

December 22, 2023

VIA ONLINE SUBMISSION

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

Re: *Bank of America Corporation*
Shareholder Proposal of Warren Wilson College et al.
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 statement in support thereof (the “Supporting Statement”) submitted by As You Sow (“As You Sow”) on behalf of Warren Wilson College, James C. Manolis (S) and the Minnesota Valley National Wildlife Refuge Trust; Arjuna Capital on behalf of Elaine Alexander; the Sierra Club Foundation; Mercy Investment Services, Inc.; the Congregation of Sisters of St. Agnes; the Adrian Dominican Sisters; Bon Secours Mercy Health, Inc.; and the Congregation of St. Joseph (collectively, the “Proponents”).

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 copies of this correspondence to the Proponents.

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 Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should

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be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

Resolved: Shareholders request that BofA prepare and issue an assessment of the proportion of the bank's auto manufacturing, energy, and power sectors' emissions that are attributed to clients that the bank assesses are not aligned with a credible 1.5°C pathway by 2030, whether this proportion of unaligned clients will prevent BofA from meeting its 2030 net zero targets, and actions it proposes to address any such emissions reduction shortfalls.

The Supporting Statement states:

Supporting Statement: The assessment should take into account all material financing mechanisms and asset classes that contribute to BofA's emissions, including direct lending, underwriting, and investments.

A copy of the Proposal and the Supporting Statement, as well as correspondence with Warren Wilson College, the lead Proponent, directly relevant to this no-action request, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company—specifically, the Proposal impermissibly seeks to eliminate management's discretion by dictating specific methods for the Company's already extensive disclosures, calculations and methodologies concerning the progress and pathway the Company is on to achieving certain 2030 Scope 3 greenhouse gas ("GHG") emissions goals.

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OVERVIEW

As alluded to in the Proposal, in 2022 the Company announced 2030 targets for reducing GHG emissions associated with financing activities related to three high GHG emitting sectors: auto manufacturing, energy and power generation (collectively, the “2030 Financed Emissions Goals”).¹ At the time of making this announcement, the Company explained the activities covered by the 2030 Financed Emissions Goals:

Bank of America’s targets initially cover emissions related to its committed credit exposure to clients in auto manufacturing, energy and power generation. For each of these sectors, the company has set targets based on emissions intensity, calculated on a weighted average for each portfolio of clients.²

The announcement further explained, “Bank of America plans to set targets for other key sectors through 2024 and update targets to include capital markets activities when the methodology is finalized and released by Partnership for Carbon Accounting Financials (PCAF).”³ In addition, the Company provided more detail on its goals and processes in an accompanying public report entitled, “Approach to Zero™”.⁴ The Approach to Zero report:

- identifies what financing activity is covered by the 2030 Financed Emissions Goals and explains why certain financing activities are not currently covered;
- states that when calculating its financed emissions, the Company will follow the standards and methodologies developed by the PCAF, which are in conformance with the requirements set forth in the Greenhouse Gas Protocols’ Scope 3 reporting standard for financed emissions;
- describes the process the Company uses in gathering data for purposes of assessing progress toward its goals; and
- describes the formula the Company uses in reporting its financed emissions.

¹ See Bank of America Announces 2030 Financing Activity Targets as Part of Net Zero Commitment (Apr. 13, 2022), available at <https://newsroom.bankofamerica.com/content/newsroom/press-releases/2022/04/bank-of-america-announces-2030-financing-activity-targets-as-par.html>

² *Id.*

³ *Id.*

⁴ Approach to Zero™: Our commitment to helping finance the transition to net zero before 2050 (Apr. 2022), available at <https://about.bankofamerica.com/content/dam/about/pdfs/approach-to-zero-2022.pdf>.

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The Company shares the Proponents' perspective on the importance of how we must work with our clients to help them meet their own goals to reduce GHG emissions and help drive an orderly clean energy transition. To that end, the Company has devoted significant resources to developing and implementing a methodical and holistic strategy to drive the Company's alignment with the 2030 Financed Emissions Goals. In keeping with the Company's commitment to develop and set targets for other key sectors, in 2023 the Company set targets for financed emissions in the aviation and cement sectors and announced plans to add additional 2030 Financing Activity Targets for key sectors in 2024 and to initiate facilitated emissions calculations for certain capital markets portfolios.⁵ The Company also makes extensive public disclosures in these areas, including how the Company is training thousands of its bankers on understanding how to engage with tens of thousands of commercial clients worldwide to assist those clients in meeting their own GHG emissions targets, and the Company's commitment to deploy \$1.5 trillion in sustainable finance activities, including \$1 trillion devoted to climate change, over the next 10 years. In short, the Company's initiatives in its climate strategy are a core way in which the Company drives Responsible Growth, and there is robust disclosure of its strategy, methodologies and progress toward this goal.

However, notwithstanding the Company's overall climate strategy and disclosures, the Proposal seeks to alter virtually every aspect of the Company's 2030 Financed Emissions Goals, requiring additional financing activities to be addressed that are currently outside the scope of the 2030 Financed Emissions Goals, eschewing industry reporting standards in favor of "individual protocols and strategies," altering the way the Company works with its clients in gathering data for purposes of evaluating the Company's pathway to net zero and requiring a different model for reporting goals and progress toward those goals. As such, the Proposal inappropriately seeks to interfere with the Company's ordinary business operations and micromanages the Company by limiting management's discretion in developing, calculating, reporting on and achieving the 2030 Financed Emissions Goals.

⁵ See 2023 Task Force on Climate-related Financial Disclosures Report at 30, available at https://about.bankofamerica.com/content/dam/about/report-center/esg/2023/2023_TCFD_Report.pdf.

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ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." 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 considerations that underlie this policy. The first is 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." 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 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 . . . methods for implementing complex policies." In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, *which is designed to preserve management's discretion on ordinary business matters* but not prevent shareholders from providing *high-level direction* on large strategic corporate matters." SLB 14L (emphasis added).

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In SLB 14L, the Staff also stated that in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, it 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.” The Staff stated that it would also consider “references to well-established national or international frameworks when assessing proposals related to disclosure” as examples of topics that shareholders are well-equipped to evaluate. *Id.*

When proposals request the adoption of specific approaches to address climate change matters, the extent to which a proposal permits the board or management to retain discretion is particularly relevant. In SLB 14L, the Staff indicated that when reviewing such proposals, it “would not concur in the exclusion of . . . proposals that *suggest* targets or timelines so long as the proposals *afford discretion to management as to how to achieve such goals*” (emphasis added). SLB 14L cites *ConocoPhillips Co.* (avail. Mar. 19, 2021) as an example of its application of the micromanagement standard, noting that the proposal at issue did not micromanage the company in the Staff’s view because it requested that the company address a particular issue but “did not *impose a specific method* for doing so.” (Emphasis added).

In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. *See The Coca-Cola Co.* (avail. Feb. 16, 2022) and *Deere & Co.* (avail. Jan. 3, 2022) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). Moreover, “granularity” is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses “on the level of granularity sought in the proposal *and whether and to what extent it inappropriately limits discretion of the board or management.*” (Emphasis added).

As with the shareholder proposals in *Deere*, *Coca-Cola* and other precedents discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

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

The Proposal requests that the Company “issue an assessment of the proportion of the bank’s auto manufacturing, energy and power sectors’ emissions that are attributed to clients that the bank assesses are not aligned with a credible 1.5°C pathway by 2030” and the Supporting Statement provides that such assessment “should take into account all material financing mechanisms and asset classes that contribute to [the Company]’s emissions, including direct lending, underwriting, and investments.” In this regard, the Proposal does not provide the Company “high-level direction on large strategic corporate matters” and is not “suggest[ing] targets or timelines.” See SLB 14L. Instead, the Proposal seeks to eliminate management discretion by “impos[ing] a specific method” and “granularity” as to how to the Company is to measure, report on and achieve the 2030 Financed Emissions Goals, going so far as to alter what activities are included within these Scope 3 goals. The Proposal disregards management’s judgment, which the Commission sought to preserve with the ordinary business exclusion, by imposing specific methods and delving into granular detail on how the Company is to measure, report on and achieve the 2030 Financed Emissions Goals. Moreover, instead of operating within a well-established disclosure framework, the Proposal’s prescriptive approach for how the Company must assess aspects of its financed Scope 3 GHG emissions is inconsistent with the established measurement and reporting frameworks.

1. The Proposal Does Not Follow Well-Established National Or International Frameworks.

As noted above, the Company has reported, through extensive public disclosures, that in addressing the 2030 Financed Emissions Goals, the Company will follow the standards and methodologies developed by the PCAF, which are in conformance with the requirements set forth in the Scope 3 reporting standard for financed emissions published by the Greenhouse Gas Protocol Initiative. The Greenhouse Gas Protocol Initiative is a multi-stakeholder partnership of businesses, non-governmental organizations, governments and others, convened by the World Resources Institute and the World Business Council for Sustainable Development, whose mission is to “develop internationally accepted [GHG] accounting and reporting standards for business and to promote their broad adoption.”⁶ In furtherance of this goal, the group published the GHG Protocol Corporate Accounting and

⁶ See <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> at 2.

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Reporting Standard (as revised, the “Corporate Standard”)⁷ in order to, among other things, guide companies on preparing “a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles” and “provide business with information that can be used to build an effective strategy to manage and reduce GHG emissions.”⁸ For those companies that choose to report Scope 3 emissions, the group’s Corporate Value Chain (Scope 3) Accounting and Reporting Standard⁹ (the “Scope 3 Reporting Standard”) and Technical Guidance for Calculating Scope 3 Emissions¹⁰ (the “Technical Guidance,” and together with the Corporate Standard and Scope 3 Reporting Standard, the “GHG Protocol”) provide a standardized framework for assessing, categorizing and measuring their value chain emissions.

The GHG Protocol’s reporting framework has been widely adopted and endorsed. In its comment letter on the Commission’s proposed climate reporting rules, the Proponents’ representative, As You Sow, stated, “[w]e suggest that in order to assist in quickly ensuring standardized reporting, the SEC mandate that reporting be conducted in line with the GHG Protocol, at least initially Alternatively, we urge the agency to require that companies provide a rationale for how and why they depart from the GHG Protocol.”¹¹ In its recent report, *Road to Zero Emissions; 100 Companies Ranked on Net Zero Emissions*, As You Sow acknowledges both the complexities of Scope 3 reporting under the GHG Protocol and that the GHG Protocol encourages companies to take a phased approach to reporting when necessary, stating:

The GHG Protocol has already set the stage for how necessary Scope 3 emissions reporting is and, due to the complexity of Scope 3 reporting, even recommends companies approach disclosing Scope 3 in a “phased approach” and improve the quality of emissions data over time. With investors already identifying Scope 3 emissions as critical information to disclose for businesses across industries,

⁷ See *id.*

⁸ Corporate Standard at 3.

⁹ Available at https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf.

¹⁰ Available at <https://ghgprotocol.org/scope-3-calculation-guidance-2>.

¹¹ Comment letter submitted on June 21, 2022 by As You Sow, File Number S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors, available at <https://www.sec.gov/comments/s7-10-22/s71022-20132601-303123.pdf>.

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companies have much to gain from leading the development of these potential standards *that take time to accurately report on.*¹²

Yet the Proposal reflects significant departures from GHG Protocol standards. In contrast to the prescriptive dictates outlined in the Proposal, the GHG Protocol firmly recognizes the complexities faced by a company when determining which activities and categories of Scope 3 emissions to include within the company's Scope 3 inventory and affirms that such determinations should rest with a company's management because inventories taking into account company-specific circumstances should be established. For example, the Scope 3 Reporting Standard recognizes that the process of determining which activities and categories of emissions to include within a company's Scope 3 inventory is inherently tied to the day-to-day management of a company and the company's business goals, stating, "[b]efore accounting for scope 3 emissions, companies should consider which business goal or goals they intend to achieve."¹³ The process of developing a Scope 3 inventory is principles-based, with the Scope 3 Reporting Standard stating, "GHG accounting and reporting of a scope 3 inventory shall be based on the following principles: relevance, completeness, consistency, transparency, and accuracy." The Scope 3 Reporting Standard recognizes that "[i]n practice, companies may encounter tradeoffs between principles when completing a scope 3 inventory" and states, "[c]ompanies should balance tradeoffs between principles depending on their individual business goals."¹⁴ Summarizing these considerations, the Corporate Standard states, "[c]ompanies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information."¹⁵

¹² As You Sow, *Road to Zero Emissions; 100 Companies Ranked on Net Zero Emissions* (Nov. 1, 2023), at page 20 (emphasis added), available at https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/654173fbfb360c7445aa3d0c/1698788352229/AsYouSow2023_RoadToZero_v5_FIN_20231031.pdf.

¹³ Scope 3 Reporting Standard, Chap. 2, *Business Goals*, at 11.

¹⁴ *Id.*, Chap. 4, *Accounting and Reporting Principles*, at 23-24.

¹⁵ Corporate Standard, Chap. 4, *Setting Operational Boundaries; Scope 3: Other Indirect GHG Emissions*, at 29.

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2. The Proposal Dictates Specific Methods For Implementing Scope 3 Financed Emissions Reporting That Limit Management’s Discretion And Are Inconsistent With The Company’s Publicly-Disclosed Path To Implementing The 2030 Financed Emissions Goals.

The Proposal does not suggest targets or timelines for implementing GHG emission goals, but instead seeks to impose specific methods for implementing the Company’s 2030 Financed Emissions Goals, which would inappropriately limit management’s discretion in addressing and implementing the complex issue of managing and reporting on Scope 3 emissions. In numerous respects, the approach dictated by the Proposal and the Supporting Statement seeks to micromanage the Company’s actions and disclosures in a way that conflicts with methodologies that the Company has already adopted and disclosed:

- The Proposal would require additional financing activities to be addressed that are currently outside the scope of the 2030 Financed Emissions Goals based upon the Company’s judgment and determinations as to how best to reach its goals, which are well disclosed already. The Supporting Statement states that the assessment of client alignment called for in the Proposal “should take into account all material financing mechanisms and asset classes that contribute to [the Company’s] emissions, including direct lending, underwriting, and investments.” In contrast, as stated above and as discussed in the Approach to Zero report, instead of assessing emissions based on “direct lending,” the 2030 Financed Emissions Goals are based on committed credit exposure because the Company believes that its committed credit exposure “best represents the support [the Company] provide[s] clients, avoids volatility associated with timing of clients’ use of credit facilities and is in alignment with [the Company’s] peers.”¹⁶ In addition, whereas the Supporting Statement advocates for an approach where “banks should independently establish and disclose their own individual protocols and strategies for each business activity,” the scope of financing activities encompassed by the 2030 Financed Emissions Goals does not include “underwriting and investments” and other capital markets activity “due to the lack of a consistent industry methodology.”
- The Proposal would require the Company to alter the way it works with its clients in gathering data for purposes of evaluating the Company’s pathway to net zero and reporting on its progress. The Proposal would require the Company to

¹⁶ Approach to Zero report, at 7.

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develop a methodology, outside of the GHG Protocol, in which it first assesses whether each of its tens of thousands of clients are or are not “aligned with a credible 1.5°C pathway by 2030.” The Company would then have to calculate and report on a ratio and how that ratio reflects on the Company’s progress to meeting its 2030 Financed Emissions Goals. In contrast, the Company is developing an internal technology system to produce decision-useful metrics by collecting client emissions data where available, estimating such data where not available, calculating client physical unit emissions intensity and quantifying the Company’s financed emissions. As explained in the Approach to Zero report, the Company’s approach more realistically reflects that “[c]lient-reported emissions data continues to be limited,” and that “data gaps present a challenge in measuring the emissions attributed to [the Company’s] financing activities.”¹⁷ The Company’s approach is also designed to provide that the Company has comprehensive documentation, meets rigorous reporting standards and manages its financed emissions model to the Company’s standards across its lifetime.

- The Proposal would require a different model for reporting goals and progress toward those goals than the approach the Company has adopted. The Supporting Statement asserts that, in order for the Company to have a “realistic transition plan in place to meet its goals,” a “first step is assessing its clients’ likelihood of meeting net zero by 2030 goals.” However, there are many ways to have a realistic transition plan, and the specific method that would be imposed under the Proposal to address this complex issue is not the path that the Company (or, indeed, most companies) have chosen. The Supporting Statement asserts that “banks should independently establish and disclose their own individual protocols and strategies specific to each business activity.” In contrast, as described in the Approach to Zero report, the Company’s approach to this complex issue is based on management’s assessment of “the best available climate science, the GHG Protocol, the PCAF standard, [Net Zero Banking Alliance] guidelines and the [Financial Services Task Force of the Sustainable Markets Initiative] Net Zero Practitioner’s Guide.”¹⁸ The Approach to Zero report further details the elements of the Company’s transition plan to meet its goals, which relies on five pillars: Assist, Advocate, Analyze, Align and Attest. For example, as part of assisting clients in their transition to net zero, the Company is a leader in structuring and

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 6.

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arranging sustainability-linked financing and offers margin adjustment mechanisms based on client achievements against environmental and social performance metrics, including science-based GHG reductions.¹⁹ Yet this type of dynamic and multi-faceted process would not be reflected in the snapshot assessment and ratio reporting approach prescribed in the Proposal, and in fact would require different processes and dynamics for working with the Company's clients.

The GHG Protocol clearly illustrates the “complex nature” of and “tradeoffs” involved in determining what activities and categories are included in a company's Scope 3 GHG emissions inventory, including what is included within the company's Scope 3 emissions goals, as well as the need to balance trade-offs such as completeness and transparency with consistency and accuracy, and that such determinations are inherently tied to a company's business goals. As such, whereas a proposal that suggests targets and timelines for Scope 3 emission goals might not rise to the level of implicating micromanagement, the Proposal—which seeks to prescribe what financing activities are included within the Company's Scope 3 financing emissions goals—dictates a specific means for assessing progress towards those goals and mandates a specific means for reporting on progress towards those goals, thereby inappropriately limiting management's discretion as to how to set, achieve and report on its goals. Thus, the Proposal is the type of proposal upon which “shareholders, as a group, would not be in a position to make an informed judgment.”²⁰

3. Staff Precedent Supports Exclusion Of The Proposal Under The Micromanagement Standard Of Rule 14a-8(i)(7).

As applied to the Company, the Proposal addresses a complex, multifaceted issue by imposing a prescriptive standard that differs from both the approach the Company believes is best suited to the Company's financing activities when measuring GHG emissions and the standards set forth in the GHG Protocol. The Proposal thus falls clearly within the scope of the 1998 Release and SLB 14L by addressing intricate, granular details and prescribing a specific method for implementing complex policies.

¹⁹ *Id.* at 4.

²⁰ 1998 Release, as reaffirmed in SLB 14L.

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In applying the micromanagement standard under Rule 14a-8(i)(7), the Staff consistently has concurred with the exclusion of shareholder proposals attempting to micromanage a company by delving too deeply into a company's Scope 3 goal-setting and reporting process. Most recently, in *Amazon.com, Inc.* (avail. Apr. 7, 2023, recon. denied Apr. 20, 2023), the Staff concurred with the exclusion of a proposal that, like the Proposal here, sought to dictate how the company assessed, measured and reported on aspects of its Scope 3 GHG emissions. In *Amazon.com, Inc.*, the proposal requested that the company measure and disclose Scope 3 GHG emissions from "its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors." The company argued to the Staff that the request would replace management's judgments by dictating the content of its Scope 3 emissions inventory outside the standards of the GHG Protocol. Similarly, in *Apple Inc. (Christine Jantz)* (avail. Dec. 21, 2017), the Staff concurred that a proposal micromanaged the company when it requested an evaluation and report on the potential for the company to achieve, by a fixed date, net-zero GHG emissions across operations directly owned by the Company and its major suppliers. The company argued to the Staff that the proposal "prob[ed] 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" since the requested evaluation would necessarily require the company to evaluate and prioritize particular courses of actions and changes to its operations and business, and then to replace its own judgments about the best course of action with a course of action directed solely at meeting the specific emissions level selected by the proponent by one of the arbitrary dates selected by the proponent. *See also, Apple Inc.* (avail. Dec. 5, 2016) (concurring in exclusion of a similar proposal that sought to define the scope of operations that would be included in a Scope 3 net-zero GHG emission plan).

Similarly, in *The Coca-Cola Co.* (avail. Feb. 16, 2022), the proposal requested that the company submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly. The company argued to the Staff that the proposal thereby "dictate[d] the content of and process by which the [c]ompany may make certain public statements by interfering with and impermissibly limiting the fundamental discretion of management to decide upon and exercise the corporate right to speech, and instead impose[d] a time-consuming and unnecessary process." The Staff concurred with the proposal's exclusion, as it "micromanage[d] the [c]ompany." In *Texas Pacific Land Corp. (Recon.)* (avail. Oct. 5, 2021), the Staff granted exclusion of a proposal that would have required that the company "establish a goal of achieving a 95% profit margin." Although the Staff did not issue a response letter in connection with its concurrence that the proposal could be excluded, the company argued to the Staff that "the profit margin strategy of the [c]ompany" was a "matter fundamental to management's

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choices relevant to its revenues and expenditures in the context of the broader strategy of the [c]ompany,” and that the proposal, by “mandating a very specific strategic goal,” that was not informed by a “deep understanding of the [c]ompany’s operations, growth opportunities and the industry as a whole” would “circumvent[] management’s expertise and fiduciary duties,” ultimately micromanaging the company. *See also SeaWorld Entertainment, Inc.* (avail. April 20, 2021) (“*SeaWorld 2021*”) (concurring with exclusion of a proposal seeking a report on specific changes to the company’s business to address animal welfare concerns); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as “seek[ing] to micromanage 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”).

Like the precedents discussed above, implementation of the Proposal would involve replacing management’s judgments on complex reporting principles and business decisions that are intimately tied to the Company’s business goals and operations with a prescriptive approach that deprives management of any discretion. The Proposal’s provision that the Company’s assessment “should take into account all material financing mechanisms and asset classes contributing to [its] emissions, including direct lending, underwriting, and investments” is directly comparable to the situation in *Amazon.com, Inc.*, where the proposal likewise sought to dictate the operational boundaries of the company’s Scope 3 assessment and reporting to include activities that differed from the company’s GHG Protocol-aligned approach to Scope 3 reporting. Given the scope and nature of the Company’s operations, changing its Scope 3 emissions goals to report against the Proposal’s requested methodologies and “take into account all material financing mechanisms and asset classes contributing to [its] emissions, including direct lending, underwriting, and investments,” and implementing the other methodology and reporting changes prescribed in the Proposal would alter the carefully and holistically developed strategies and alignment with business goals reflected in the 2030 Financed Emissions Goals. These changes would have significant implications for numerous aspects of the Company’s climate change activities that take into account the many “tradeoffs” and considerations described in the Scope 3 Reporting Standard. The Proposal’s attempt to prescribe what is and is not counted in the Company’s Scope 3 emissions goals and how the Company assesses and reports its progress on those goals raises complex and nuanced issues that are not appropriate for direct shareholder oversight, and as such, the Proposal is exactly the type that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7).

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C. Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.

As discussed in the “Background” section above, a proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in which the company should address a policy issue, regardless of whether the proposal touches upon a significant policy issue. Here, the Company does not dispute that the Proposal’s reference to “systemic climate risk” addresses a significant social policy matter. However, the focus of the Proposal is not on a broad policy issue relating to GHG emissions and climate change. Instead, the Proposal is an attempt to limit the Company’s discretion in how it addresses the complex and granular issue of establishing, assessing and reporting on certain aspects of the Company’s Scope 3 emissions. In this respect, it is well established that a proposal that seeks to micromanage a company’s business operations is excludable under Rule 14a-8(i)(7) regardless of whether the proposal raises issues with a broad societal impact. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that “a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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.” For example, following the issuance of SLB 14L, the Staff concurred with the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. *See Amazon.com., Inc.* (concurring that a proposal requesting the company report Scope 3 emissions from “its full value chain” was excludable for attempting to micro-manage the company); *Verizon Communications, Inc. (National Center for Public Policy Research)* (avail. March 17, 2022) (concurring that a proposal requesting the company publish annually the written and oral content of diversity, inclusion, equity, or related employee-training materials probed too deeply into matters of a complex nature); *The Coca-Cola Co.* (avail. Feb. 16, 2022) (concurring that a proposal addressing the company’s political activities was excludable on account of attempting to micromanage the issue); and *SeaWorld 2021* (concurring that a proposal addressing animal rights was excludable on account of attempting to micromanage the issue). Thus, the fact that the Proposal addresses climate change does not preclude its exclusion under Rule 14a-8(i)(7).

Office of Chief Counsel
Division of Corporation Finance
December 22, 2023
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CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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
Danielle Fugere, As You Sow
Natasha Lamb, Arjuna Capital
Dan Chu, Sierra Club Foundation
Mary Minette, Mercy Investment Services, Inc.

EXHIBIT A



VIA FEDEX & EMAIL

November 3, 2023

Ross E. Jeffries, Jr.
Deputy General Counsel and Corporate Secretary
Bank of America Corporation
Bank of America Corporate Center
100 North Tryon Street
NC1-007-56-06
Charlotte, NC 28255
ross.jeffries@bankofamerica.com
bac_shareholder_relations@bofa.com

Dear Mr. Jeffries,

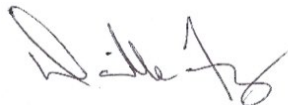
As You Sow® is filing a shareholder proposal on behalf of Warren Wilson College (“Proponent”), a shareholder of Bank of America Corporation for inclusion in Bank of America’s 2024 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns.

To schedule a dialogue, please contact myself, Danielle Fugere, at  @asyousow.org. Please send all correspondence **with a copy to**  @asyousow.org.

Sincerely,



Danielle Fugere
President & Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: i_r@bankofamerica.com
i_r@bofa.com

WHEREAS: Bank of America (“BofA”) has established 2030 net zero emission reduction targets for financing activity in the auto, energy, and power sectors and has signed a Net Zero Banking Alliance Commitment Statement¹ Despite investor demand for clearer disclosure of its transition planning,¹ shareholders lack sufficient information as to whether BofA is on a path to meet those targets.

Critically, BofA’s annual disclosures lack clear information on the impact that non- or slow-transitioning companies in these high-emitting sectors will have on the Company’s ability to meet its 2030 targets. These omissions leave investors unable to assess the potential for misalignment between BofA’s 2030 targets and its clients’ transition progress, and what actions, if any, BofA is proactively taking to address such misalignment.

Independent assessments show that most companies in these three sectors are failing to align with a 2030 net zero pathway. For example, the Transition Pathway Initiative finds that no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario.² This is significant because BofA is the fourth largest global lender and underwriter of fossil fuels.³ Similarly, no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a net zero by 2030 path.⁴

The potential for misalignment carries with it significant risk. The European Banking Authority, which oversees \$72 billion of BofA’s assets, maintains strict greenwashing standards.⁵ If BofA fails to meet its targets, it faces the possibility of litigation, reputational harms, and financial costs. Failure to meet targets will also contribute to systemic climate risk to harm investor portfolios.

BofA must have a fully informed, realistic transition plan in place to meet its goals. A first step is assessing its clients’ likelihood of meeting net zero by 2030 goals. As the Institutional Investors Group on Climate Change explains, “[t]o deliver on their targets and commitments, banks should independently establish and disclose their own individual protocols and strategies specific to each business activity,” which will involve “planning for phasing out financing of inconsistent activities which present particular risks . . . while pivoting financing towards climate solutions.”⁶ This should include criteria governing financing of misaligned clients and setting firm-wide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C aligned companies and activities.

RESOLVED: Shareholders request that BofA prepare and issue an assessment of the proportion of the bank’s auto manufacturing, energy, and power sectors’ emissions that are attributed to clients that the bank assesses are not aligned with a credible 1.5°C pathway by 2030, whether this proportion of

¹ <https://about.bankofamerica.com/content/dam/about/pdfs/approach-to-zero-2022.pdf>

² <https://www.transitionpathwayinitiative.org/sectors/oil-gas>

³ https://www.bankingonclimatechaos.org/wp-content/uploads/2023/08/BOCC_2023_vF.pdf

⁴ <https://www.transitionpathwayinitiative.org/sectors/autos>

⁵ <https://d1io3yog0oux5.cloudfront.net/feac4ff196b6ca5c7bbde354bbf2898d/bankofamerica/db/914/9857/pdf/BANK+OF+AMERICA+EUROPE+DACANNUAL+REPORT+AND+FINANCIAL+STATEMENTS+FOR+THE+YEAR+ENDED+31+DECEMBER+2022.pdf>

⁶ <https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf>, p.9

unaligned clients will prevent BofA from meeting its 2030 net zero targets, and actions it proposes to address any such emissions reduction shortfalls.

SUPPORTING STATEMENT: The assessment should take into account all material financing mechanisms and asset classes that contribute to BofA's emissions, including direct lending, underwriting, and investments.

October 30, 2023

Andrew Behar
CEO
As You Sow
2020 Milvia Street, Suite 500
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, Warren Wilson College, (“Stockholder”), authorizes *As You Sow* to file or co-file a shareholder resolution with the named Company on our behalf for inclusion in the Company’s 2024 proxy statement. The resolution at issue relates to the below described subject.

Stockholder: Warren Wilson College

Company: Bank of America Corp

Subject: Report on climate transition planning.

The Stockholder has continuously owned Company stock, with voting rights, for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of such stock through the date of the Company’s annual meeting in 2024.

The Stockholder gives *As You Sow* authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder, presenting the proposal at the Company’s annual general meeting, and all other forms of representation necessary in moving the proposal. The Stockholder understands that the Stockholder’s name may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

Anthony Rust is the Chair of the Investment Committee at Warren Wilson College.

He is available for a meeting with Bank of America Corp regarding this shareholder proposal, at the following days/times: [Stockholder to provide 2 dates and 30-minute meeting options within the following time frame: 11/20/2023 - 12/1/2023

Monday - Friday and between the hours of 9:00am and 5:30pm Eastern Time]

DATE: 11-20-23

TIME: 12:00 pm

DATE: 11-21-23

TIME: 12:00 p.m.

If the Company would like to meet at one of these dates and times, let the Stockholder and *As You Sow* at, [REDACTED]@asyousow.org, know within 2 days of the dates offered in this letter

If this Authorization is used for a Co-filing role instead of for a Proponent role, then the Stockholder agrees to designate the Proponent to engage on the Stockholder's behalf on the dates and times that the Proponent has provided.

Anthony Rust can be contacted at [REDACTED]@gmail.com to schedule a dialogue during one of the above dates. Any correspondence regarding meeting dates must **also be sent to my representative:**

Danielle Fugere, President & Chief Counsel at [REDACTED]@asyousow.org

Elizabeth Levy, Climate Associate at [REDACTED]@asyousow.org

and to [REDACTED]@asyousow.org.

Sincerely,

DocuSigned by:

Damian Fernandez

B62D83ADB659482...

Dr. Damián J. Fernández
President