



DIVISION OF
CORPORATION FINANCE

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

February 20, 2024

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Bank of America Corporation (the "Company")
Incoming letter dated December 11, 2023

Dear Ronald O. Mueller:

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

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(i). As required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the Proponent failed to adequately correct it. When submitting a revised proposal "[a] shareholder must prove ownership as of the date the original proposal is submitted." Staff Legal Bulletin 14F (Oct. 18, 2011). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rules 14a-8(b)(1)(i) and 14a-8(f).

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

Sincerely,

Rule 14a-8 Review Team

cc: Luke Perlot
National Legal and Policy Center

December 11, 2023

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
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Bank of America Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof 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 2024 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-

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8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information.

BACKGROUND

The Proposal was submitted to the Company by Luke Perlot on behalf of the Proponent on October 19, 2023 (the "Submission Date") via email and UPS and received by the Company on October 19, 2023. *See Exhibit A.* Mr. Perlot's submission did not include any documentary evidence of the Proponent's ownership of Company shares. Subsequently, on October 26, 2023, Mr. Perlot submitted and the Company received a revised version of the Proposal via email and explained that the attachment to his correspondence was "an amended version of the Proposal that was previously submitted by NLPC on October 19, 2023. This version reflects a corrected editorial error." *See Exhibit B.* On October 30, 2023, Mr. Perlot submitted a letter from Fidelity Investments ("Fidelity") dated October 26, 2023 (the "Fidelity Letter") via email, stating that the Proponent's Fidelity account "currently holds 166.000 shares of Bank of America (BAC) CUSIP: 060505104 and has held these securities for at least three years" and that the "letter contains information as of close of business on October 26, 2023." *See Exhibit C.* The Proponent did not include any additional documentary evidence of ownership of Company shares for the three years¹ preceding and including the Submission Date. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares.

Accordingly, the Company properly sought verification of stock ownership and other documentary support from the Proponent. Specifically, the Company sent the Proponent a letter, dated November 2, 2023, identifying a proof of ownership deficiency, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiencies identified (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit D, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), and attached a copy of Rule 14a-8, Staff Legal Bulletin No. 14 (Jul. 13, 2001) ("SLB 14"), SLB 14F and SLB 14L. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient Company shares;

¹ The 166 shares referenced in the Fidelity Letter had a market value of less than \$5,000 at the relevant time.

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- the specific defects in the Fidelity Letter, including that “[t]he October 26, 2023 letter from Fidelity Investments that you provided is insufficient because it verifies ownership of 166 of the Company’s shares as of October 26, 2023 and states that the Proponent has held Company securities for ‘at least three years,’ but does not verify ‘continuous’ ownership for any of the full time periods, to and including the Submission Date (October 19, 2023), set forth in any of the [o]wnership [r]equirements above. To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying its continuous ownership of sufficient Company shares to satisfy at least one of the [o]wnership [r]equirements for the requisite period preceding and including the Submission Date”;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including “a written statement from the ‘record’ holder of the Proponent’s shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the [o]wnership [r]equirements” of Rule 14a-8(b); and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Company sent the Deficiency Notice to the Proponent via email and overnight delivery on November 2, 2023, which was within 14 calendar days of the Company’s receipt of the Proposal. *See Exhibit D.* On November 3, 2023, Mr. Perlot responded to the Deficiency Notice via email stating “[p]lease find cover letter and enclosed Fidelity investments shareholder verification letter responding to your letter alleging deficiency in our proposal submitted on Oct. 19 for consideration at the 2024 annual shareholder meeting.” *See Exhibit E.*

Attached to Mr. Perlot’s November 3, 2023 email was a cover letter from Mr. Perlot and the Fidelity Letter that Mr. Perlot previously provided on October 30, 2023 (together, the “Deficiency Notice Response”). *See Exhibit E.* As discussed below, the Fidelity Letter is insufficient to cure the ownership deficiency because it does not verify that as of the Submission Date the Proponent had satisfied any of the continuous ownership requirements of Rule 14a-8(b)(1) for any of the full time periods set forth in the rule. As of the date of this letter, the Company has not received any further proof of ownership from the Proponent.

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ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish Eligibility To Submit The Proposal Despite Proper Notice.

A. Rule 14a-8(b)(1)

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal, a shareholder proponent must have continuously held:

- (A) at least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years preceding and including the Submission Date;
- (B) at least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years preceding and including the Submission Date; or
- (C) at least \$25,000 in market value of the company's shares entitled to vote on the proposal for at least one year preceding and including the Submission Date.

Each of these ownership requirements were specifically described by the Company in the Deficiency Notice.

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. SLB 14 specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

SLB 14F provides that proof of ownership letters may fail to satisfy Rule 14a-8(b)(1)'s requirement if they do not verify ownership "for the entire one-year period preceding and including the date the proposal [was] submitted." This may occur if the letter verifies ownership as of a date before the submission date (leaving a gap between the verification date and the submission date) or if the letter verifies ownership as of a date after the submission date and only covers a one-year period, "thus failing to verify the [stockholder's] beneficial

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ownership over the required full one-year period preceding the date of the proposal's submission." SLB 14F. The guidance in SLB 14F remains applicable even though Rule 14a-8 has since been amended to provide the tiered ownership thresholds described above. In each case, consistent with the Staff's guidance in SLB 14F and as required by Rule 14a-8(b), a shareholder proponent must submit adequate proof demonstrating such proponent's continuous ownership of the requisite amount of company shares for the requisite time period. In SLB 14L, the Staff reminded companies that they "should identify any specific defects in the proof of ownership letter."

As discussed in the "Background" section above, the Fidelity Letter did not contain adequate documentary evidence of the Proponent's continuous ownership of Company shares for any of the requisite time periods set forth in Rule 14a-8(b), and the Proposal may therefore be excluded. Accordingly, the Company timely provided the Deficiency Notice, which identified the specific defects in the Proponent's proof of ownership submission, and described how the deficiencies could be remedied. Thereafter, the Proponent failed to timely correct the deficiency.

B. The Fidelity Letter Fails To Cure The Deficiency Because The Fidelity Letter Fails To Demonstrate Continuous Ownership Cf Company Shares For The Requisite Period

The Fidelity Letter that Mr. Perlot provided twice, including in response to the Deficiency Notice, is insufficient because it fails to demonstrate that as of the Submission Date, October 19, 2023, the Proponent had held sufficient shares for any of the requisite time periods required by Rule 14a-8(b). Specifically, the Fidelity Letter, dated October 26, 2023, only demonstrates that "as of close of business on October 26, 2023," the Proponent held "166.000 shares of Bank of America (BAC) CUSIP: 060505104 and has held these securities for at least three years." See Exhibit E. The 166 shares referenced in the Fidelity Letter had a market value of less than \$5,000 at the relevant time. Accordingly, the Proponent would have needed to demonstrate that it had held those shares for at least three years preceding and including the Submission Date (October 19, 2023). The Fidelity Letter fails to establish ownership of such shares for at least three years as of the Submission Date, as required under Rule 14a-8(b)(i)(C).

Although Mr. Perlot submitted revisions to the Proposal on October 26, 2023 that were intended to "correct[] editorial error," the submission of those revisions does not change the date as of which the Proponent must demonstrate sufficient ownership under Rule 14a-8(b). The Staff made clear in SLB 14F that when a proponent submits revisions to a proposal, "[the] shareholder must prove ownership as of the date the original proposal is submitted." SLB 14F (emphasis added). Accordingly, the Proponent was required to demonstrate that as of the

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Submission Date, October 19, 2023, the Proponent had held sufficient shares for any of the requisite time periods required by Rule 14a-8(b). The Deficiency Notice specifically states that the Submission Date was October 19, 2023 and that the Fidelity Letter “does not verify ‘continuous’ ownership for any of the full time periods, to and including the Submission Date (October 19, 2023)” set forth in Rule 14a-8(b)(1).

The Staff has consistently concurred with the exclusion of proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) where, after receiving proper notice from a company, the proof of ownership submitted failed to establish that as of the date the shareholder submitted the proposal the shareholder had continuously held the requisite amount of company securities for the entire required period. For example, in *AT&T Inc. (Lawrence)* (avail. Dec. 23, 2020), the proponents submitted the proposal on October 24, 2020 and, following the company’s delivery of a deficiency notice, provided a broker letter that established continuous ownership of company securities for “more than one year” as of November 9, 2020 (leaving an ownership gap of 16 days from October 24, 2019 to November 8, 2019). The Staff concurred with exclusion of the proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). Likewise, in *Starbucks Corp.* (avail. Dec. 11, 2014), the proponent submitted the proposal on September 24, 2014 and provided a broker letter that established continuous ownership of company securities for one year as of September 26, 2014 (leaving a two day ownership gap). The Staff, in concurring with exclusion, noted that “the proponent appears to have failed to supply...documentary support sufficiently evidencing that it satisfied the minimum ownership requirements” for the required minimum period.²

Here, and consistent with the foregoing precedent, the Fidelity Letter is clearly deficient because it leaves a gap (from October 19, 2020 to October 25, 2020) by addressing ownership of Company shares dating back only to October 26, 2020, when the Proposal was submitted on October 19, 2023 (and thus pursuant to Rule 14a-8(b)(i)(C) needed to cover a period of no less than three years prior to and including October 19, 2023)—a gap in ownership similar to the

² See also *Amazon.com, Inc. (Montgomery Trusi)* (avail. Apr. 2, 2021) (concurring with the exclusion of a proposal where the proponent’s purported proof of ownership covered the 13-month period prior to and including November 30, 2020, but the proposal was submitted on December 17, 2020, leaving a 17-day gap in ownership); *Anthem, Inc.* (avail. Feb. 21, 2019) (concurring with the exclusion of a proposal where the proponent’s purported proof of ownership covered the one-year period prior to and including November 7, 2018, but the proposal was submitted on November 13, 2019, leaving a 6-day gap in ownership); *Mondelēz International, Inc.* (avail. Feb. 11, 2014) (concurring with the exclusion of a proposal where the proponent’s purported proof of ownership covered the one-year period prior to and including November 27, 2013, but the proposal was submitted on November 29, 2013, leaving a two-day gap in ownership); *PepsiCo, Inc. (Alberi)* (avail. Jan. 10, 2013) (concurring with the exclusion of a proposal where the proponent’s purported proof of ownership covered the one-year period prior to and including November 19, 2012, but the proposal was submitted on November 20, 2012).

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gap in *AT&T (Lawrence)* and a greater gap in ownership than the two-day gap in *Starbucks Corp.*

It is well established that where a company provides proper notice of a procedural defect to a proponent and the proponent's response fails to cure the defect, the company is not required to provide any further opportunities for the proponent to cure. In fact, Section C.6. of SLB 14 states that a company may exclude a proposal pursuant to Rule 14a-8 if "the shareholder timely responds but does not cure the eligibility or procedural defect(s)." While SLB 14L suggests that there may be situations where the Staff considers it appropriate for a company to provide a second deficiency notice, the language of SLB 14L indicates that this situation is limited to when a company "sen[ds] a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s)." SLB 14L. In the present case, the Deficiency Notice was sent after first receiving the Fidelity Letter, and both identified the specific defects in the Fidelity Letter and provided clear and detailed instructions on the ownership requirements under Rule 14a-8(b) and on how to cure the defect. See Exhibit D. The Proponent specifically acknowledged receipt of the Deficiency Notice. See Exhibit E. As such, the Deficiency Notice identified the specific defects in the Proponent's proof of ownership, and therefore the Company has complied with both the letter and spirit of the Staff's guidance in SLB 14L. In this respect, the situation is comparable to that addressed in *Bank of America Corp. (National Center for Public Policy Research)* (avail. Jan. 23, 2023), where the Staff concurred in exclusion of a proposal when a deficiency notice was sent after receiving a broker letter that failed to adequately establish the proponent's proof of ownership, and the Company's deficiency notice identified the specific defects in the proponent's proof of ownership and provided clear and detailed instructions on the ownership requirements under Rule 14a-8(b) and on how to cure the defect.

As in the precedent cited above, the Proponent failed to provide adequate documentary evidence of ownership of Company shares. Therefore, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Proposal. Accordingly, we ask that the Staff concur that the Company may excluded the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further

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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,

A handwritten signature in blue ink, appearing to read "Ronald O. Mueller".

Ronald O. Mueller

Enclosures

cc: Luke Perlot, National Legal and Policy Center

EXHIBIT A

From: Luke Perlot [REDACTED]@nlpc.org>

Date: Thursday, Oct 19, 2023 at 2:08 PM

To: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>, Ross Jeffries - Bank of America Corporate Secretary <bac_corporate_secretary@bofa.com>

Cc: Paul Chesser <[REDACTED]@nlpc.org>, Peter Flaherty <[REDACTED]@nlpc.org>

Subject: Shareholder proposal for 2024 annual meeting

Dear Mr. Jeffries/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at The Bank of America Corporation's 2024 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Best regards,

Luke Perlot
Associate Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]



NATIONAL LEGAL AND POLICY CENTER

October 19, 2023

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: ross.jeffries@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 166 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 conduct an audit that analyzes the impacts, both adverse and beneficial, of BAC’s climate transition policies regarding the economic and humanitarian effects on emerging nations. 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 any business day Monday through Friday between October 30 and November 20, between the hours of 9:00 a.m. and 5:00 p.m. in the Eastern Time Zone (U.S.). I can be reached at [REDACTED] or at [REDACTED]@nlpc.org.

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a “no-action” letter should be forwarded to me via email or sent to my attention at [REDACTED]

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

Phone: [REDACTED] Email: [REDACTED]@nlpc.org

Sincerely,

A handwritten signature in black ink, appearing to read "L Perlot". The signature is fluid and cursive, with the first letter "L" being particularly large and stylized.

Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: "Humanitarian Risks Due to Climate
Change Policies" proposal

Humanitarian Risks Due to Climate Change Policies

WHEREAS: The global energy crisis has focused the public's and policy makers' attention on the effects from rising energy prices. Russia's invasion of Ukraine is partially to blame, but the haphazard worldwide transition to so-called¹ "green" energy has arguably inflicted greater harm via toxic pollution and energy prices:²

- According to Fatih Birol, Executive Director of the International Energy Agency (IEA), developing nations are the most vulnerable to rising fossil fuel prices.³ "Birol said those who will be hit hardest include oil-importing nations in Africa, Asia and Latin America because of higher import prices and their weaker currencies."
- 760 million people, primarily in Africa and Asia, still don't have access to electricity, according to the IEA.⁴
- Reduced investment in fossil fuels disproportionately impacts the poor. "Reducing poverty is not feasible without access to cheap and reliable energy."⁵
- High economic growth is necessary to fund clean energy technology in developing nations. "Given such high growth can't be met easily by zero-carbon solutions, their emissions will need to rise in the short run."⁶
- ...represent potential sources of business growth—or decline—for Bank of America Corporation ("BAC" or "Company") and the global economy.

SUPPORTING STATEMENT: BAC has made energy transition policies integral to its lending and underwriting activities:

- BAC's Approach to Zero strategy outlines the firm's commitment to reaching net zero greenhouse gas emissions by 2050, in accordance with the Paris Climate Agreement.⁷
- BAC aims to mobilize \$1.5 trillion in sustainable finance by 2030.⁸
- BAC led the world in ESG debt issuance volume in 2022.
- BAC "has reduced its overall fossil fuel financing from slightly over \$39 billion in 2016 to slightly less than \$32 billion in 2021, a greater decline in funding than its peers."⁹

¹ <https://www.dailymail.co.uk/sciencetech/article-12545855/Devastating-transition-green-energy-metal-mining-23-million-people-toxic-waste-rivers-polluted-farmland.html>

² <https://www.wsj.com/articles/americas-new-energy-crisis-11659153633>

³ <https://www.cnbc.com/2022/10/26/iea-developing-nations-the-number-one-casualty-of-the-energy-crisis.html>

⁴ <https://www.iea.org/reports/sdg7-data-and-projections/access-to-electricity>

⁵ <https://thebreakthrough.org/journal/no-16-spring-2022/let-them-eat-carbon>

⁶ <https://www.brookings.edu/articles/it-is-unfair-to-push-poor-countries-to-reach-zero-carbon-emissions-too-early/>

⁷ <https://about.bankofamerica.com/content/dam/about/pdfs/approach-to-zero-2022.pdf>

⁸ <https://about.bankofamerica.com/en/making-an-impact/sustainable-finance>

⁹ <https://greenportfolio.com/blog/top-fossil-fuel-financier-bank-of-america/>

BAC's climate policies appear to conflict with its commitment to the United Nations' sustainable development goals (SDGs),¹⁰ especially the first goal of "no poverty."¹¹

RESOLVED: Shareholders request the Board of Directors to oversee an audit that analyzes the impacts, both adverse and beneficial, of BAC's climate transition policies regarding the economic and humanitarian effects on emerging nations, which rely heavily on – but have limited access to – fossil fuels and other non-“renewable” sources of power, such as nuclear. Perspectives from a full spectrum of respected economists, nongovernmental organizations, research firms, and public-interest groups could be considered. BAC should avoid one-sided political or viewpoint bias, with the auditor consulting specialists across a range of stances – including those who may rebut prevailing corporate media- and government-driven narratives on climate and energy. Among perspectives that may be considered include experts such as Alex Epstein, Michael Shellenberger, Bjorn Lomborg, Robert Bryce, Roy Spencer, John Christy, Roger Pielke, Jr., Richard Lindzen, and others.

A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be published on BAC's website.

¹⁰ <https://about.bankofamerica.com/en/making-an-impact/sustainable-finance>

¹¹ <https://sdgs.un.org/goals>

EXHIBIT B

From: Luke Perlot <[REDACTED]@nlpc.org>
Sent: Thursday, October 26, 2023 4:15 PM
To: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>; Ross Jeffries - Bank of America Corporate Secretary <bac_corporate_secretary@bofa.com>
Cc: Paul Chesser <[REDACTED]@nlpc.org>
Subject: Amended shareholder proposal for 2024 annual meeting

Dear Mr. Jeffries/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at The Bank of America Corporation's 2024 annual shareholder meeting.

The Proposal is an amended version of the Proposal that was previously submitted by NLPC on October 19, 2023. This version reflects a corrected editorial error.

If you could confirm receipt of this, I would appreciate it.

Best regards,

Luke Perlot
Associate Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]



NATIONAL LEGAL AND POLICY CENTER

October 26, 2023

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: ross.jeffries@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.

The Proposal is an amended version of the Proposal that was previously submitted by NLPC on October 19, 2023. This version reflects a corrected editorial error.

National Legal and Policy Center (NLPC) is the beneficial owner of 166 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 by requesting the Board of Directors to conduct an audit that analyzes the impacts, both adverse and beneficial, of BAC’s climate transition policies regarding the economic and humanitarian effects on emerging nations. 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 any business day Monday through Friday between November 6 and November 21, between the hours of 9:00 a.m. and 5:00 p.m. in the Eastern Time Zone (U.S.). I can be reached at [REDACTED] or at [REDACTED]@nlpc.org.

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

Phone: [REDACTED] Email: [REDACTED]@nlpc.org

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a “no-action” letter should be forwarded to me via email or sent to my attention at [REDACTED]

Sincerely,

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Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: “Humanitarian Risks Due to Climate Change Policies” proposal

Humanitarian Risks Due to Climate Change Policies

WHEREAS: The global energy crisis has focused the public's and policy makers' attention on the effects from rising energy prices. Russia's invasion of Ukraine is partially to blame, but the haphazard worldwide transition to so-called¹ "green" energy has arguably inflicted greater harm via toxic pollution and energy prices:²

- According to Fatih Birol, Executive Director of the International Energy Agency (IEA), developing nations are the most vulnerable to rising fossil fuel prices.³ "Birol said those who will be hit hardest include oil-importing nations in Africa, Asia and Latin America because of higher import prices and their weaker currencies."
- 760 million people, primarily in Africa and Asia, still don't have access to electricity, according to the IEA.⁴
- Reduced investment in fossil fuels disproportionately impacts the poor. "Reducing poverty is not feasible without access to cheap and reliable energy."⁵
- High economic growth is necessary to fund clean energy technology in developing nations. "Given such high growth can't be met easily by zero-carbon solutions, their emissions will need to rise in the short run."⁶
- Developing nations represent potential sources of business growth—or decline—for Bank of America Corporation ("BAC" or "Company") and the global economy.

SUPPORTING STATEMENT: BAC has made energy transition policies integral to its lending and underwriting activities:

- BAC's Approach to Zero strategy outlines the firm's commitment to reaching net zero greenhouse gas emissions by 2050, in accordance with the Paris Climate Agreement.⁷
- BAC aims to mobilize \$1.5 trillion in sustainable finance by 2030.⁸
- BAC led the world in ESG debt issuance volume in 2022.
- BAC "has reduced its overall fossil fuel financing from slightly over \$39 billion in 2016 to slightly less than \$32 billion in 2021, a greater decline in funding than its peers."⁹

¹ <https://www.dailymail.co.uk/sciencetech/article-12545855/Devastating-transition-green-energy-metal-mining-23-million-people-toxic-waste-rivers-polluted-farmland.html>

² <https://www.wsj.com/articles/americas-new-energy-crisis-11659153633>

³ <https://www.cnbc.com/2022/10/26/iea-developing-nations-the-number-one-casualty-of-the-energy-crisis.html>

⁴ <https://www.iea.org/reports/sdg7-data-and-projections/access-to-electricity>

⁵ <https://thebreakthrough.org/journal/no-16-spring-2022/let-them-eat-carbon>

⁶ <https://www.brookings.edu/articles/it-is-unfair-to-push-poor-countries-to-reach-zero-carbon-emissions-too-early/>

⁷ <https://about.bankofamerica.com/content/dam/about/pdfs/approach-to-zero-2022.pdf>

⁸ <https://about.bankofamerica.com/en/making-an-impact/sustainable-finance>

⁹ <https://greenportfolio.com/blog/top-fossil-fuel-financier-bank-of-america/>

BAC's climate policies appear to conflict with its commitment to the United Nations' sustainable development goals (SDGs),¹⁰ especially the first goal of "no poverty."¹¹

RESOLVED: Shareholders request the Board of Directors to oversee an audit that analyzes the impacts, both adverse and beneficial, of BAC's climate transition policies regarding the economic and humanitarian effects on emerging nations, which rely heavily on – but have limited access to – fossil fuels and other non-“renewable” sources of power, such as nuclear. Perspectives from a full spectrum of respected economists, nongovernmental organizations, research firms, and public-interest groups could be considered. BAC should avoid one-sided political or viewpoint bias, with the auditor consulting specialists across a range of stances – including those who may rebut prevailing corporate media- and government-driven narratives on climate and energy. Among perspectives that may be considered include experts such as Alex Epstein, Michael Shellenberger, Bjorn Lomborg, Robert Bryce, Roy Spencer, John Christy, Roger Pielke, Jr., Richard Lindzen, and others.

A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be published on BAC's website.

¹⁰ <https://about.bankofamerica.com/en/making-an-impact/sustainable-finance>

¹¹ <https://sdgs.un.org/goals>

EXHIBIT C

From: Luke Perlot [REDACTED]@nlpc.org>

Date: Monday, Oct 30, 2023 at 5:56 PM

To: Jeffries, Ross E. - Legal <ross.jeffries@bofa.com>, Ross Jeffries - Bank of America Corporate Secretary <bac_corporate_secretary@bofa.com>

Cc: Paul Chesser [REDACTED]@nlpc.org>

Subject: Proof of Ownership

Dear Mr. Jeffries/Corporate Secretary:

As promised, this letter follows up to our Oct. 26, 2023 submission of our shareholder proposal for Bank of America Corporation's 2024 Annual Shareholder Meeting. I have attached a verification letter from Fidelity Investments of our holdings.

I can be reached at [REDACTED] or at [REDACTED]@nlpc.org if you have any further questions. Further correspondence can also be sent to me at [REDACTED].

Best regards,
Luke



NATIONAL LEGAL AND POLICY CENTER

October 30, 2023

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: ross.jeffries@bofa.com

Dear Mr. Jeffries/Corporate Secretary:

As promised, this letter follows up to our Oct. 26, 2023 submission of our shareholder proposal for Bank of America Corporation's 2024 Annual Shareholder Meeting. I have attached a verification letter from Fidelity Investments of our holdings.

I can be reached at [REDACTED] or at [REDACTED]@nlpc.org if you have any further questions. Further correspondence can also be sent to me at [REDACTED]

Sincerely,

Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: "Enclosure: Fidelity Investments
shareholder verification letter" proposal

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

Phone: [REDACTED] Email: [REDACTED]

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045



NATIONAL LEGAL AND POLICY CTR
107 PARK WASHINGTON CT
FALLS CHURCH, VA 22046-4519

October 26, 2023

Dear Corporate Secretary at Bank Of America:

Thank you for contacting Fidelity Investments in regards to holdings verification for National Legal and Policy Center's account ending in [PII]. I appreciate the opportunity to assist you.

Please accept this letter as verification that the referenced account currently holds 166,000 shares of Bank of America (BAC) CUSIP: 060505104 and has held these securities for at least three years.

In addition, National Financial Services LLC is a subsidiary of Fidelity Investments and Fidelity's DTC number is 0226.

Please note that this letter contains information as of close of business on October 26, 2023, and can be subject to change pending any new and subsequent transactions in the same securities. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

I hope this information is helpful. For any other issues or general inquiries, please contact a Fidelity representative at 800-544-6666. Thank you for choosing Fidelity Investments.

Sincerely,

A handwritten signature in cursive script that reads "Monica Chao".

Monica Chao
Personal Investing Operations

Our File: W388678-24OCT23

EXHIBIT D

From: [Walter, Geoffrey E.](#)
To: [\[REDACTED\]@nlpc.org](#)
Subject: Bank of America (National Legal and Policy Center) Correspondence
Date: Thursday, November 2, 2023 5:07:41 PM
Attachments: [Bank of America \(National Legal and Policy Center\) Correspondence.pdf](#)

Mr. Perlot,

Attached on behalf of our client, Bank of America Corporation, please find our notice of deficiency with respect to the shareholder proposal you submitted on behalf of the National Legal and Policy Center. A copy of this letter also was sent to you via UPS overnight delivery.

We would appreciate you kindly confirming receipt of this correspondence.

Sincerely,

Geoffrey Walter

Geoffrey E. Walter
[Associate Attorney](#)

T: [+1 202.887.3749](tel:+12028873749)
GWalter@gibsondunn.com

GIBSON DUNN
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, D.C. 20036-5306

November 2, 2023

VIA OVERNIGHT MAIL AND EMAIL

Luke Perlot
National Legal and Policy Center



Dear Mr. Perlot:

I am writing on behalf of Bank of America Corporation (the “**Company**”), which received on October 19, 2023 the shareholder proposal entitled “Humanitarian Risks Due to Climate Change Policies” that you submitted for inclusion in the proxy statement for the Company’s 2024 Annual Meeting of Shareholders on behalf of the National Legal and Policy Center (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 (the “**Proposal**”). The Proposal was originally submitted to the Company via email on October 19, 2023 (the “**Submission Date**”) and was subsequently revised to correct an editorial error via correspondence dated and received on October 26, 2023.

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention and which you and the Proponent should correct as described below if the Company is to consider the Proponent to have properly submitted the Proposal.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an “**Ownership Requirement**,” and collectively, the “**Ownership Requirements**”).

The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date the Company has not received adequate proof that the Proponent has satisfied any of the Ownership Requirements.

Mr. Luke Perlot
November 2, 2023
Page 2

The October 26, 2023 letter from Fidelity Investments that you provided is insufficient because it verifies ownership of 166 of the Company's shares as of October 26, 2023 and states that the Proponent has held Company securities for "at least three years," but does not verify "continuous" ownership for any of the full time periods, to and including the Submission Date (October 19, 2023), set forth in any of the Ownership Requirements above. To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying its continuous ownership of sufficient Company shares to satisfy at least one of the Ownership Requirements for the requisite period preceding and including the Submission Date.

As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("**DTC**"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>. If a shareholder's shares are held through DTC, the shareholder needs to obtain and submit to the Company proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to obtain and submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to obtain and submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

In addition, Rule 14a-8(b)(1)(iii) of the Exchange Act requires a shareholder to provide the company with a written statement that it is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal, including the shareholder's contact information and the business days and specific times during the company's regular business hours that such shareholder is available to discuss the proposal with the company. In this regard, we believe the general statement you provided that the Proponent is available "any business day Monday through Friday between November 6 and November 21, between the hours of 9:00 a.m. and 5:00 p.m. in the Eastern Time Zone (U.S.)" is not adequate because the statement does not include the *spec.fic dates* and *spec.fic times* the Proponent is available to meet.¹ Accordingly, to remedy these defects, you or the Proponent must provide a statement of the Proponent's engagement availability that includes the *spec.fic dates* and *spec.fic times* that the Proponent is available during the period between 10 and 30 days after the Submission Date.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 1050 Connecticut Avenue N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at rmueller@gibsondunn.com. Please note that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

¹ See *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, SEC Release No. 34-89964, 51 (Sept. 23, 2020) (indicating that a general statement of the stockholder-proponent's availability is insufficient for purposes of compliance with Rule 14a-8(b)(iii) and that "the identification of *spec.fic dates* and *times* would add certainty as to the shareholder-proponent's availability") (emphasis added).

Mr. Luke Perlot
November 2, 2023
Page 4

If you have any questions with respect to the foregoing, please contact me at 202-955-8500. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Ronald O. Mueller

Enclosures

EXHIBIT E

From: [Luke Perlot](#)
To: [Walter, Geoffrey E.](#); [Mueller, Ronald O.](#); [ross.jeffries](#); [bac_corporate_secretary](#)
Subject: Re: Bank of America (National Legal and Policy Center) Correspondence
Date: Friday, November 3, 2023 1:09:03 PM
Attachments: [Bank of America Deficiency Response 2024.pdf](#)

[WARNING: External Email]

Mr. Walter/Mr. Mueller,

Please find cover letter and enclosed Fidelity investments shareholder verification letter responding to your letter alleging deficiency in our proposal submitted on Oct. 19 for consideration at the 2024 annual shareholder meeting.

Best regards,
Luke

From: Geoffrey <GWalter@gibsondunn.com>
To: lperlot [REDACTED]@nlpc.org>
Date: Thursday, 2 November 2023 5:08 PM EDT
Subject: Bank of America (National Legal and Policy Center) Correspondence

Mr. Perlot,

Attached on behalf of our client, Bank of America Corporation, please find our notice of deficiency with respect to the shareholder proposal you submitted on behalf of the National Legal and Policy Center. A copy of this letter also was sent to you via UPS overnight delivery.

We would appreciate you kindly confirming receipt of this correspondence.

Sincerely,

Geoffrey Walter

Geoffrey E. Walter
[Associate Attorney](#)

T: +1 202.887.3749
GWalter@gibsondunn.com

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, D.C. 20036-5306

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NATIONAL LEGAL AND POLICY CENTER

November 3, 2023

Mr. Ronald O. Mueller
Legal Counsel, Bank of America Corporation
Gibson, Dunn, & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

VIA EMAIL: GWalter@gibsondunn.com, RMueller@gibsondunn.com,
ross.jeffries@bofa.com, bac_corporate_secretary@bofa.com

Dear Mr. Mueller:

This letter responds to your November 2 letter alleging a deficiency in our October 19, 2023 submission and October 26, 2023 correction of our "Humanitarian Risks Due to Climate Change Policies" proposal.

I have attached a verification letter from Fidelity Investments of our holdings. In addition, I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal on November 6 at 9 AM EST, November 7 at 9 AM EST, November 8 at 9 AM EST, November 9 at 9 AM EST, November 10 at 9 AM EST, November 13 at 9 AM EST, November 14 at 9 AM EST, November 15 at 9 AM EST, November 16 at 9 AM EST, November 17 at 9 AM EST, November 20 at 9 AM EST, and November 21 at 9 AM EST.

I can be reached at [REDACTED] or at [REDACTED] if you have any further questions. Further correspondence can also be sent to me at [REDACTED]

Sincerely,

Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: Fidelity Investments shareholder
verification letter

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

Phone: [REDACTED] Email: [REDACTED]@nlpc.org

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045



NATIONAL LEGAL AND POLICY CTR
107 PARK WASHINGTON CT
FALLS CHURCH, VA 22046-4519

October 26, 2023

Dear Corporate Secretary at Bank Of America:

Thank you for contacting Fidelity Investments in regards to holdings verification for National Legal and Policy Center's account ending in **PII** 7. I appreciate the opportunity to assist you.

Please accept this letter as verification that the referenced account currently holds 166.000 shares of Bank of America (BAC) CUSIP: 060505104 and has held these securities for at least three years.

In addition, National Financial Services LLC is a subsidiary of Fidelity Investments and Fidelity's DTC number is 0226.

Please note that this letter contains information as of close of business on October 26, 2023, and can be subject to change pending any new and subsequent transactions in the same securities. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

I hope this information is helpful. For any other issues or general inquiries, please contact a Fidelity representative at 800-544-6666. Thank you for choosing Fidelity Investments.

Sincerely,

A handwritten signature in cursive script that reads "Monica Chao".

Monica Chao
Personal Investing Operations

Our File: W388678-24OCT23



December 21, 2023

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

Ladies and Gentlemen:

This letter responds to the letter dated December 11, 2023 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 2024 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 we “failed to provide the requisite proof of continuous stock ownership in response to the Company’s proper request for that information” – is erroneous. Indeed, we *did* provide the requisite proof of continuous stock ownership in response to the Company’s request.

Following I will address Mr. Mueller’s point of objection to our Proposal submission.

NLPC did provide the Company with requisite proof of continuous stock ownership, thus, the Proposal should NOT be excluded from its Proxy under Rule 14a-8(b)

In its letter requesting no-action, the Company contends that the written statement from our broker – verifying that NLPC had continuously held 166,000 shares of the Company’s common stock for greater than three years at the time of the proposal – is noncompliant with Rule 14a-8(b). The no-action request states:

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

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

“Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal, a shareholder proponent must have continuously held:

- (A) at least \$2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years preceding and including the Submission Date;
- (B) at least \$15,000 in market value of the company’s securities entitled to vote on the proposal for at least two years preceding and including the Submission Date; or
- (C) at least \$25,000 in market value of the company’s shares entitled to vote on the proposal for at least one year preceding and including the Submission Date.”

As stated in the Letter, we submitted the Proposal on October 19, 2023, and submitted an amended version of the Proposal on October 26, 2023. As promised in the Proposal submission, we provided a letter stating that our Fidelity account “currently holds 166.000 shares of Bank of America (BAC) CUSIP: 060505104 and has held these securities for at least three years” and that the “letter contains information as of close of business on October 26, 2023.”

The Company’s no-action request incorrectly labels the October 19, 2023 submission as the “Submission Date,” while arguing its case as if the October 26, 2023 submission was merely a continuation of the October 19 submission. Thus, the Company argues that the proof of ownership provided by NLPC does not meet the requirements of Rule 14a-8(b).

This argument is erroneous. Although the October 26 submission is a revised version of the October 19 submission, we clearly intended it to initiate a new Proposal submission process. Thus, October 26, 2023 is the correct “Submission Date,” and the proof of ownership we provided to the Company is sufficient under Rule 14a-8(b).

First, had we intended to provide an updated version of the proposal in continuation of the initial submission process, we would have done so unambiguously. Instead, we filed the second submission in the same manner that we filed the first, and the same manner we have filed dozens of other shareholder proposals—at many of the largest companies in the United States—that meet Rule 14a-8 requirements and were included in the respective proxy materials.

Second, it is important to note that the two submissions are largely the same. Each is comprised of a cover letter and enclosed Proposal, which collectively meet the Rule 14a-8 standards.

Both were accompanied by the following correspondence:

“Attached please find cover letter with enclosed shareholder proposal for consideration at The Bank of America Corporation’s 2024 annual shareholder meeting.”

However, the October 26 submission was accompanied by an additional correspondence:

“The Proposal is an amended version of the Proposal that was previously submitted by NLPC on October 19, 2023. This version reflects a corrected editorial error.”

Both cover letters contained the following sections:

- *“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 166 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.”*

However, the October 26 cover letter also contained the following:

“The Proposal is an amended version of the Proposal that was previously submitted by NLPC on October 19, 2023. This version reflects a corrected editorial error.”

Thus, the only discernable difference between the two is the explanation for multiple submissions. When taken in the context of the cover letter submitted on October 26, it’s obvious that the October 26 submission replaced the October 19 submission. We ask the Staff to take careful note of following sections in the October 26 cover letter:

“I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in Bank of America Corporation’s (“Company”) proxy statement.”

We declared our intention to submit the proposal enclosed on October 26, not the previous proposal submitted on October 19, for inclusion in the Company’s proxy

statement.

“Which requisite shares have been held continuously for more than three years prior to, and including, this date of submission.”

We then claimed – and later verified – to have held requisite shares for more than three years prior to, and including, *“this date of submission,”* i.e. October 26, 2023.

Therefore, our Proposal submission dated October 26, 2023 clearly superseded the Proposal submission dated October 19, 2023, thus the requisite proof of continuous ownership we provided to the company is sufficient under Rule 14a-8.

Conclusion

As outlined above in further explanatory detail omitted by the 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 lperlot@nlpc.org or by telephone at (571) 749-5085.

Sincerely,



Luke Perlot
Associate Director
Corporate Integrity Project

Cc:

Ronald O. Mueller & Geoffrey Walter, Gibson, Dunn & Crutcher LLP
Ross Jeffries, Bank of America Corporation