



DIVISION OF
CORPORATION FINANCE

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

March 5, 2025

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

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

Dear Ronald O. Mueller:

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

The Proposal requests the board of directors issue a report concerning the legality and judgment of management's decision-making, and insufficient disclosure specificity, regarding the dissemination to government agencies of customers' personal information.

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

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: Paul Chesser
National Legal and Policy Center

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 the National Legal and Policy Center
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 the National Legal and Policy Center (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

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

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company.

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 Deposit Insurance Fund. As a registered financial holding company and bank holding company, the Company is subject to the supervision of, and regular inspection by, the Board of Governors of the Federal Reserve System ("Federal Reserve"), while its U.S. bank subsidiaries, organized as national banking associations, are subject to regulation, supervision and examination by the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Consumer Financial Protection Bureau ("CFPB") and the Federal Reserve. Additionally, the Company and its bank and broker dealer subsidiaries are subject to a significant number of laws, rules and regulations that

govern their businesses in the U.S. and in the other jurisdictions in which they operate, which set forth requirements on permissible activities, compliance risk management, consumer products and sales practices, anti-money laundering and anti-corruption, compliance with government sanctions, privacy and data protection, among others, including those promulgated by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

The Proposal addresses the Company's customer relations and its management and handling of customer accounts and account information, particularly in the context of authorized provision of information to government authorities. The Company's relationship with its clients and the handling of client accounts, including the terms upon which it does business with clients across its operations and how it manages and protects customer account information, are essential to the operation of the Company's business as a financial services institution. In managing customer accounts and customer account information, the Company is required to comply with the vast array of laws, rules and regulations applicable to the Company and its subsidiaries, including those promulgated by the Federal Reserve, OCC, FDIC, FinCEN, and CFPB. Decisions regarding customer accounts, including the handling of customer information,¹ involve legal, regulatory, operational, risk management and financial considerations that implicate detailed and extensive policies and procedures and are fundamental to the Company's day-to-day operations. Because the Proposal addresses the Company's handling of customer relations, it is precisely the type of shareholder proposal that companies are permitted to exclude under Rule 14a-8(i)(7).

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central

¹ In this regard, while the Supporting Statement raises a handful of alleged actions, 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 has taken action to "deceive[] its customers and betray[] their trust."

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considerations that underlie this policy. The first was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Examples of the tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, *decisions on production quality and quantity*, and the retention of suppliers” (emphasis added). 1998 Release. The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”). Moreover, in Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. See, e.g., *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

In the instant case, the Proposal relates to the Company’s relationships with customers and its management and handling of customer accounts and account information, particularly in the context of providing information to government authorities, which is subject to the Company’s obligation to comply with laws, rules and regulations, and involves other core business considerations that routinely arise in managing the Company’s operations. The Proposal also would micromanage the Company by seeking to evaluate the legality, judgment and disclosures around the Company’s policies and practices in providing customer account information to government agencies, which would include all federal, state, and local agencies, and thereby probing too deeply into matters of a complex nature. As such, similar to the well-established precedents described in greater detail below and consistent with the Commission guidance and Staff precedents, the Proposal involves matters related to the Company’s ordinary business and may be excluded under Rule 14a-8(i)(7).

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

The Proposal seeks to require that the Company issue a report evaluating “management’s decision-making, and insufficient disclosure specificity, regarding the dissemination to government agencies of customers’ personal information.” The Company’s decision-making regarding the policies and procedures that govern the Company’s handling of customer accounts, including handling of customer information, implicates routine management decisions that encompass legal, regulatory, operational, risk management and financial considerations, among others. For example, as a global financial institution organized under the laws of the United States, the Company is subject to significant federal, state and local laws and regulations, which, among other things, include requirements relating to appropriate procedures for the protection of customer information. In addition, laws and regulations require that the Company report unusual or suspicious activity to agencies or government entities as part of its obligations to monitor for particular criminal activity, such as money laundering. As a result, the Company has developed a detailed set of policies and procedures encompassing the handling of customer accounts and information, including policies and procedures, consistent with applicable federal, state and local regulatory requirements, relating to protecting customer account information and providing certain information to government agencies. The Proposal impermissibly seeks to interject shareholders into this aspect of the Company’s ordinary business.

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

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(*National Legal and Policy Center*) (avail. Mar. 21, 2023); *Wells Fargo & Co.* (avail. Mar. 2, 2023).

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

The Staff also has consistently concurred with the exclusion of proposals relating to how a company handles customer accounts and any associated procedures, even when those proposals touched upon concerns over the exercise of constitutionally protected rights. For instance, in *PayPal Holdings, Inc. (Laurent Ritter)* (avail. Apr. 10, 2023) (“*PayPal (Ritter)*”), the proposal requested that the board of directors revise its reporting to “provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services” and the supporting statement requested that the report include the “external legal or policy basis and internal company criteria for removals,” as well as “[a]ny

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

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

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technical assistance and advertising programs[,] lending strategies and data collection procedures”).

Here, like the policies, practices, and procedures at issue in the *AT&T Precedent*, *American Express*, and the other precedents cited above, the Proposal relates to the Company’s day-to-day management and handling of customer accounts and account information. The Proposal thus involves the Company’s policies and procedures relating to the products and services the Company offers to its customers and the Company’s procedures for handling customer accounts, customer relations and protecting customer information. In particular, the Proposal asks that the Company provide a report evaluating “management’s decision-making . . . regarding the dissemination to government agencies of customers’ personal information.” As in the *AT&T Precedent*, where the proposal was concerned with “how cooperation between U.S. law enforcement entities and telecommunications companies affects Americans’ privacy and civil rights,” the Proposal similarly focuses on the Company’s disclosure of customer information to law enforcement agencies and alleges that the Company “conspired with government agencies to violate the civil liberties of customers” and “intrude on the privacy rights of United States citizens.” In this way, the Proposal is also similar to that in *American Express*, as both proposals concern providing certain customer financial information to law enforcement agencies and express privacy concerns.

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

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

The well-established precedents discussed above demonstrate that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No.

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

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

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

The Proposal does not transcend the Company’s ordinary business operations. Rather, as discussed above, the Proposal’s principal focus is on the policies and procedures relating to the Company’s management of customer information. While the Proposal is premised on the (incorrect) assertion that the Company “maliciously conspired with

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government agencies to violate the civil liberties of customers,”² the Proposal focuses on the Company’s management and handling of customer accounts, and specifically the legality and judgment of the Company’s decisions and the sufficiency of its disclosures regarding transmitting customer information to government agencies. As such, the Proposal is focused on customer relations and is comparable to the precedents discussed above in which the Staff concurred with the exclusion of proposals that focused on a company’s management of customer accounts, even when those proposals referenced company responses to government inquiries. See, e.g., *AT&T 2017* (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board of directors review and publicly report the consistency between the company’s policies on privacy and civil rights and the company’s alleged actions with respect to law enforcement investigations where the supporting statement raised concerns regarding “how cooperation between U.S. law enforcement entities and telecommunications companies affects Americans’ privacy and civil rights” and cited a company program that reportedly provided law enforcement access to certain data); *PayPal (Ritter)* (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board of directors revise its reporting to “provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services” where the supporting statement alleged that the company “routinely targets users for speech protected by the First Amendment” and raised concerns about “accountability on human rights, civil liberties, and sound technology policy” including “the contradiction between [the company’s] human rights policy and account suspensions and other potential violations of freedom of speech”); *JPMorgan Chase & Co. (National Legal and Policy Center)* (avail. Mar. 21, 2023) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting details on the company’s “policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government,” where the supporting statement raised concerns about “unconstitutional law enforcement activities and censorship” and the company’s “cooperat[ion] with the government in the unconstitutional program”); *PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company ensure “that [the company’s] users do not have accounts frozen or the use of [company] services terminated without giving specific, good and substantial reasons to the user for so doing” when the supporting statement briefly alleged that the company’s fraud modeling system was “unethical and un-American” because it “put[] people out of business to save the company money by not using proper human oversight”).

² Notably, the interim staff report of the U.S. House of Representatives Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government cited in the Supporting Statement does not state that the Company “conspired” with government agencies and does not state that the Company acted “maliciously.” A more recent report by the same House subcommittee, issued on December 6, 2024 (available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-05-Financial-Surveillance-in-the-United-States.pdf>) states, “The reporting requirements of the Bank Secrecy Act turn financial institutions into confidential informants that are required to secretly report Americans’ financial activities to the federal government.” *Id.* at 6.

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Nor does the fact that the Proposal concerns “the legality and judgment of management’s decision-making, and [allegedly] insufficient disclosure specificity” cause the Proposal to transcend the Company’s ordinary business. For example, in *Texas Pacific Land Corp. (Special Opportunities Fund, Inc.)* (avail. Sept. 26, 2022), the proposal requested that an independent investigation be conducted to assess possible improprieties by certain company directors, and in *Eagle Bancorp, Inc.* (avail. Mar. 29, 2022), the proposal sought an independent review of certain investigations performed by the company, and in both instances the Staff concurred that the proposals did not raise an issue that transcended the companies’ ordinary business. Similarly, in *Texas Pacific Land Corp. (Jason Hubert)* (avail. Sept. 5, 2023), the proposal requested a board review of the company’s processes surrounding the preparation of its proxy statement disclosures, and the Staff concurred that the proposal did not raise an issue that transcended the company’s ordinary business.

Because the subject of the Proposal is a review of how the Company manages customer information and focuses on the Company’s decision-making and disclosures to customers, the Proposal is distinguishable from proposals that directly focused on significant policy issues, such as identifying potential factors in a company’s operations that may contribute to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin or political views (see, for example, *JPMorgan Chase & Co. (The Bahnsen Family Trust)* (avail. Mar. 21, 2023)); conducting operations in countries that raise human rights concerns (*Alphabet Inc. (Mari Fennel-Bell et al.)* (avail. Apr. 12, 2022)); providing support for military and militarized policing agency activities (*Alphabet Inc. (Edward Feigen et al.)* (avail. Apr. 12, 2022)); assisting in the enforcement of state laws criminalizing abortion access (*American Express Co.* (avail. Mar. 6, 2023)); or establishing a merchant category code for standalone gun and ammunition stores (*Mastercard Inc.* (avail. Apr. 25, 2023)). In each of those no-action requests, the Staff rejected the companies’ argument and did not concur with exclusion of the proposal under Rule 14a-8(i)(7) because, in the Staff’s view, the companies had not met their burden to demonstrate that the proposals focused on a topic that did not transcend ordinary business matters. In contrast, the Proposal is more comparable to the proposals addressed in part II.B. of this letter above, such as the proposal in *AT&T 2016*. As discussed above, the Staff there concurred that a proposal focused on its customer account policies—specifically, “a report . . . clarifying the [c]ompany’s policies regarding providing information to law enforcement and intelligence agencies, domestically and internationally, above and beyond what is legally required . . . , whether and how the policies have changed since 2013, and assessing risks to the [c]ompany’s finances and operations arising from current and past policies and practices” “[did] not focus on a significant policy issue” and was excludable under Rule 14a-8(i)(7) because it related to “procedures for protecting customer information.” Accordingly, because the Proposal’s subject is the Company’s ordinary business operations, the Proposal does not transcend the Company’s ordinary business operations and does not focus on any significant policy issue and may be excluded under Rule 14a-8(i)(7).

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

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

In assessing the “granularity” of a proposal and the extent to which a proposal seeks to micromanage a company’s ordinary business operations, the precedents focus on not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. As a result, in precedents where proposals seek a report but would require granular and complex reviews of information drawn from companies’ ordinary business operations, the Staff has concurred that the proposals are excludable under Rule 14a-8(i)(7) because they seek to micromanage the companies. For example, in *Delta Air Lines, Inc.* (avail. Apr. 24, 2024), the Staff concurred that a proposal asking the company to “issue a report on [the company’s] expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions” could be excluded because it sought to micromanage the company, where the company pointed out that the proposal would require it to dig into granular detail to evaluate the costs of numerous routine management actions related to management of its workforce. In *Delta Air Lines*, although the proposal called for a report, the company argued that the information required by the proposal would delve deeply into ordinary business operations, noting that workforce management matters are “multi-faceted, complex and based on a range of considerations, and they are the subject of laws of multiple states and foreign countries.” Similarly, in *Home Depot, Inc. (Jessica Wrobel)* (avail. Mar. 21, 2024), the proposal requested that the company prepare a living wage report. The company characterized the proposal as requiring an unusual and highly prescriptive format for which there was no well-established national or international framework, and that would require assembling granular detail to calculate the requested information and provide specific calculations and statistics. The company explained that each element of that process required the collection of data that was not readily available and could be terribly complex. The Staff concurred that the

proposal sought to micromanage the company and thereby was excludable under Rule 14a-8(i)(7). *See also, Amazon.com, Inc.* (avail. Apr. 1, 2024) (same). In *Phillips 66* (avail. Mar. 20, 2023), the Staff concurred that a proposal requesting a report on the undiscounted expected value to settle the company's asset retirement obligations ("AROs") with indeterminate settlement dates could be excluded because the proposal micromanaged the company, where the company argued that the proposal prescribed a specific approach for assessing the value of AROs with indeterminate settlement dates.

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

As in *Delta Air Lines* and the other precedents cited above, the Proposal would require a report on complex issues that would require extensive information involving granular and "intricate detail" on the Company's oversight of customer accounts and management of customer account information, as addressed under SLB 14L. The Proposal seeks disclosure "regarding dissemination to government agencies of customers' personal information." If the Company were to publish the report requested by the Proposal, this would require the Company to review *any* instance where the Company shared *any* information about *any* customer with *any* government agency, at the federal, state or local level, which could implicate *any or all* of the Company's approximately 70 million customer accounts, then necessitate the Company's Board of Directors undertake granular diligence and analysis of management's decision-making in each instance.

Moreover, just as with *Deere & Co.* and the other precedents cited above, the Proposal seeks to micromanage the Company by directing that the Company's Board of Directors assess and report on "management's decision-making, and insufficient disclosure specificity" regarding fundamental aspects of the Company's day-to-day business operations. The Proposal appears to only request reporting on the Board of Directors' assessment of management's decision-making with respect to policies and procedures that govern the Company's management and handling of customer accounts and account information rather than any specific actions with respect to such policies and procedures. However, the Proposal seeks to interject shareholders, via the Board report, into detailed and complex aspects of the Company's ordinary business that are driven by numerous considerations, including the Company's obligation to comply with numerous legal reporting obligations, to respond to a wide variety of government requests for information, and to assess the disclosures, policies and processes that best balance those considerations with customer relations and data management considerations. As in *Deere & Co.*, the Proposal does not operate to "provid[e] high-level direction on large strategic corporate matters" and does not seek disclosures in line with "well-established national or international frameworks," but instead seeks to probe on "methods for implementing complex policies." SLB 14L.

The Proposal seeks to interject shareholders into complex determinations and evaluations on how the Company oversees customer accounts and manages customer account information, which involve complex considerations regarding customer relations and compliance with applicable federal, state and local laws. As discussed above, decisions about customer accounts and the management and handling of customer account information, even if limited to the context of information provided to government agencies pursuant to requirements imposed in statute or regulation, are multifaceted and require management to evaluate complex issues. The Company has gone to great lengths to develop customer policies and procedures, and, as discussed above, the implementation of those policies and procedures, including the handling of customer accounts, customer relations, and protection of customer information, are fundamental to the management of the Company's day-to-day operations. These policies and procedures require judgments and considerations that draw on management's day-to-day business experience, legal compliance and assessment of numerous possible consequences and impacts. Furthermore, the complexity of the type of assessment the Proposal requests the Board of Directors undertake is simply not the type of "high-level direction on large strategic corporate matters" that Rule 14a-8(i)(7) was intended to allow. Instead, the Proposal implicates management's decisions of whether, and under what circumstances, the Company disseminates customer information to government agencies, which decisions are fundamental business matters for the Company's management. Accordingly, it is inappropriate to seek to have shareholders interjected into determining how management addresses the many considerations relevant to the management and handling of customer accounts and customer account information. The Proposal thus micromanages the Company's fundamental day-to-day decisions and policies and procedures with respect to its customer accounts, customer relations and protecting customer information. As a result, the Proposal may be excluded under Rule 14a-8(i)(7).

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
December 20, 2024
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CONCLUSION

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

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. 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
Paul Chesser, National Legal and Policy Center

EXHIBIT A



September 20, 2024

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

VIA UPS & EMAIL: [REDACTED] bac_corporate_secretary@bofa.com

Dear Mr. Jeffries/Corporate Secretary:

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

National Legal and Policy Center (NLPC) is the beneficial owner of 216 shares of the Company’s common stock with a value exceeding \$2,000, which requisite shares have been held continuously for more than three years prior to, and including, this date of submission. NLPC intends to hold the shares through the date of the Company’s next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value requesting the Board of Directors to issue a report on protecting customers’ civil liberties and privacy. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

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

Nat’l Headquarters: [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

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

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

Sincerely,



Paul Chesser
Director
Corporate Integrity Project

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

Protecting Customers' Civil Liberties and Privacy

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

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

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

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

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

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

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

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

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

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

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



NATIONAL LEGAL AND POLICY CENTER

February 19, 2025

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 the National Legal and Policy Center (“NLPC”)
Securities Exchange Act of 1934—Rule 14a-8

SUBMITTED THROUGH THE SEC ONLINE SHAREHOLDER PORTAL
Reference #611901

Ladies and Gentlemen:

This letter responds to the letter dated December 20, 2024 from Ronald O. Mueller of Gibson, Dunn & Crutcher LLP, counsel for Bank of America Corporation (“BAC” or “Company”), requesting that the Division of Corporation Finance (“Staff”) take no action if the Company excludes our shareholder proposal (“Proposal”) from its proxy materials (“Proxy”) for its 2025 annual shareholder meeting.

The Company’s request provides insufficient justification for exclusion and should be denied no-action relief.

The Company’s excuse to exclude our Proposal from the Proxy – because it “involves matters related to the Company’s ordinary business operations” that “does not focus on any significant policy issue that transcends the Company’s ordinary business operations” – is erroneous. Our following analysis explains why.

First: No backchannel communications

BAC and Mr. Mueller conclude their no-action pleading by stating:

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, sic] assistance in this matter, please do not hesitate to call me at (phone number) or Ross E. Jeffries, Jr., the Company's Corporate Secretary, at (phone number).

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

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

NLPC fully expects Staff to act professionally and transparently with us as proponents, and that no communication will be conducted with the Company or its representatives without complete and contemporaneous disclosure to us. We will seek full legal redress against both the Company and the SEC without such transparency.

‘Precedents’ are irrelevant

The Company and its legal counsel throw voluminous “precedents” against the wall in an attempt to bedazzle the Staff into accepting their premise that those past examples are analogous and/or relevant to NLPC’s Proposal. There is no way of knowing whether the alleged precedents are relevant or not, unless Staff revisits those original decisions to find out what previous Staff reviewers identified as the determining factors in providing no-action relief in those past cases, which *themselves* contain voluminous and far-reaching dubious “precedents.” Alleged “precedent” Staff decisions cited in no-action pleadings *never* identify specific arguments that were persuading factors in their past decisions. Instead, the best proponents and companies can glean is whether Staff “concur” or “do[es] not concur” on the broader premise upon which a Company builds its no-action pleading. Staff *never* specifies which among the many arguments in each pleading convinced them in reaching their decisions, as the Company’s lawyers would lead one to believe.

The vast majority of the Company’s 15 pages of legalese (not including supplemental Exhibit pages) arguing against NLPC’s Proposal are made up of these vague, undetailed and misrepresented “precedents.”

Bottom line: Company lawyers’ “precedents” are irrelevant absent context and a decision-making nexus, and therefore should be disregarded.

The idea that the Proposal doesn’t focus on a significant policy issue that transcends ordinary business operations is absurd

The foundation upon which the Proposal is built is simple and should end the fallacious claim that its premise does not address a significant enough policy issue that transcends ordinary business operations.

The reason? The fact that BAC was the subject of damning findings in a March 6, 2024 report by the U.S. House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (“Weaponization Committee”) *all by itself* elevates the Proposal to “a significant policy issue.”¹ No other debate about it

¹ “FINANCIAL SURVEILLANCE IN THE UNITED STATES: HOW FEDERAL LAW ENFORCEMENT COMMANDEERED FINANCIAL INSTITUTIONS TO SPY ON AMERICANS,” U.S. House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, March 6, 2024. See <https://judiciary.house.gov/sites/evo-subsites/republicans->

should be necessary to establish that point. Nonetheless, to furnish some basic detail as the Proposal cites, the Subcommittee's findings in the 56-page report determined that the Company:

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

Further, as the Proposal cites, officials with the FBI's intelligence and domestic terrorism operations said BAC “data-mined its customer base,” despite no directive from the agency to do so. In other words, the Company provided information that the FBI never asked for.

As if the findings in that March preliminary report were not enough, the Weaponization Committee issued its final report on December 20, 2024, after the submission of NLPC's Proposal to BAC.² The 17,000+-page monstrosity references Bank of America and its questionable – if not unethical and unconstitutional – conduct no less than 367 times. This final report was also released subsequent to the second interim one³ cited by the Company in its no-action pleading (Page 10, Footnote 2), in which it argues a certain helplessness in protecting its customers' data due to the Bank Secrecy Act. The citation, as one would expect, yanks a single quote out of the context of the full 47-page report that condemns BAC's handling of customer privacy and data. The report established a fact pattern which stated that the Company “voluntarily and without legal process, provided the Federal Bureau of Investigation (FBI) with a list of names of all

judiciary.house.gov/files/evo-media-document/How-Federal-Law-Enforcement-Commandeered-Financial-Institutions-to-Spy.pdf.

² “Final Report: The Weaponization of the Federal Government,” U.S. House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, December 20, 2024. See <https://judiciary.house.gov/media/press-releases/final-report-weaponization-federal-government> (links to segments of the report embedded here).

³ “FINANCIAL SURVEILLANCE IN THE UNITED STATES: HOW THE FEDERAL GOVERNMENT WEAPONIZED THE BANK SECRECY ACT TO SPY ON AMERICANS,” U.S. House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, December 6, 2024. See <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-05-Financial-Surveillance-in-the-United-States.pdf>.

individuals who used a [BAC] credit or debit card in the Washington, D.C. region around [Jan. 6, 2021].”

But it’s the final, 17,000+-page Weaponization Committee report – which includes extensive whistleblower testimony – that provides of fuller picture of BAC’s irresponsible handling of its customers’ privacy and data. As just one transcribed excerpt of an interview with retired FBI Supervisory Intelligence Analyst George Hill illustrates:⁴

A. . . . The Bank of America, with no directive from the FBI, data-mined its customer base. And they data-mined a date range of 5 to 7 January [of 2021] any BOA customer who used a BOA product. And by “BOA product,” I mean a debit card or a credit card. They compiled that list. And then, on top of that list, they put anyone who had purchased a firearm during any date. So it was a huge list

Q. Was the list that Bank of America provided targeted just to the D.C. area for those—

A. Yes.

Q. —dates?

A. Just the District and surrounding area, so, like, the NOVA area.

Q. And the surrounding area.

A. Yeah.

Q. And it’s anyone who used a Bank of America either debit or credit card—

A. Right.

Q. —to conduct a transaction.

A. Any transaction. To buy a hotdog. Doesn’t matter.

Q. Okay. And then my understanding is that they created a

⁴ “Final Report,” pgs. 2911-2912.

second list where that first list was prioritized based on individuals that had purchased a firearm?

A. They just basically just built on top of it, anybody who committed a—you know—

Q. A firearm purchase?

A. [T]hese are your priorities, these are your number one individuals that you need to go after. Not only did they use a BOA product in the District, but they've also purchased a firearm at some point in time, any time.

Q. This list was provided then without any legal process to the FBI?

A. Correct.

Thus it is clear that for whatever reason, BAC initiated its own database search of DC-area customer transactions and offered the mined data to the FBI without a subpoena or request. This is clearly outside the scope of the Bank Secrecy Act or any other regulatory law that the Company is subject to. It also exceeds the conduct of BAC's competitors as regards their cooperative actions with federal law enforcement surrounding the Jan. 6, 2021 Capitol incident, as no other financial institution was singled out by the Weaponization Committee for egregious behavior the way BAC was. Without question the Company's actions violated the trust of its customers.

Further, the Weaponization Committee's final report cited at least three instances within the course of one year in which it requested information from BAC Chairman/CEO Brian Moynihan. Then, on November 16, 2023, the Committee finally subpoenaed Mr. Moynihan for documents related to the federal government's financial surveillance practices.

Bank of America didn't care to discuss our Proposal with us, until...

NLPC submitted roughly two dozen shareholder proposals on various topics to mostly Fortune 500 companies for the 2025 proxy season, following our similar volume of submissions in each of the past three years.⁵ Unlike almost every other company where we submitted proposals – nearly all of which acknowledged receipt of our submissions, as well as our proof of stock ownership letters – BAC sent no acknowledgment, confirmation or response to our September 20, 2024 Proposal submission nor our September 26, 2024 broker letter submission. The response was “crickets,” as is often

⁵ See <https://nlpc.org/nlpc-resolutions/>.

described in slang. The only communication we received was a notification that came from the Company's outside law firm, when it filed the no-action request on the Company's behalf.

That changed in late January 2025, however, under curious circumstances.

On January 23, 2025, at the World Economic Forum in Davos, Switzerland (where Mr. Moynihan is an annual attendee), newly inaugurated American President Donald Trump spoke by satellite feed.⁶ With Mr. Moynihan present, President Trump criticized the CEO and his Company for politically-motivated debanking practices, according to FoxBusiness.com:

"You've done a fantastic job," Trump told Moynihan during a question and answer session, "but I hope you start opening your bank to conservatives, because many conservatives complain that the banks are not allowing them to do business within the bank — and that included a place called Bank of America... They don't take conservative business."

"And I don't know if the regulators mandated that because of [President Joe] Biden or what," Trump continued, "But you and [JPMorgan CEO Jamie Dimon] and everybody — I hope you're going to open your banks to conservatives, because what you're doing is wrong."

Moynihan did not respond to Trump's remarks regarding fair banking for conservatives, and instead changed the subject, telling the president that Bank of America looks forward to sponsoring the World Cup when it comes to the U.S.

A Bank of America spokesperson denied the bank has closed accounts for political reasons and said they "welcome conservatives."

"We serve more than 70 million clients and we welcome conservatives," the spokesperson told FOX Business. "We are required to follow extensive government rules and regulations that sometimes result in decisions to exit client relationships. We never close accounts for political reasons and don't have a political litmus test."

President Trump's accusations echoed claims made in a letter sent to Mr. Moynihan by 15 U.S. state attorneys general in April 2024, which detailed numerous examples of BAC discriminating against groups for political or religious reasons;

⁶ Breck Dumas. "Trump confronts Bank of America CEO for not taking 'conservative business'," FoxBusiness.com, Jan. 23, 2025. See <https://www.foxbusiness.com/politics/trump-confronts-bank-america-ceo-not-taking-conservative-business>.

politicizing its services; and a pattern of viewpoint-based debanking.⁷ On February 13, 2025, Mr. Moynihan reportedly met with U.S. senators on Capitol Hill (along with JPMorgan Chase and Co. Chairman/CEO Jamie Dimon) to discuss debanking concerns.⁸

Following President Trump's shaming of BAC and Mr. Moynihan at the World Economic Forum, a week later the Company suddenly wanted to discuss our Proposal with us (see attached Exhibit A). This extremely belated, disingenuous gesture – delivered more than four months after our Proposal submission, well beyond the Securities and Exchange Commission-prescribed 10-30 day window for proponents and companies to discuss proposals, and after being thoroughly ignored by the Company – highlights what a public relations pickle the Company suddenly finds itself in. It also undermines the assertions it has made in its no-action request to Staff.

Because our Proposal submission provided (as the SEC requires) the Company two “specific dates and times” of availability for a discussion within the 10-30 window – while at the same time offering broad availability beyond those “specific dates and times” during those 20 days – we rejected BAC's insincere and untimely request, barring its willingness to withdraw no-action and compliance with the request made in our Proposal.

For their part, BAC's corporate secretary stated that Company representatives “couldn't connect on your timeline in the Fall.” He should understand it's the SEC's designated timeline, not “ours” or “mine.” We followed the rules and guidance and BAC did not. And apparently the multi-billion-dollar Company has unique challenges that prevent their representatives from corresponding or meeting within that SEC-prescribed timeframe – ones that other companies we met with were able to overcome. For example, we had worthwhile meetings to discuss our proposals with Apple, Walmart, JPMorgan Chase and Goldman Sachs (and many others), all of which seemed to easily find time within the 10-30 day time window to conference with us.

Brief rebuttal of all the other BAC no-action claims

The Proposal's “Resolved” statement establishes that its desired result has nothing to do with the contentions made in the Company's no-action pleading. The clause requests:

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

⁷ Kris W. Kobach et al. Letter to Bank of America Chairman/CEO Brian Moynihan, April 15, 2024. See <https://files.constantcontact.com/d3e83e11901/a14941d7-bb75-4789-9730-55e935d4209d.pdf>.

⁸ Chase Williams. “Bank CEOs Dimon and Moynihan deny debanking accusations, admit ‘things can be fixed’,” FoxBusiness.com, Feb. 13, 2025. See <https://www.foxbusiness.com/politics/bank-ceos-dimon-moynihan-deny-debanking-accusations-admit-things-can-fixed>.

personal information.

As Staff should be able to see, the Proposal does not – as the 15-page no-action pleading claims – require the Company to detail or report on “how the Company manages customer relations, customer accounts and customer information.” Without further citing extensively from the no-action pleading, the Proposal only asks for BAC to explain itself in light of the Weaponization Committee’s clearly outlined and detailed conclusions that the Company uniquely handed over customers’ private information without a request from federal authorities, outside the scope of the Bank Secrecy Act or any other regulatory laws that BAC is subject to. For similar reasons the Staff should conclude that the Proposal does not seek to “micromanage” the Company.

Further, Staff should find it noteworthy that the no-action pleading did *not* try to argue the excludable reason that the Proposal’s request would require the Company to break the law – because it doesn’t, of course. Nonetheless one would expect that in BAC’s extensive arguments and efforts to get the Proposal excluded from its proxy statement, that it would also attempt to make the case – considering the numerous regulatory laws potentially in play – that the Proposal would cause such a violation on the Company’s part. Clearly the legal team felt it could not make that case to the Staff.

Conclusion

In past years BAC, when expressing opposition to shareholder proposals in its proxy statements, routinely argues that the proponents’ requests are “unnecessary,” or are too “costly,” or “would not be a productive use of time or effort.”⁹

Yet the Company applies a different standard regarding necessity, costs and productivity when it comes to deploying high-priced law firms to (for example) spend countless billable hours writing 15+-page no-action requests to avoid accountability for actions that Congress has criticized harshly. That’s an expense of time and money – i.e. shareholder assets – that the Board believes is a worthwhile endeavor. Putting the Proposal in the proxy statement and granting three or four minutes for its presentation at the annual meeting – where shareholders could actually learn something about BAC’s questionable activities and then vote on possible action – is without question far cheaper than paying multinational law firm Gibson, Dunn & Crutcher to help the Company evade further scrutiny.

The Company would have been better off utilizing its extensive and expensive legal resources to protect its customers against likely illegal privacy intrusions and providing pre-emptive advice that would have kept BAC out of Congressional investigators’ crosshairs.

Consequently, as outlined above in further explanatory detail omitted by the

⁹ See <https://investor.bankofamerica.com/regulatory-and-other-filings/proxy-statements>.

Office of Chief Counsel
Division of Corporation Finance
February 19, 2025
Page 9

Company in its no-action request, the Proposal is fully compliant with all aspects of Rule 14a-8. For this reason, NLPC asks the Staff to recommend enforcement action should the Company omit the Proposal.

A copy of this correspondence has been timely provided to the Company. If you have any questions or need more information, please feel free to contact me via email at pchesser@nlpc.org or by telephone at (662)374-0175.

Sincerely,

A handwritten signature in black ink that reads "Paul Chesser". The signature is written in a cursive, flowing style.

Paul Chesser
Director
Corporate Integrity Project

Cc: Gibson, Dunn & Crutcher LLP (via shareholderproposals@gibsondunn.com)

EXHIBIT A



Hereich, Tara - Legal

January 30, 2025 at 2:25 PM

Request for engagement on shareholder proposal

[Hide](#)

To: Paul Chesser,

Cc: Luke Perlot, Ross Jeffries - Bank of America Shareholder Relations - Legal, Chang, Gale - Legal, Hereich, Tara - Legal



Siri Found a Contact
Hereich, Tara - Legal

Add



Dear Mr. Chesser,

We received your letter and shareholder proposal for inclusion in Bank of America's proxy statement for the 2025 annual meeting. We'd like to meet with you to better understand your views and share our perspective on this proposal. Regrettably, the time windows that you proposed in your letter did not align with our schedules. Please let us know if you are available for a 30-minute teleconference during the following potential windows:

Thursday, February 6: 1:30-2pm ET

Wednesday, February 12: 1:30-3pm ET

Thursday, February 13: 1-4pm ET

Kind regards,
Tara

Tara M. Hereich

Associate General Counsel
Bank of America | Legal Department
114 West 47th Street | New York, NY 100



January 31, 2025 at 8:17 AM



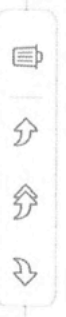
Paul Chesser

Re: Request for engagement on shareholder proposal

To: Hereich, Tara - Legal,

Cc: Luke Perlot, Ross Jeffries - Bank of America Shareholder Relations - Legal, Chang, Gale - Legal,

[Redacted]



Tara, Ross, Gale,

Considering it has been more than four months since our Sept. 20 proposal submission and that your team made no effort to confirm receipt of the proposal, nor our proof of stock ownership letter, with us only receiving notification of your outside lawyer's no-action filing — nor was there any effort to schedule a discussion within the SEC-prescribed 10-30 window for such meetings, despite our offer of broad availability during that timeframe — we view your sudden request for a conversation about the proposal as disrespectful and disingenuous, and likely driven by new U.S. political leadership and the shaming of Mr. Moynihan at the World Economic Forum.

We're very busy at this stage preparing for proxy season and are not interested in discussing the proposal unless you are ready to inform us that Bank of America plans to withdraw its no-action request and will fully comply with the terms of our proposal request.

Sincerely,

Paul

Paul Chesser
Director, Corporate Int
National Legal and Policy Center

Project

<https://www.nlpc.org/corporate-integrity-project/>



Jeffries, Ross E. - Legal

February 1, 2025 at 8:47PM

FW: Request for engagement on shareholder proposal

[Details](#)

To: Paul Chesser, Cc: Chang, Gale - Legal, Hereich, Tara - Legal

Hi Paul – no disrespect was intended! As we get ready to send the Statements in Opposition, we're reaching out to proponents now to check availability for engagement. Sorry we couldn't connect on your timeline in the Fall, but thanks for letting us know you're not available for a meeting at this time.

**I hope you're well,
Ross**

Ross E. Jeffries, Jr.

Deputy General Counsel and Corporate Secretary

Bank of America Corporation

100 N. Tryon Street

NC1-007-56-06

Charlotte, NC 28255