareholders to know the extent that the Company has committed itself to "net zero" policies. Nowhere in the Proposal or Supporting Statement does the Proponent request what the Response Letter characterizes interchangeably as "complete lists of net zero memberships and agreements" or an "exhaustive list of [the Company's] net zero commitments and agreements" or "all of those memberships, commitments, and agreements." Rather, the focus of the Proposal is a report on the Company's net zero activities, which report should *include* information on such memberships, commitments and agreements.

Second, the Response Letter misinterprets Rule 14a-8(i)(10) by arguing that anything less than a report providing information on all of the Company's memberships, commitments, and agreements does not substantially implement the proposal. As discussed in detail in the No-Action Request, the history of Rule 14a-8(i)(10) demonstrates that the substantial implementation exclusion requires just that—substantial implementation—and the Proponent's attempt to argue otherwise, which fails to cite any relevant precedents, is inconsistent with both the express language and the history of the rule. The Staff has explicitly rejected a reading of Rule 14a-8(i)(10) that would permit no-action relief only when a company has fully effected a proposal's request. Instead, the Staff's long-standing and consistent position is 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.* (avail. Mar. 28, 1991). Moreover, the standard under Rule 14a-8(i)(10) is not whether a company has implemented a proposal in exactly the manner requested by a proponent, but whether a company has satisfied the "essential objective" of the proposal. *See General Motors Corp.* (avail. Mar. 4, 1996). Consistent with this standard, the Staff has concurred that a company can substantially implement a proposal by taking actions that differ from what the shareholder proponent would prefer. *See*, *e.g.*, *The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014) (concurring in exclusion under Rule 14a-8(i)(10) and denying reconsideration where the proponent objected that the company's actions had not implemented the proposal in a manner that the proponent viewed as acceptable).

Here, the Company has substantially implemented the Proposal by publishing comprehensive annual sustainability disclosures that report on the Company's net zero activities and that include information on what the Response Letter concedes are "literally dozens of net zero organizations or partnerships." These disclosures are directly responsive to the specific requests set forth in the Proposal's Resolved clause, including

that the disclosure include two specific categories of disclosure—the Company's "membership in organizations advocating net zero goals and policies" and the Company's "commitments and agreements involving net zero goals and policies." While the Proponent may prefer that the Company implement the Proposal's request in a different manner and now seeks to recharacterize the language of the Proposal and its objective, that preference has no bearing on the analysis of the Company's actions under Rule 14a-8(i)(10). As detailed in the No-Action Request, the Company's annual sustainability disclosures clearly "compare favorably" with the guidelines of the Proposal and address the Proposal's essential objective of "reporting annually to shareholders on [the Company's] net zero activities." As a result, the Proposal may properly be excluded from the 2025 Proxy Materials under Rule 14a-8(i)(10).

II. If The Proposal Requires Disclosure Of All Of The Company's Memberships, Commitments And Agreements, The Proposal May Be Excluded Under Rule 14a-8(i)(7).

If the Proposal is read to require a report with more extensive, or literally all, of the Company's "memberships, commitments, and agreements" related to its net zero activities, the Proposal micromanages the Company and is therefore excludable under Rule 14a-8(i)(7). In Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M"), the Staff, citing prior statements by the Commission, noted that the determination as to whether a proposal deals with a matter relating to a company's ordinary business operations is "made on a *case-by-case* basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed."[1] SLB 14M reinstated the Staff's prior guidance under Staff Legal Bulletin 14J (Oct. 23, 2018), in which the Staff stated that "a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds," and under Staff Legal Bulletin 14K (Oct. 16, 2019) ("SLB 14K"), in which the Staff stated that a proposal may micromanage when it "prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal." In SLB 14K, the Staff also stated that "the precatory nature of a proposal does not bear on the degree to which a proposal micromanages."

If the Proposal requires the Company to prepare a report that includes "complete lists of net zero memberships and agreements" and an "exhaustive list of [the Company's] net zero commitments and agreements," the Proposal would require the Company to (1) review the actions and positions of each organization in which the Company is a member to determine if each such organization "advocate[s] net zero goals and policies" and (2) assess every "commitment" and "agreement" to determine if they "involve[e] net zero goals and policies." In the context of a global financial institutions such as the Company, this latter step alone could require the Company to report on thousands of loan

[1] SLB 14M at part A, citing Release No. 34-40018 (May 21, 1998) (the "1998 Release").

agreements and financing commitments that are part of the Company's net zero financing activities.

In this respect, the Proposal, as described in the Response Letter, is comparable to other proposals requesting the compilation and publication of detailed and extensive information where the Staff has concurred in exclusion under Rule 14a-8(i)(7). *See 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). For example, in *Deere & Co.* (avail. Jan. 3, 2022), the proposal requested 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" so that "shareholders can appropriate[ly] gauge executives' responses to and management of [reputational and legal risks and financial harm]" to the company associated with employment discrimination. 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." The Staff concurred with exclusion under Rule 14a-8(i)(7), noting that the proposal "micromanage[d] the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices." Similarly, in *Amazon.com, Inc. (Stephen Sacks and Hinda F. Sacks)* (avail. Mar. 27, 2020), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company include on its sales website a department category concerning sustainability products to address climate change. The company argued that the proposal would require the company to "list certain products it sells in specific groupings on its website, change its product categorization methods, alter its proprietary algorithms to determine what products to 'suggest' to customers, and advertise and designate certain products in a specified manner" and thereby sought to "prescribe[] specific details for implementation of complex policies as a substitute for the judgment of management."

As in *Ford Motor Co.*, *Deere & Co.* and *Amazon.com, Inc.*, the Response Letter argues that the Proposal is intended to allow shareholders to step into the shoes of management to oversee alleged legal and financial risks from the Company's net zero activities, and prescribes a specific means for reporting on that issue that, as described in the Response Letter, seeks to limit management's discretion on how best to inform shareholders about the extent of the Company's net-zero activities. The Company already provides extensive reporting regarding those activities, as well as its relationships with organizations and initiatives that support net zero-related goals, in each case providing information that it has determined to be most relevant to its shareholders in order for them to understand the extent to which the Company has committed itself to net-zero policies. For the Company to instead disclose highly detailed lists on these matters would require significant changes in how the Company currently tracks and reports on its net zero

activities, micromanaging the Company and impermissibly limiting management's discretion on complex and nuanced matters that are not appropriate for direct shareholder oversight. For these reasons, to the extent the Proposal requests disclosure of all of the Company's memberships, commitments and agreements related to its net zero activities, the Proposal may be properly excluded under Rule 14a-8(i)(7) because it would seek to micromanage the Company.

* * *

With respect to the ordinary business argument set forth in part II of this letter, we request that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j). Rule 14a-8(j)(1) states that a company that "intends to exclude a proposal from its proxy materials . . . must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission within 80 days of filing its definitive proxy materials if the company demonstrates "good cause" for missing the deadline. In SLB 14M, the Staff stated that it "consider[s] the publication of [SLB 14M] to be 'good cause' if it relates to legal arguments made by" a new no-action request. The legal arguments set forth in part II of this letter relate to the Staff's guidance in SLB 14M that reinstates prior Staff guidance under Rule 14a-8(i)(7). Accordingly, we believe that the Company has "good cause" for its inability to meet the 80-day requirement with respect to such argument, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 Proxy Materials. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Ross E. Jeffries, Jr., the Company's Corporate Secretary, at (980) 388-6878.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Ross E. Jeffries, Bank of America Corporation
Steve Milloy, New Breeze

EXHIBIT S-1

January 16, 2025

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 New Breeze
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter responds to the Bank of America Corporation ("Bank of America" or the "Company") letter of December 20, 2024 ("No Action Request") informing you that the Company intends to exclude the shareholder proposal (the "Proposal") submitted by New Breeze.

Bank of America's No Action Request is false and misleading, and does not provide an adequate basis for excluding the Proposal.

1. Overview of the Proposal and No Action Request

Bank of America seeks to omit New Breeze's shareholder proposal, claiming that it has already "substantially implemented the Proposal."[1] New Breeze's proposal asks Bank of America to issue an annual report disclosing its "net zero activities," "[m]embership" in net zero organizations, and its "corporate commitments and agreements" involving net zero matters.[2] New Breeze argues that this information is crucial to shareholders because other companies have been investigated and sued for similar "net zero activities."[3]

2. Bank of America's existing disclosures are partial and omit material information that should be disclosed to shareholders.

Bank of America seeks to omit New Breeze's shareholder proposal, claiming that it has already "substantially implemented the Proposal."[4] New Breeze's proposal asks Bank of America to issue an annual report disclosing its "net zero activities," "[m]embership" in net zero organizations, and its "corporate commitments and agreements" involving net zero matters.[5]

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[1] Bank of America's No Action Request on New Breeze Proposal at 2 (hereinafter "New Breeze No-Action Letter") (citing to 17 CFR 240.14a-8(i)(10)).
[2] New Breeze No-Action Letter at 2, 13.
[3] New Breeze No-Action Letter at 13.
[4] Bank of America's No Action Request on New Breeze Proposal at 2 (hereinafter "New Breeze No-Action Letter") (citing to 17 CFR 240.14a-8(i)(10)).
[5] New Breeze No-Action Letter at 2, 13.

New Breeze argues that this information is crucial to shareholders because other companies have been investigated and sued for similar "net zero activities."[6]

In its No Action Request, Bank of America argues that it already provides "detailed annual disclosure" of its net zero memberships, commitments, and agreements in its Sustainability Report.[7] However, Bank of America admits that it only discloses its "*key*" memberships in net zero "organizations," "initiatives," and "trade associations" and its "*key* environmental partners."[8] Indeed, Bank of America's 2024 Sustainability Report expressly states that it only discloses "key" memberships and a "partial list" of environmental partnerships.[9]

These partial disclosures are inadequate. Shareholders need information on *all* of Bank of America's memberships, commitments, and agreements, because participation in net zero trade associations and organizations can be evidence of illegal collusion and other unlawful trade practices. Indeed, three of Bank of America's peers were recently sued on seven counts of antitrust violations for their membership in net zero organizations.[10] The lawsuit alleges that the defendants' net zero memberships and agreements provide "substantial evidence" of an antitrust violation.[11]

Bank of America's complete lists of net zero memberships and agreements constitute *material* information, as any of those memberships or agreements could result in litigation exposure. For example, a federal court recently considered BlackRock's involvement in Climate Action 100+. The court stated that Climate Action 100+ "conflict[ed] with United States law requiring money managers to act solely in their clients' long-term economic interests."[12] It also found BlackRock's recent departure from the group on this basis to be "essentially a confession that its involvement in that particular initiative and related pursuits" had not been undertaken solely in the economic interests of its clients.[13] As the court put it, "it is not possible ... to conclude that BlackRock's investment strategy maximized the financial benefits" to its clients, and it does not

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[6] New Breeze No-Action Letter at 13.
[7] New Breeze No-Action Letter at 8, 9; *see* New Breeze No-Action Letter at 2.
[8] New Breeze No-Action Letter at 8 (emphases added).
[9] *See* Bank of Am., Sustainability at Bank of America, 47 (Sept. 30, 2024), https://about.bankofamerica.com/content/dam/about/report-center/esg/2024/Sustainability_at_Bank_of_America_2024_Report.pdf (hereinafter "Sustainability Report") (including a list of "key" organizations that it partners with to push "the decarbonization of high-emitting sectors"); Sustainability Report at 49-50 (listing "a number of organizations/initiatives ... including" some organizations and initiatives, that it participates in to push "a sustainable future"); Sustainability Report at 50-51 (including a "*partial* list" (emphasis added) of its net zero partnerships with other companies).
[10] Complaint at 91-96, Texas v. BlackRock Inc., No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf.
[11] *See* Complaint at 39-52, Texas v. BlackRock Inc., No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf.
[12] Findings of Fact and Conclusions of Law, 36, *Spence v. American Airlines, et al.*, 4:23-cv-00552-O (N.D. Tex. Jan. 10, 2025).
[13] Findings of Fact and Conclusions of Law, 36, *Spence v. American Airlines, et al.*, 4:23-cv-00552-O (N.D. Tex. Jan. 10, 2025).

"make any rational economic sense" to encourage energy companies "to act in a manner that directly undermines the company's profits."[14]

Notably, Bank of America appears to have recently made a "confession" of its own—Bank of America left the Net-Zero Banking Alliance (NZBA) on December 31, 2024, less than two weeks after it submitted the No Action Request.[15] This decision demonstrates awareness of at least some of the risks Bank of America's memberships, commitments, and agreements have created. Shareholders should know what other memberships, commitments, and agreements Bank of America continues to maintain, so that they can properly evaluate the risks of those memberships, commitments, and agreements.

There is a significant difference between partial, company-selected lists of key memberships, commitments, and agreements, and a full list of all memberships, commitments, and agreements. In 2023, Altria asked the SEC for permission to exclude a proposal asking for a third-party racial equity audit, claiming that it had already "substantially implemented" the proposal by undertaking a civil rights assessment which involved third-party review and assurance, but was led by Altria.[16] The SEC denied the request, concluding that a "Company-led civil rights assessment will not substantially implement the request for a third-party audit."[17] The No Action Request here presents a similar question: Bank of America would like to pick and choose which memberships, commitments, and agreements to disclose, but the proposal asks for *all* of those memberships, commitments, and agreements to be revealed. Bank of America's cherry-picked disclosures do not "substantially implement" the proposal.

Bank of America also does not reveal its existing commitments and agreements. Bank of America claims that its annual Sustainability Report "address[es] in detail ... a range of goals and targets" and provides "comprehensive annual disclosures" related to net zero,[18] but this is incorrect for three primary reasons.

First, Bank of America's disclosures are not "comprehensive"—as noted above, the Report itself indicates that it is providing "partial" lists of "key" partnerships.[19]

Second, Bank of America's No Action Request equivocates fundamentally different concepts. The equivocation begins almost immediately: Bank of America correctly quotes the proposal as seeking information on "*memberships, ... commitments and agreements*," but then claims to have substantially implemented the proposal through "comprehensive annual disclosures regarding its

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[14] Findings of Fact and Conclusions of Law, 65–66, *Spence v. American Airlines, et al.*, 4:23-cv-00552-O (N.D. Tex. Jan. 10, 2025).
[15] ESG News, *Morgan Stanley, Citi, Bank of America Join Others in Exiting Net Zero Banking Alliance* (Jan. 2, 2025), https://esgnews.com/morgan-stanley-citi-bank-of-america-join-others-in-exiting-net-zero-banking-alliance/.
[16] SEC Letter to Altria Group (Mar. 27, 2023), https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/sfphila0032723-14a8.pdf.
[17] SEC Letter to Altria Group (Mar. 27, 2023), https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/sfphila0032723-14a8.pdf.
[18] New Breeze No-Action Letter at 9.
[19] *See* Sustainability Report at 49.

sustainability-related *activities, goals, and affiliations*."[20] Bank of America then claims that the proposal is merely seeking information about "progress on its Net Zero goal."[21] But Bank of America's publicly-stated corporate "activities, goals, and affiliations," and progress on those goals, are fundamentally different than its public and private *memberships, commitments, and agreements*. For instance, a goal, activity, target can be announced, altered, or dropped unilaterally—for example, Bank of America notes that it has publicly pledged to deploy $1.5 trillion in sustainable financing by 2030.[22] In contrast, the proposal clearly asks for "memberships" and "commitments and agreements involving net zero goals and policies," which typically involve a third party, raising the chances that the third party may attempt to enforce that agreement, either legally or through the court of public opinion. Bank of America simply reiterating its own public "goals and targets" does not provide investors with sufficient information about what "commitments or agreements" it has made to third parties.

Third, as Bank of America admits, it only provides "an overview of each organization's or initiative's *background*" and Bank of America's "involvement,"[23] rather than information about the more relevant question of what commitments or agreements Bank of America has made to each organization or initiative. For example, as an NZBA member, Bank of America was *required* to use the United Nations Environment Programme Financial Initiative's (UNEP FI) Guidelines to set 2030 targets, and regularly report to UNEP FI on the bank's progress.[24] But Bank of America's Report only briefly mentions the NZBA, omits any mention of UNEP FI or the Guidelines, and misleadingly claims that the NZBA merely develops "*voluntary* considerations."[25] Given that Bank of America admits to being a part of literally dozens of net zero organizations or partnerships (and that is not a complete list),[26] the Sustainability Report leaves investors with significant questions about Bank of America's net zero commitments and agreements.

Bank of America's Sustainability Report is insufficient. Shareholders deserve an exhaustive list of Bank of America's net zero commitments and agreements. In the antitrust lawsuit against Bank of America's peers, parties have used several different net zero commitments and agreements against the corporate defendants.[27] Without a complete report on Bank of America's net zero commitments, shareholders cannot assess whether Bank of America is vulnerable to similar claims.

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[20] New Breeze No-Action Letter at 2 (emphasis added); *see* New Breeze No-Action Letter at 9 (equating "corporate commitments and agreements" to "a range of goals and targets").
[21] New Breeze No-Action Letter at 2 (emphasis added); *see* New Breeze No-Action Letter at 9 (equating "corporate commitments and agreements" to "a range of goals and targets").
[22] New Breeze No-Action Letter at 9 (emphasis added).
[23] New Breeze No-Action Letter at 9.
[24] NZBA, *Commitment Statement*, https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/UNEP-FI-NZBA-Commitment-Statement.pdf.
[25] *See* Sustainability Report at 72-80.
[26] New Breeze No-Action Letter at 8.
[27] *See* Complaint at 39-52, *Texas v. BlackRock Inc., et. al.*, No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf.

Furthermore, several states have begun investigating corporations with net zero commitments for consumer fraud.[28] New York has even initiated a consumer fraud suit against a beef producer for falsifying "their commitment to sustainability" by setting net zero targets that the New York Attorney General's Office considers to be "not feasible."[29] In New York's lawsuit, the substance of the commitments and agreements made by the corporations has been crucial for determining whether companies are "greenwashing." Bank of America's shareholders deserve access to material information about the commitments that Bank of America has made in order to determine the bank's exposure to similar "greenwashing" lawsuits. Indeed, as the proposal's supporting statement points out, there are serious questions about the technical and financial viability of net zero targets.[30] Those targets may become even more difficult to meet given that the federal policy environment is undergoing a significant shift, and is likely to move away from policies that favor net zero goals.[31] In light of these issues, disclosure of *all* net zero commitments and agreements is material information that is not covered by the Report.

3. Bank of America's No Action Request should be rejected.

As current events demonstrate, Bank of America's net zero-related activities give rise to substantial and material corporate risk and liability, both criminal and civil. Shareholders have the absolute right to be fully informed, not partially informed about these risks and liabilities. Bank of America's representation of its partial disclosures in its No Action Request as having "substantially implemented the Proposal" is false and misleading. Bank of America's No Action Request should be rejected.

We would be happy to provide you with any additional information that you may have regarding this subject. Correspondence should be sent to milloy@me.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (240) 205-1243. A copy of this letter has been sent to Bank of America and its counsel.

Sincerely,

Steven J Milloy
President, New Breeze

cc: Ross E. Jeffries, Bank of America Corporation
Ronald O. Mueller, Gibson Dunn

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[28] *See, e.g.*, James Lynch, *Republican Attorneys General Warn Companies That Grandiose Climate Promises May Violate the Law*, Nat'l Rev. (Sept. 27, 2024), https://www.nationalreview.com/news/republican-attorneys-general-warn-companies-that-grandiose-climate-promises-may-violate-the-law/.

[29] Press Release, Letitia James, N.Y. Att'y Gen., *Attorney General James Sues World's Largest Beef Producer for Misrepresenting Environmental Impact of Their Products* (Feb. 28, 2024), https://ag.ny.gov/press-release/2024/attorney-general-james-sues-worlds-largest-beef-producer-misrepresenting.

[30] New Breeze No-Action Letter, Exhibit A.

[31] *See, e.g.*, WFYI.com, *How Will Donald Trump Handle U.S. Climate Policy During His Second Term?* (Nov. 11, 2024), https://www.wfyi.org/news/articles/how-will-donald-trump-handle-us-climate-policy-during-his-second-term.