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

DIVISION OF
CORPORATION FINANCE

February 21, 2019

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Bank of America Corporation
Incoming letter dated December 21, 2018

Dear Mr. Mueller:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Bank of America Corporation (the "Company") by Worcester County Food Bank and Plymouth Congregational Church of Seattle (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents' behalf dated January 11, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Jonas D. Kron
Trillium Asset Management, LLC
jkron@trilliuminvest.com

February 21, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Bank of America Corporation
Incoming letter dated December 21, 2018

The Proposal requests that the board complete a report to shareholders evaluating overdraft policies and practices and the impacts they have on customers.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates to the products and services offered for sale by the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Michael Killoy
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

TRILLIUM ASSET MANAGEMENT®

January 11, 2019

VIA e-mail: shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Bank of America Corporation Stockholder Proposal of Worcester County Food Bank and Plymouth Congregational Church of Seattle

Dear Sir/Madam:

This letter is submitted on behalf of Worcester County Food Bank and Plymouth Congregational Church of Seattle, as its designated representative in this matter (hereinafter referred to as "Proponents"), who are the beneficial owners of shares of common stock of Bank of America Corporation (hereinafter referred to as "Bank of America" or the "Company"), and who has submitted a shareholder proposal (hereinafter referred to as "the Proposal") to Bank of America, to respond to the letter dated December 21, 2018 sent to the Office of Chief Counsel by the Company, in which Bank of America contends that the Proposal may be excluded from the Company's 2019 proxy statement under rules 14a-8(i)(5) and 14a-8(i)(7).

I have reviewed the Company's letter, and based upon the foregoing, as well as upon a review of rule 14a-8, it is my opinion that the Proposal must be included in Bank of America's 2019 proxy statement because the Proposal focuses on a relevant matter, a significant policy issue confronting Bank of America and does not seek to micromanage the company. Therefore, we respectfully request that the Staff not issue the no-action letter sought by the Company.

Pursuant to Staff Legal Bulletin 14D (November 7, 2008) we are filing our response via e-mail in lieu of paper copies and are providing a copy to Bank of America's counsel Ronald O. Mueller via e-mail at RMueller@gibsondunn.com.

The Proposal

The Proposal, the full text of which is attached as Attachment A, states:

> **Resolved:** Shareholders request the Board complete a report to shareholders (prepared at reasonable cost, omitting proprietary and confidential information, and within a

reasonable time) evaluating overdraft policies and practices and the impacts they have on customers.

We respectfully believe that the Proposal focuses on a significant issue facing the company both in terms of significance to the Company under i5 as well as the significance of the issue under i7. We also believe it is useful to look at the evidence of this significance in a unified manner that illustrates why it is appropriate for investors to consider the Proposal at Bank of America's annual meeting in April.

The first piece of salient information is provided by the Company in its explanation of the significant lengths it has gone to and the significant resources it has devoted to continuing to charge overdraft fees under certain circumstances. On pages 3 and 4 of the Company letter it provides extensive details about the significant steps it has taken to address the issue. It discusses the careful evaluation process that lead to changes to products and development of new products, which eventually lead to "industry-leading products." The letter goes on to list a wide range of organizations it extensively consulted with and the eventual certification of a product. The Company also relates information about its significant communications and marketing strategies, ongoing monitoring programs, and technology enhancements. Clearly all of this substantial and meaningful activity has a significant impact in that Bank of America has deposit relationships with 40 million customers – a remarkably large segment of the population served by a "vast network of physical branch locations [and] ATMs."

All of this demonstrates that the Company clearly believes that it is significantly related to its business. If it was truly *unimportant*, the Company would be expected to have either done nothing to change its policies and practices or would have simply stopped imposing overdraft fees altogether. That would have been the most efficient and low resource way of addressing the issue that would have been reflective of an unimportant issue. However, the opposite appears true: overdraft policies and practices are significant enough that Bank of America has decided it was appropriate to devote its valuable time, personnel, resources, expertise, technology, and dollars to developing what is described as a significantly elaborate and involved set of policies and practices. It suggests that Bank of America views overdraft fees as being meaningful enough to its business that it is willing to go to significant lengths to maintain at least some level of overdraft fee revenue.

Of course all of this will be of interest to investors and is therefore practicable for Bank of America shareholders to consider and opine upon at the Company annual meeting. Overdraft fees have been a matter of widespread public attention and discussion for years. For example, in 2014 – 2016 the issue received significant attention from the media, regulators, customers, and civil society:

- America's 3 Biggest Banks Collected $6 Billion in ATM and Overdraft Fees in 2015
  http://time.com/money/4182413/atm-overdraft-fees-big-banks/
  "JPMorgan Chase, Bank of America and Wells Fargo earned more than $6 billion from ATM and overdraft fees in 2015, according to a report from SNL Financial and CNNMoney."

- Bank of America ranks 2nd for most overdraft charges, new data show
  https://www.charlotteobserver.com/news/business/banking/bank-watch-blog/article22498887.html
  "The disclosures come as regulators continue to keep a close watch on overdraft fees five years after federal rules took effect banning lenders from charging the fees without getting customers' approval. … Banks could face additional overdraft rules. The CFPB is in the process of reviewing whether additional regulations affecting overdraft practices are necessary."

- Bank Overdraft Charges Cost Customers $11.6 Billion A Year, Study Finds
  https://www.forbes.com/sites/elizabethharris/2016/12/20/bank-overdraft-charges-cost-customers-11-6-billion-a-year-study-finds/#2bba5d376704
  "These costs affect as many as 40 million adults in America"

- 6 Ways To Avoid Obscene Bank Overdraft Fees
  https://www.forbes.com/sites/nickclements/2015/05/29/6-ways-to-avoid-obscene-bank-overdraft-fees/#7999abe27094
  "Overdraft fees remain extremely lucrative for banks. For the first time, banks have to disclose the amount of overdraft fees charged. According to the data, Bank of America, Wells Fargo, and JPMorgan Chase are on track to generate $4 billion of overdraft fees this year alone."

- Banks just can't quit charging you overdraft fees
  https://www.chicagotribune.com/business/ct-banks-overdraft-fees-20161220-story.html
  "That fee of $30 or $35 might not seem like much, but the Consumer Financial Protection Bureau estimates that the median debit card purchase triggering an overdraft is $24. In other words, the typical debit overdraft is essentially a loan with an interest rate that, in annual terms, measures in the thousands of percentage points… The CFPB has said it wants to tighten regulations on overdraft fees next year, an initiative put in doubt by the results of the 2016 presidential election. Donald Trump's supporters have criticized the very existence of the agency, let alone its enforcement powers."

- Overdraft fees top $1 billion at the big 3 banks
  https://money.cnn.com/2015/05/27/investing/overdraft-fees-over-1-billion-big-banks/
  "A 2014 Pew study found more than half of the people who overdrew their checking accounts in the past year didn't remember consenting to the overdraft service."

- 17,000% interest? Small purchases trigger big overdraft fees
  https://money.cnn.com/2014/07/31/pf/overdraft-fees/index.html
  "Bank of America (BAC) is even rolling out a special checking account for chronic overdrafters, where customers are stopped from making purchases that exceed their balance. … But because overdraft fees mean big money for banks -- accounting for more than half of fee income from checking accounts -- many banks' policies are still troubling, the CFPB found."

- ATM, overdraft fees surge to record high
  https://www.cnbc.com/2015/10/05/atm-overdraft-fees-surge-to-record-high.html

- Overdraft Protection Is More Dangerous Than It Sounds
  https://www.theatlantic.com/business/archive/2016/12/overdraft-protection-pew/511250/
  "But it may be hard to convince the financial industry to implement those fixes, after all—a CFPB study found that overdraft makes up a significant share of total fee revenue at many banks."

- Bank Overdraft Fees Hit Younger Adults Hardest, Pew Says
  https://www.nytimes.com/2016/04/21/your-money/bank-overdraft-fees-hit-younger-adults-hardest-pew-says.html

- What that $34 overdraft fee is really costing you
  https://www.washingtonpost.com/news/wonk/wp/2014/07/31/what-that-34-overdraft-fee-is-really-costing-you/?utm_term=.318e52adf907

That media and regulatory attention continued into 2017 even after the election of 2016 suggested that banks may not face greater scrutiny for its overdraft policies and practices, the following two stories are just examples of a long litany of attention:

- Bank customers fork over $15 billion in fees
  https://www.cnbc.com/2017/09/26/bank-customers-fork-over-15-billion-in-fees.html
  "Almost half of Americans who've had a checking account have been charged an overdraft fee at some point. In fact, the average consumer overdrafts more than twice a

year and coughs up $35 in fees each time, according to a study released Tuesday by personal finance website NerdWallet."

- These People Pay the Most Overdraft Fees
  https://www.bloomberg.com/news/articles/2017-08-04/bank-overdraft-fees-are-here-to-stay
  "Despite reforms and new tech, one economist predicts revenue tied to poor math skills will rise to $40 billion by 2020."

However, in November 2017, President Trump named Mick Mulvaney as the head of the CFPB which renewed attention on whether the agency would address the overdraft fee controversy.

- What does Mulvaney's appointment mean for the future of CFPB?
  https://www.usatoday.com/story/news/politics/2017/11/28/what-does-mulvaneys-appointment-mean-future-cfpb/901067001/

- Mick Mulvaney won't completely destroy the CFPB. He'll just rip its teeth out.
  https://theweek.com/articles/739718/mick-mulvaney-wont-completely-destroy-cfpb-hell-just-rip-teeth

By 2018, it became clear that the CFPB was not going to take action on the matter.

- From overdraft to HMDA, rulemaking has new look at Mulvaney's CFPB
  https://www.americanbanker.com/list/from-overdraft-to-hmda-rulemaking-has-new-look-at-mick-mulvaneys-cfpb May 16, 2018
  "The CFPB's agenda no longer includes any reference to a rulemaking for overdraft programs on checking accounts, student loan servicing or so-called 'larger participants.' Banks had preemptively opposed further efforts to crack down on overdraft programs, arguing that rules that took effect in 2010 which required customers to opt in to such programs had proven effective. But former CFPB Director Richard Cordray had continued to sound the alarm on overdraft, suggesting that customers weren't necessarily aware of the risks involved. That the agenda makes no mention of overdraft is a concrete sign Mulvaney is not interested in pursuing that course, which many had expected given his desire to ease regulations."

At which point we saw renewed interest from Congress as U.S. Senators Brown and Booker proposed the "Stop Overdraft Profiteering Act of 2018".

- Sen. Sherrod Brown renews effort to crack down on bank overdraft fees

https://www.cleveland.com/metro/index.ssf/2018/08/sen_sherrod_brown_renews_effor.html
"Saying the charges amount to '**predatory lending in disguise**,' Brown said constituents have told him of paying $32 overdraft penalties on a $24 check, and being charged steep overdraft fees when their utility bills were automatically deducted from their accounts at a time when they were hospitalized and couldn't deposit their paychecks." (emphasis added)

- Banning overdraft fees: Cory Booker's new idea to tackle big banks
https://www.vox.com/2018/8/2/17640068/cory-booker-bank-overdraft-fees
"financial institutions have seen such fees contribute to a massive chunk of their income: In 2016, US customers paid roughly $15 billion in overdraft and bounced check fees. That's the equivalent of nearly 10 percent of the net income that banks raked in that year. Their attachment to these fees has only grown, with many institutions charging customers roughly $35 every time they overdraw their accounts."

The "Stop Overdraft Profiteering Act of 2018" would do the following if enacted:[1]

- Prohibit overdraft fees on debit card transactions and ATM withdrawals.
- Prohibit financial institutions from charging more than one overdraft fee per month and no more than six overdraft fees in any single calendar year for check and recurring bill payment overdrafts.
- Limit check and recurring bill payment overdrafts fees to an amount that is reasonable and proportional to the financial institution's costs in providing the overdraft coverage.
- Mandate a three-day waiting period between when an individual opens a new account and when a financial institution may offer overdraft protection.
- Mandate that depository institutions post transactions in a manner that minimizes overdraft and nonsufficient fund fees.
- Increase other consumer disclosures related to overdraft coverage programs.

See also,

- Banning fees won't solve all of our problems with bank overdraft programs
https://www.bankrate.com/banking/checking/banning-overdraft-fees/
"Banks often charge around $35 each time a customer doesn't have enough funds in their checking account to cover a transaction. These fees reportedly cost Americans more than $34 billion last year, and nearly 80 percent of overdraft charges (and non-sufficient funds fees) are paid by 'frequent overdrafters' who account for just 9 percent

[1] https://www.booker.senate.gov/?p=press_release&id=835

of the population. The latest proposal to address the high cost of overdrafts would ban these charges altogether in some instances. But the fate of the bill is uncertain. *And although banks are taking steps to improve their overdraft programs, experts say there's more work to do.*" (emphasis added)

All of this public debate and the Company's own extensive efforts at addressing overdraft fees illustrates a number of important points. One, the issue of overdrafts transcends the day-to-day affairs of the company. Whether it is the attention brought to bear on Bank of America by legislators, regulators, reporters, or public interest groups – or whether it is the amount of time and effort the Company has taken to work with non-profits to tailor its products, it is impossible to deny that Bank of America's policies and practices are a significant policy issue confronting the Company such that it would be practicable for investors to consider a shareholder proposal focused on overdraft fees. Given all of the information in the public sphere on the issue and it its recent re-elevation in public discussions by the Booker-Brown bill, it is clear that investors should be able to review the Proposal, reflect on the arguments made by the Proponent and the Company, and exercise an intelligent vote on the matter.

In fact, shareholders did exactly that in 2010 at BB&T Corporation when the shareholders considered a shareholder proposal on the bank's overdraft policies.[2] That proposal made an almost identical request of the company, seeking "a report to shareholders, prepared at reasonable cost and omitting proprietary information by November 2010, evaluating overdraft policies and practices and the impacts these practices have on borrowers." In 2010, that BB&T shareholder proposal received a 23% vote.[3] Since 2010, the issue has only gained in notoriety and controversy. Also during that time investor interest in ESG issues such as overdraft policies has grown significantly. For those reasons, it is entirely reasonable to conclude that when the Proposal goes to a vote at Bank of America, shareholder support could easily climb much higher than 23%.

Finally, as discussed at the beginning of this letter and as covered in media stories referred to above, it is clear that overdraft policies and practices are relevant for the Company and shareholder consideration. The significant attention the Company has devoted to trying to maintain some form of overdraft fee revenue is clearly something that warrants investor attention. Whether that interest is motivated by financial analysis, ESG considerations, or

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2 http://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=6816047&type=PDF&symbol=BBT&companyName=BB%26T+Corp.&formType=DEF+14A&dateFiled=2010-03-08

3 http://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=6920758&type=PDF&symbol=BBT&companyName=BB%26T+Corp.&formType=8-K&dateFiled=2010-04-30

evaluation of where management is spending its time and attention, investors have a multitude of reasons to consider and form opinions on the Proposal.

Conclusion

In conclusion, we respectfully request the Staff inform the Company that rule 14a-8 requires a denial of the Company's no-action request. Please contact me at (503) 592-0864 or jkron@trilliuminvest.com with any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,

Jonas D. Kron
Senior Vice President

cc: Ronald O. Mueller at RMueller@gibsondunn.com
Geoffrey Walter at GWalter@gibsondunn.com

Appendix A

Overdraft Policies and Practices

WHEREAS: Bank of America charges a $35 fee when it pays a customer's check, ATM withdrawal, or certain other electronic transactions, even though the customer's account lacks sufficient funds to cover the charges (if the customer opts-in). In 2017, this resulted in Bank of America collecting over $1.6 billion in overdraft/NSF fees. This represented over 2.2% of its total income and 34% of its non-interest income.

According to a 2018 Center for Responsible Lending report, FDIC data shows the largest American banks collected $11.45 billion in overdraft/NSF fees in 2017. Their studies found:

- account holders incurring large numbers of overdraft fees are more often low-income, single, non-white, and renters;
- customers often pay more in overdraft fees than the overage amount;
- banks collect a high volume of overdraft fees each year from college-age customers and older Americans who rely heavily on Social Security Income; and
- many consumers who opted into fee-based overdraft coverage for debit card transactions after the 2010 change to the Federal Reserve's Regulation E did so as a result of aggressive or deceptive marketing.

The CFPB found the majority of customers that frequently overdraft are more financially vulnerable than those who are not. And Pew research has shown approximate 70% of heavy overdrafters earn less than $50,000/year.

Bank of America's flat $35 overdraft/NSF fee does not appear to bear any relationship to the cost or risk of covering an overdraft, which casts doubt on its reasons for imposing the fee and raises reputational risks. This also means that almost regardless of the size of the overdraft, the fee is the same – e.g. the cost to the customer is the same whether she is $5 over her balance or $500 over her balance. This is concerning since a 2014 CFPB study found customers were paying a median overdraft fee of $34 for debit card payments of $24 or less. The Washington Post has reported that this is the equivalent of a loan with a 17,000 percent annual rate.

This issue has presented the company with litigation risk in the last few years, including a $22 million and a $66 million settlement regarding overdraft practices.

Citibank does not charge overdraft fees for point of sale or ATM withdrawals.

In response to the potential and actual harm to vulnerable customers, U.S. Senator Cory Booker has introduced the Stop Overdraft Profiteering Act, which would prohibit banks from imposing

overdraft fees on debit card or ATM transactions. Furthermore, it would limit the number of overdraft fees that could be levied on check-based transactions.

Resolved: Shareholders request the Board complete a report to shareholders (prepared at reasonable cost, omitting proprietary and confidential information, and within a reasonable time) evaluating overdraft policies and practices and the impacts they have on customers.

GIBSON DUNN

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December 21, 2018

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

Re: *Bank of America Corporation*
Stockholder Proposal of Worcester County Food Bank and Plymouth Congregational Church of Seattle
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 2019 Annual Meeting of Stockholders (collectively, the "2019 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statements") received from Trillium Asset Management, LLC on behalf of Worcester County Food Bank and Plymouth Congregational Church of Seattle (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 2019 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 stockholder 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 this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

*** FISMA & OMB Memorandum M-07-16

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request the Board complete a report to shareholders (prepared at reasonable cost, omitting proprietary and confidential information, and within a reasonable time) evaluating overdraft policies and practices and the impacts they have on customers.

A copy of the Proposal, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(5) because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business; and
- Rule 14a-8(i)(7) because the proposal deals with matters relating to the company's ordinary business operations.

BACKGROUND

The Company is committed to ensuring that its policies, practices, products and programs align to advance the Company's purpose of making its customers' financial lives better through the power of every connection. The Company achieves its purpose by pursuing Responsible Growth, which entails growing and winning in the marketplace by remaining committed to its customer-focused strategy and by managing risk well. Under the Company's Responsible Growth strategy, this growth must be sustainable, by sharing success with the communities it serves, being the best place to work for its teammates, and driving the Company to develop products and services that fit its customers' financial profiles and help customers achieve their financial goals.[1]

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[1] *See* Bank of America Environmental, Social & Governance Update (2017), at pages 12-13 ("Enabling Financial Health"), which specifically addresses the Company's overdraft

Operating one of the United States' largest national banks, the Company maintains deposit relationships with 40 million customers. Thirty-eight million of those deposit relationships are Bank of America Advantage Banking (checking) accounts. One of the Company's value propositions for customers with checking accounts is the convenience they derive from being able to use ATM/debit cards at more than 16,000 Bank of America Automated Teller Machines ("ATMs"), access to more than 4,470 branch locations, the ubiquity of online and mobile banking capabilities, and availability of increasingly sophisticated digital technologies. To facilitate the availability of this vast network of physical branch locations, ATMs, and online/mobile capabilities to its customers, the Company may charge fees to customers for certain activities. This includes those times when a customer attempts to make a payment in excess of balances maintained in the checking account (an "overdraft"), and when a customer engages in a transaction for which there are insufficient funds in the account to make the payment (an "NSF").

Beginning in 2009, as an element of its routine customer relations and product development activities, the Company has carefully evaluated and evolved its overdraft policies and practices to improve transparency and to provide accounts designed to help customers avoid overdraft fees. The policies reflect the fact that overdrafts and NSF transactions involve complex determinations that call for careful balancing of numerous considerations. For example, while the Company may incur costs and risks when allowing an overdraft or honoring a payment or cash withdrawal request in an NSF situation, denying payment in those situations can have meaningful consequences for the customer. This may include the customer's inability to obtain a necessary product or service; the customer being charged a returned check fee by merchants; or the customer's lack of access to cash in an emergency. Balancing these considerations, in 2009, the Company adopted an industry-leading practice and determined to not allow overdrafts for non-recurring debit card purchases if a customer does not have sufficient funds.

Since that time, the Company has implemented a number of additional overdraft services, policies, and procedures to benefit its customers. The Company eliminated its Extended Overdraft Balance Charge, which assessed a fee when an account was overdrawn for more than five business days, and implemented a low dollar threshold service, under which overdraft/NSF fees are not charged for overdrafts below a threshold amount. The Company also has developed specific products and services to help customers avoid overdraft and NSF situations, including the introduction of the Bank of America Advantage SafeBalance Banking ("SafeBalance") checking accounts in 2014. The SafeBalance account

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policy, at: https://about.bankofamerica.com/assets/pdf/BAC_2017_ESG-Update_online_ADA.pdf.

is a low-cost alternative to a traditional checking account that eliminates all overdraft and NSF fees. The SafeBalance account features have been certified by the Cities for Financial Empowerment Fund as meeting the core features of the National Bank On Account Standards for safe and affordable accounts.

In 2016, the Company launched a series of proactive communication policies for customers who regularly experience overdrafts, to enhance their awareness of the SafeBalance offering. The Company also provided heightened awareness to customers of other services, including a "decline all" setting that is available on other Advantage Banking accounts to avoid overdraft fees. Additionally, under the Company's policies, the Company proactively communicates to the customer about overdraft fees, how to avoid them, and the "decline all" setting at the time of opening a new Advantage Banking account that could incur an overdraft fee. The Company also monitors overdraft behaviors on Advantage Banking accounts and may automatically place the "decline all" setting on an account for excessive overdrafts. As a result of enhanced technology and marketing of SafeBalance accounts to make the product more accessible for the appropriate customers, in October 2018, 11% of new accounts opened at the Company were SafeBalance accounts.

When developing, implementing, monitoring, and evolving its overdraft policies and practices, the Company engages with consumer advocates in the design and marketing of its overdraft services. For example, the Company receives extensive input from its National Community Advisory Council, comprised of senior leaders from social justice, consumer advocacy, community development, environmental organizations, and think-tanks. In addition to this voluntary oversight, all of the Company's business activities, including overdraft/NSF fees, are subject to regulatory supervision and review, often by multiple regulators in multiple jurisdictions. None of the Company's regulators has identified specific regulatory concerns with the Company's overdraft/NSF fees.

As a result of the Company's proactive efforts to evolve its overdraft policies and practices since 2009, overdraft/NSF fee revenue has been declining and is expected to continue to decline in the future. The Company continues to analyze its overdraft/NSF fee policies, including via use of improved technologies, enhanced communications with customers, and input from stakeholders such as consumer advocates, with the goal of assisting customers spend only monies that are available to them, increasing their awareness of other product options, and enhancing product transparency and education.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because The Proposal Is Not Relevant To The Company's Business.

A. Background

Rule 14a-8(i)(5) provides that a stockholder proposal may be excluded "[i]f the proposal relates to operations which account for less than five percent of the company's total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Prior to adoption of this version of Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id*. In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." Exchange Act Release No. 20091 (Aug. 16, 1983) ("1983 Release").

In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), the Staff reexamined its historic approach to interpreting Rule 14a-8(i)(5) and determined that the Staff's "application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982—the question of whether the proposal 'deals with a matter that is not significantly related to the issuer's business' and is therefore excludable." *Id*. Accordingly, the Staff noted that, going forward, it "will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5 percent of total assets, net earnings and gross sales." *Id*. Under this framework, the analysis is "dependent upon the particular circumstances of the company to which the proposal is submitted." *Id*. A proponent can continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. In this regard, "[w]here a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the

company's business' . . . . The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the 'total mix' of information about the issuer." In SLB 14I, the Staff further indicated that a company's directors, acting with knowledge of the company's business and the implications for a particular proposal on that business is better situated to determine whether a particular proposal is "otherwise significantly related to the company's business." *Id.* The Company's Board of Directors (the "Board") has delegated to its Corporate Governance Committee (the "Governance Committee") the "review of, and recommendations to, the Board regarding stockholder proposals." Pursuant to statements by Director of Corporation Finance Hinman, review by a company's board of directors pursuant to SLB 14I may be conducted by a committee of the board.[2]

B. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(5) Because The Proposal Is Not Significantly Related to the Company's Business

As the Proponents acknowledge in the Proposal, the fees generated by the Company's overdraft policies and practices are not significant to the Company's business under the standards of Rule 14a-8(i)(5). The Company has confirmed that for its fiscal year 2017, the revenue, income and assets associated with overdraft/NSF services were less than 5% of the Company's total revenue, net income and assets, respectively. In addition, the Company does not expect these percentages to exceed 5% for fiscal year 2018. In fact, due to the policies and practices discussed above, the amount of fees generated per account from the Company's overdraft/NSF services has steadily declined since 2009.

Moreover, the Supporting Statements do not demonstrate that the Proposal is otherwise significantly related to the Company's business. Instead, the Supporting Statements make generalized assertions or address practices or issues that are not applicable or significant to the Company. For example, the Proposal's second paragraph cites generalized conclusions based on years-old studies of nationwide overdraft programs

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[2] *See* William H. Hinman, Director, Division of Corporation Finance, SEC, Remarks at the American Bar Association Business Law Section Committee on Federal Regulation of Securities "Dialogue with the Director of Division of Corporation Finance" (Nov. 16, 2018).

conducted in 2006, 2007, and 2010.[3] The Supporting Statements assert, without any support or citation, that the Company's overdraft/NSF fee "does not appear to bear any relationship to the cost or risk of covering an overdraft." However, that paragraph abruptly turns to a general discussion of a nationwide study addressing overdraft fees for debit card payments which, as noted above, is inapplicable to the Company since it has not allowed overdrafts for non-recurring debit card purchases since 2009.

To further assess whether the Proposal is "otherwise significantly related to the Company's business," the Company presented the Proposal to the Governance Committee and reviewed with the Governance Committee information regarding the Company's business and implications of the Proposal for the Company's business. In concluding that the Proposal does not otherwise present issues that are significantly related to the Company's business, the Governance Committee considered the following factors:

- **The Company's Business Activities.** The Proposal addresses only one service that is provided incident to certain types of customer accounts. Moreover, the Company has actively taken steps to educate its customers about overdrafts, including at the time of account opening, to reduce the occurrence of overdraft fees, and expanded the promotion of its SafeBalance accounts, under which customers are not charged overdraft or NSF fees.

- **Financial Impact.** For 2017, the revenue, income and assets associated with the Company's overdraft/NSF services were less than 5% of the Company's total revenue, net income and assets, respectively. The Governance Committee also considered the fact that the Company's overdraft/NSF fee revenue has been declining since 2010 and is expected to continue to decline in the future. The practices that were at issue in the two lawsuits cited in the Supporting Statements were not central to the Company's overdraft services and have been discontinued without significant impact on the Company. The amounts that the Company agreed to pay in settlement of those lawsuits represents less than 0.5% of the Company's 2017 net income.

- **Actions Already Taken by the Company.** As part of its routine and ongoing evaluation of product and service offerings and the ways to enhance its customer

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[3] *See* Center for Responsible Lending, *Unfair Market: The State of High-Cost Overdraft Practices in 2017* (Aug. 2018) (citing studies from 2006, 2007, and 2011 at notes 3, 5, 6, and 10).

relationships, the Company has been proactive since 2009 in evaluating and evolving its overdraft policies and practices to improve transparency and provide solutions that help customers. For example, since its inception in 2014, the Company has enhanced the technology and marketing of SafeBalance accounts to make them more accessible for the appropriate customers. SafeBalance accounts are available for all customers, with specific fee waivers for students. In October 2018, 11% of new accounts were SafeBalance accounts. The Company has engaged with consumer advocates in the design and marketing of its overdraft services and received extensive input from its National Community Advisory Council, a council comprised of senior leaders from social justice, consumer advocacy, community development, environmental organizations, and think-tanks that advises the bank on community development, environmental, and consumer policy issues.

- **The Company Does Not Engage In Many Of The Practices Mentioned In The Proposal**. The Company does not engage in many of the practices cited in the Supporting Statements and in the studies that the Proposal references. For example, contrary to the Proposal's suggestions, the Company does not impose overdraft fees on non-recurring debit card purchases and has eliminated extended overdraft fees. For those situations where the Company does provide overdraft services, it carefully considers the terms of such services, such as enhancing transparency around its operations and providing alternative arrangements that its customers can opt to utilize. For example, consumers may choose to receive low balance alerts or, as noted above, select a "decline all" setting. Thus, the Company already evaluates the impact that its overdraft policies and practices have on its customers.

- **The Impact On Other Aspects Of The Company's Business That Result From Its Overdraft Policies and Procedures**. Because of the actions the Company has taken since 2009 and because of the processes the Company has in place to evolve its overdraft policies and procedures, the Company does not believe there are any significant impacts on other aspects of its business that result from its overdraft policies and procedures. Further, the practices that gave rise to the two lawsuits referenced in the Supporting Statements have been discontinued, and the settlement terms of those lawsuits do not significantly restrict or affect other aspects of the Company's operations. The Company stands behind the steps that it has taken with its overdraft policies and procedures and believe they are consistent with the Responsible Growth tenants of growing with its customer-focused strategy and growing in a sustainable manner. In 2017 the

Company provided Senator Cory Booker with a summary of the Company's current overdraft policies and practices, including those designed to enable the Company's customers to make informed decisions with respect to the financial services and products that it offers. The Governance Committee also considered that the Company's business, including its overdraft policies and practices, is highly regulated. For example, in 2010, the Federal Reserve amended Regulation E to require that consumers wanting to have fee-based overdraft coverage for debit card purchases must affirmatively opt-in to receive that service. However, this rule change did not have a significant impact on the Company, because it had previously determined not to provide overdraft coverage for non-recurring debit card purchases. The Governance Committee considered that, similarly, the Company will continue to evaluate and update its overdraft policies and practices and will comply with any future regulatory developments.

- **The Company's Stockholders Have Not Expressly Asked For The Type Of Information That The Report Called For By The Proposal Would Cover**. The Company maintains proactive and on-going engagement with its institutional investors, regularly meeting in person or telephonically with its top 100 stockholders. These stockholders collectively own over 50% of the Company's outstanding common stock. In the course of the Company's stockholder engagement activities, no stockholders have asked for the type of report that the Proposal requests and have not stated that they perceive the Company's overdraft policies and practices as raising significant stockholder concerns. In fact, the Company has discussed its overdraft policies and practices with stockholders as an example of the Company's support for its customers' needs and to enable their financial health. Stockholders have not expressed concerns with the Company's policies and practices. Additionally, as a bank holding company, the Company is required to file a financial report that provides additional details about the Company's overdraft and NSF fees. These details are disclosed at the Federal Financial Institutions Examination Council website, https://www.ffiec.gov/about.htm, and are available to stockholders and the public.

After considering and discussing these substantive factors, the Governance Committee concurred that, as a result of the Company's strategic long-term and proactive focus on overdraft policies and practices, the Proposal is not "otherwise significantly related to the Company's business."

Based on the foregoing, the Proposal is similar to the stockholder proposal considered in *Dunkin' Brands Group, Inc.* (avail. Feb. 22, 2018). There, the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a proposal regarding the environmental impacts of

K-Cup Pods brand packaging, noting that the proposal's "significance to the [c]ompany's business is not apparent on its face" and the proponent had "not demonstrated that it is otherwise significantly related to the [c]ompany's business." Here, the Proposal relates to operations that are not economically significant to the Company. Much of the Supporting Statements consists of sweeping assertions that are not applicable to the Company, speculative, or relate to practices that the Company has discontinued. Finally, the Governance Committee has determined that the Company's overdraft policies and procedures are not otherwise significantly related to the Company's operations. Accordingly, the Proponents have not demonstrated that the Proposal is significant to the Company, and the Proposal therefore is appropriately excludable under Rule 14a-8(i)(5).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

A. Background

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

In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations is that certain tasks "are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." 1998 Release. As summarized in Staff Legal Bulletin 14H (Oct. 22, 2015), an exception to the ordinary business exclusion applies for proposals that focus on a significant policy issue that transcends day-to-day business matters and raises policy issues so significant that it would be appropriate for a shareholder vote. In SLB 14I, the Staff noted that a company's board of directors "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter

transcends ordinary business and would be appropriate for a shareholder vote," due to the directors' status as stewards with fiduciary duties to a company's shareholders and with knowledge of the company's business and the implications for a particular proposal on the company's business.

Finally, framing a stockholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* 1983 Release; *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

B. The Evaluation Of Overdraft Policies And Practices And Their Impacts On Customers Are Matters Of The Company's Ordinary Business Operations

As discussed above, the Proposal addresses only one service that the Company provides incident to certain types of customer accounts. As such, the Proposal relates to the Company's ordinary business operations – specifically, the products and services offered by the Company and the Company's customer relations – and does not raise a significant policy issue. The Staff has frequently concurred that proposals regarding the provision of banking services, and in particular, proposals addressing banks' customer account policies, credit policies, and customer relations, are matters of ordinary business and are excludable under Rule 14a-8(i)(7). For example, in a series of no-action letters, the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal that requested a board report on the direct deposit advance service offered by a number of financial services companies, under which the banks advanced loans to customers against recurring direct deposits in the customers' checking accounts. In those letters, the proponents asserted many of the same types of concerns with the advance services offered by those institutions that the Proponents here raise with respect to overdraft services offered by the Company. Nevertheless, the Staff concurred that the proposal addressed ordinary business issues and did not focus on a significant policy issue, stating, "In this regard, we note that the proposal relates to the products and services offered for sale by the company. Proposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." *See, Fifth Third Bancorp* (avail. Jan. 28, 2013, recon. denied Mar. 4, 2013), *Regions Financial Corp.* (avail. Jan. 28, 2013), *Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013).

Similarly, in *JPMorgan Chase & Co.* (avail. Mar. 16, 2010), the Staff concurred in excluding a proposal relating to JPMorgan Chase's decision to issue refund anticipation loans to customers, noting that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)." In *Bank of America Corp.* (avail. Mar. 7, 2005), the Staff also concurred that a stockholder proposal pertaining to the Company's policies regarding the decision to extend credit to particular types of customers were excludable under Rule 14a-8(i)(7), because it related to the bank's ordinary business operations of credit policies and customer relations. *See also Banc One Corp.* (avail. Feb. 25, 1993) (permitting exclusion of proposal requesting the corporation adopt procedures that would consider the impact on customers when they were denied credit)*; Bancorp Hawaii, Inc.* (avail. Feb. 27, 1992) (finding that a proposal addressing policy on financial consultancy was excludable because it related to the company's day-to-day business operations). The Staff also has consistently concurred in exclusion under Rule 14a-8(i)(7) of proposals requesting that a board of directors prepare a report on a bank or financial institution's policies related to the provision of financial services. *See Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013); *JPMorgan Chase & Co.* (avail. Feb. 26, 2007); *Bank of America Corp.* (avail. Feb. 21, 2007); and *Citigroup, Inc.* (avail. Feb. 21, 2007). In all these instances, the proposals requested reports on the companies' guidelines for providing financial services to customers, asserting that the practices were inappropriate or created risks to the banks providing them. Notwithstanding these assertions, the Staff determined the proposals were excludable under Rule 14a-8(i)(7) because the provision of financial services comprised the companies' ordinary business.

We recognize that in the past the Staff has concluded that proposals addressed at predatory lending practices can implicate a significant policy issue. *See Bank of America Corp.* (avail. Mar. 14, 2011); *Cash America Int'l, Inc.* (avail. Feb. 13, 2008); and *Conseco, Inc.* (avail. Apr. 5, 2001). However, the Staff has repeatedly declined to categorize other financial products and services not involving predatory lending practices as constituting a significant policy issue, as reflected in the *Fifth Third Bancorp* (avail. Jan. 28, 2013) and other precedent cited above. Moreover, the Company's overdraft services do not constitute or reflect predatory lending practices, which typically include abusive, illegal, and deceptive sales and collection practices, lack of clear and understandable disclosure regarding loan terms and cost, onerous repayment terms and penalties, and hidden fees. As discussed above, the Company also does not engage in, or has discontinued, many of the practices cited in the Supporting Statements and in the studies that the Proposal references. In short, the Proposal does not raise a significant policy issue that transcends the Company's ordinary business operations, and the Supporting Statements' attempts to suggest otherwise rely on outdated and general studies, inapplicable comparisons, and unsupported assertions.

Here, the Proposal requests that the Board prepare a report evaluating overdraft policies and practices and their impacts on customers. Overdraft practices are routine services banks, including the Company, provide in connection with their core banking operations. The Company's overdraft policies and procedures only apply to certain of its accounts and certain transactions and, as addressed above, the Company actively seeks to educate customers who regularly experience overdrafts to make them aware of the Company's SafeBalance account offering, as well as other services such as a "decline all" setting that is available on other accounts to avoid overdraft fees.

To assist the Staff in assessing the Proposal, given the specific context, the Company asked the Governance Committee to also consider whether the Company's overdraft policies and procedures raise a significant policy issue that transcends the Company's ordinary business and would be appropriate for a vote of the Company's stockholders. Based on the same considerations addressed above, the Governance Committee concurred that the Proposal does not raise a policy issue that is sufficiently significant in relation to the Company as to transcend the Company's ordinary business.

In particular, focusing on the policies and practices actually in place at the Company, the Governance Committee considered: the limited scope and limited financial implications of the Company's overdraft services; the actions the Company has already taken to address the impact of overdraft/NSF fees particularly with respect to customers who regularly experience overdrafts; the actual overdraft practices that the Company does and does not engage in; and the absence of stockholder concern or questions over the Company's overdraft policies and procedures. The Governance Committee particularly noted that, in the highly regulated context of the Company's operations, the Company will continue to evaluate and update its overdraft policies and practices to comply with any additional regulatory requirements that may be imposed in the future.

Based on the precedent addressed above confirming that a broad range of banks' product and service offerings and credit practices implicate only ordinary business operations and do not raise significant policy issues, including the precedent addressing direct deposit advance services, and the Governance Committee's determination that, in the conduct of the Company's actual operations, policies and practices, the Proposal is not sufficiently significant in relation to the Company, we believe the Proposal properly may be excluded under Rule 14a-8(i)(7).

III. 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 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Ross E. Jeffries, Jr., the Company's Corporate Secretary, at (980) 388-6878.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Ross E. Jeffries Jr., Bank of America Corporation
Jonas Kron, Trillium Asset Management, LLC
Jean McMurray, Worcester County Food Bank
Rev. Steven Davis, Plymouth Congregational Church of Seattle

EXHIBIT A

TRILLIUM
ASSET MANAGEMENT

OFFICE OF THE
NOV 0 8 2018
CORPORATE SECRETARY

November 6, 2018

Corporate Secretary
Bank of America Corporation
Hearst Tower, 214 North Tryon Street
NC1-027-18-05
Charlotte, NC 28255

Dear Secretary:

Trillium Asset Management LLC ("Trillium") is an investment firm based in Boston specializing in socially responsible asset management. We currently manage approximately $2.8 billion for institutional and individual clients.

As requested and authorized by Worcester County Food Bank and Plymouth Congregational Church of Seattle, Trillium Asset Management, as our clients' investment advisor, hereby submits the enclosed shareholder proposal with Bank of America Corporation for inclusion in the 2019 proxy statement and in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, Worcester County Food Bank and Plymouth Congregational Church of Seattle each hold more than $2,000 of the company's common stock, acquired more than one year prior to today's date and held continuously for that time. As evidenced in the attached letters, Worcester County Food Bank and Plymouth Congregational Church of Seattle will remain invested in this position continuously through the date of the 2019 annual meeting. We will forward verification on behalf of Worcester County Food Bank and Plymouth Congregational Church of Seattle of the positions separately. Worcester County Food Bank and Plymouth Congregational Church of Seattle will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We would welcome discussion with Bank of America Corporation about the contents of the proposal.

Please direct any communications to me at (503) 894-7551, or via email at jkron@trilliuminvest.com.

We would appreciate receiving a confirmation of receipt of this letter via email.

Sincerely,

Jonas Kron
Senior Vice President, Director of Shareholder Advocacy
Trillium Asset Management, LLC

Overdraft Policies and Practices

WHEREAS: Bank of America charges a $35 fee when it pays a customer's check, ATM withdrawal, or certain other electronic transactions, even though the customer's account lacks sufficient funds to cover the charges (if the customer opts-in). In 2017, this resulted in Bank of America collecting over $1.6 billion in overdraft/NSF fees. This represented over 2.2% of its total income and 34% of its non-interest income.

According to a 2018 Center for Responsible Lending report, FDIC data shows the largest American banks collected $11.45 billion in overdraft/NSF fees in 2017. Their studies found:

- account holders incurring large numbers of overdraft fees are more often low-income, single, non-white, and renters;
- customers often pay more in overdraft fees than the overage amount;
- banks collect a high volume of overdraft fees each year from college-age customers and older Americans who rely heavily on Social Security Income; and
- many consumers who opted into fee-based overdraft coverage for debit card transactions after the 2010 change to the Federal Reserve's Regulation E did so as a result of aggressive or deceptive marketing.

The CFPB found the majority of customers that frequently overdraft are more financially vulnerable than those who are not. And Pew research has shown approximate 70% of heavy overdrafters earn less than $50,000/year.

Bank of America's flat $35 overdraft/NSF fee does not appear to bear any relationship to the cost or risk of covering an overdraft, which casts doubt on its reasons for imposing the fee and raises reputational risks. This also means that almost regardless of the size of the overdraft, the fee is the same – e.g. the cost to the customer is the same whether she is $5 over her balance or $500 over her balance. This is concerning since a 2014 CFPB study found customers were paying a median overdraft fee of $34 for debit card payments of $24 or less. The Washington Post has reported that this is the equivalent of a loan with a 17,000 percent annual rate.

This issue has presented the company with litigation risk in the last few years, including a $22 million and a $66 million settlement regarding overdraft practices.

Citibank does not charge overdraft fees for point of sale or ATM withdrawals.

In response to the potential and actual harm to vulnerable customers, U.S. Senator Cory Booker has introduced the Stop Overdraft Profiteering Act, which would prohibit banks from imposing overdraft fees on debit card or ATM transactions. Furthermore, it would limit the number of overdraft fees that could be levied on check-based transactions.

Resolved: Shareholders request the Board complete a report to shareholders (prepared at reasonable cost, omitting proprietary and confidential information, and within a reasonable time) evaluating overdraft policies and practices and the impacts they have on customers.

PLYMOUTH CHURCH
UNITED CHURCH OF CHRIST

1217 Sixth Avenue, Seattle, WA 98101
206.622.4865
plymouthchurchseattle.org

Jonas Kron
Senior Vice President, Director of Shareholder Advocacy
Trillium Asset Management, LLC
Two Financial Center
60 South Street, Suite 1100
Boston, MA 02111

Dear Mr. Kron:

I hereby authorize Trillium Asset Management LLC to file a shareholder proposal on behalf of the Plymouth Congregational Church of Seattle at Bank of America (BAC) on the subject of overdraft fees.

The Plymouth Congregational Church of Seattle is the beneficial owner of more than $2,000 of BAC common stock that Plymouth Congregational Church of Seattle has continuously held for more than one year. Plymouth Congregational Church of Seattle intends to hold the aforementioned shares of stock continuously through the date of the company's annual meeting in 2019.

Plymouth Congregational Church of Seattle specifically gives Trillium Asset Management LLC authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal. This authorization will terminate upon the conclusion of the company's 2019 annual meeting. Plymouth Congregational Church of Seattle intends all communications from the company and its representatives to be directed to Trillium Asset Management LLC. Plymouth Congregational Church of Seattle understands that its name may appear on the corporation's proxy statement as the filer of the aforementioned shareholder proposal.

Sincerely,

Rev. Steven Davis

Rev. Steven Davis
Executive Minister
Plymouth Congregational Church of Seattle

October 24, 2018
Date

Jonas Kron
Senior Vice President, Director of Shareholder Advocacy
Trillium Asset Management, LLC
Two Financial Center
60 South Street, Suite 1100
Boston, MA 02111

Dear Mr. Kron:

I hereby authorize Trillium Asset Management LLC to file a shareholder proposal on behalf of the Worcester County Food Bank at Bank of America (BAC) on the subject of overdraft fees.

Worcester County Food Bank is the beneficial owner of more than $2,000 of BAC common stock that Worcester County Food Bank has continuously held for more than one year. Worcester County Food Bank intends to hold the aforementioned shares of stock continuously through the date of the company's annual meeting in 2019.

Worcester County Food Bank specifically gives Trillium Asset Management LLC authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal. This authorization will terminate upon the conclusion of the company's 2019 annual meeting. Worcester County Food Bank intends all communications from the company and its representatives to be directed to Trillium Asset Management LLC. Worcester County Food Bank understands that its name may appear on the corporation's proxy statement as the filer of the aforementioned shareholder proposal.

Sincerely,

Jean McMurray

Jean McMurray
Worcester County Food Bank

11/1/18

Date

GIBSON DUNN

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RMueller@gibsondunn.com

November 16, 2018

VIA OVERNIGHT MAIL

Jonas Kron
Trillium Asset Management
Two Financial Center
60 South Street
Boston, MA 02111

Dear Mr. Kron:

I am writing on behalf of Bank of America Corporation (the "Company"), which received on November 8, 2018, the stockholder proposal you submitted on behalf of the Worcester County Food Bank and Plymouth Congregational Church of Seattle (the "Proponents") entitled "Overdraft Policies and Practices" pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2019 Annual Meeting of Stockholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that either Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that either Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, each Proponent must submit sufficient proof of the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 6, 2018, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of each Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 6, 2018; or

(2) if the Proponent 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, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, 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 required number or amount of Company shares for the one-year period.

If either 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 http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain 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 submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 6, 2018.

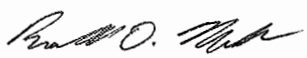
(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 6, 2018. 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, for the one-year period preceding and including November 6, 2018, the required number or amount of Company shares were continuously held: (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.

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 care of Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Washington, DC 20036.

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 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

cc: Jean McMurray
Worcester County Food Bank
474 Boston Turnpike
Shrewsbury, MA 01545

Rev. Steven Davis
Plymouth Congregational Church of Seattle
1217 Sixth Avenue
Seattle, WA 98101

Enclosures

Rule 14a-8 – Shareholder Proposals

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a–8 and provide you with a copy under Question 10 below, §240.14a–8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S–K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a–21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a–21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a–6.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

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 acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

TRILLIUM
ASSET MANAGEMENT®

November 12, 2018

Corporate Secretary
Bank of America Corporation
Hearst Tower, 214 North Tryon Street
NC1-027-18-05
Charlotte, NC 28255

Dear Secretary:

As stated in Trillium's filing letter dated November 6, 2018, and in accordance with the SEC Rules, please find the attached custodial letters from Charles Schwab Advisor Services documenting that Worcester County Food Bank and Plymouth Congregational Church of Seattle each hold sufficient company shares to file a proposal under rule 14a-8. Also please note in the attached authorization letter that Worcester County Food Bank and Plymouth Congregational Church of Seattle, the beneficial holders of the shares, each intend to hold the shares through the date of the company's 2019 Annual Meeting.

Rule 14a-8(f) requires notice of specific deficiencies in our proof of eligibility to submit a proposal. Therefore we request that you notify us if you see any deficiencies in the enclosed documentation.

Please contact me if you have any questions at (503) 894-7551; Trillium Asset Management LLC., Two Financial Center, 60 South Street, Boston, MA 02111; or via email at jkron@trilliuminvest.com.

Sincerely,

Jonas Kron
Senior Vice President, Director of Shareholder Advocacy
Trillium Asset Management, LLC

Enclosures

charles SCHWAB

November 8, 2018

RE: Plymouth Congregational Church of Seattle/Acct ***

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 2,605 shares of BAC common stock. These 2,605 shares have been held in this account continuously for at least one year prior to November 6, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

This letter serves as confirmation that the shares are held by Charles Schwab & Co, Inc.

Sincerely,

Shaun Tracey

Relationship Specialist

charles SCHWAB

November 8, 2018

RE: Worcester County Food Bank, Inc./Acct ***

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 2,896 shares of BAC common stock. These 2,896 shares have been held in this account continuously for at least one year prior to November 6, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

This letter serves as confirmation that the shares are held by Charles Schwab & Co, Inc.

Sincerely,

Shaun Tracey

Relationship Specialist

Jonas Kron
Senior Vice President, Director of Shareholder Advocacy
Trillium Asset Management, LLC
Two Financial Center
60 South Street, Suite 1100
Boston, MA 02111

Dear Mr. Kron:

I hereby authorize Trillium Asset Management LLC to file a shareholder proposal on behalf of the Worcester County Food Bank at Bank of America (BAC) on the subject of overdraft fees.

Worcester County Food Bank is the beneficial owner of more than $2,000 of BAC common stock that Worcester County Food Bank has continuously held for more than one year. Worcester County Food Bank intends to hold the aforementioned shares of stock continuously through the date of the company's annual meeting in 2019.

Worcester County Food Bank specifically gives Trillium Asset Management LLC authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal. This authorization will terminate upon the conclusion of the company's 2019 annual meeting. Worcester County Food Bank intends all communications from the company and its representatives to be directed to Trillium Asset Management LLC. Worcester County Food Bank understands that its name may appear on the corporation's proxy statement as the filer of the aforementioned shareholder proposal.

Sincerely,

Jean McMurray

Jean McMurray
Worcester County Food Bank

11/1/18
Date

PLYMOUTH CHURCH
UNITED CHURCH OF CHRIST

1217 Sixth Avenue, Seattle, WA 98101
206.622.4865
plymouthchurchseattle.org

Jonas Kron
Senior Vice President, Director of Shareholder Advocacy
Trillium Asset Management, LLC
Two Financial Center
60 South Street, Suite 1100
Boston, MA 02111

Dear Mr. Kron:

I hereby authorize Trillium Asset Management LLC to file a shareholder proposal on behalf of the Plymouth Congregational Church of Seattle at Bank of America (BAC) on the subject of overdraft fees.

The Plymouth Congregational Church of Seattle is the beneficial owner of more than $2,000 of BAC common stock that Plymouth Congregational Church of Seattle has continuously held for more than one year. Plymouth Congregational Church of Seattle intends to hold the aforementioned shares of stock continuously through the date of the company's annual meeting in 2019.

Plymouth Congregational Church of Seattle specifically gives Trillium Asset Management LLC authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal. This authorization will terminate upon the conclusion of the company's 2019 annual meeting. Plymouth Congregational Church of Seattle intends all communications from the company and its representatives to be directed to Trillium Asset Management LLC. Plymouth Congregational Church of Seattle understands that its name may appear on the corporation's proxy statement as the filer of the aforementioned shareholder proposal.

Sincerely,

Rev. Steven Davis

Rev. Steven Davis
Executive Minister
Plymouth Congregational Church of Seattle

October 04, 2018
Date