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

DIVISION OF
CORPORATION FINANCE

March 1, 2023

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Bank of America Corporation (the "Company")
Incoming letter dated December 19, 2022

Dear Ronald O. Mueller:

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

The Proposal requests that the board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company has not substantially implemented the Proposal. In this regard, we note that the Company's policy is limited to executive officers whose compensation is reported in an annual proxy statement.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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RMueller@gibsondunn.com

December 19, 2022

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*
Shareholder Proposal of John Chevedden
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 2023 Annual Meeting of Shareholders (collectively, the "2023 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statements") submitted by John Chevedden (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

> Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

The Proposal elaborates on what types of post-employment payments would and would not be covered by the policy requested in the Proposal, including cash or equity awards that are paid out or vest "*due to* a senior executive's termination" as well as "equity awards if vesting is accelerated . . . *due to* termination." (emphases added). The Supporting Statement indicates that the purpose of the Proposal is to prevent management from "seeking a business combination simply to trigger a management golden parachute windfall" and to protect against "lavish management termination pay". A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

For the reasons discussed below, we believe that the Proposal may properly be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal through the Company's existing Severance Agreement Approval Policy (the "Severance Agreement Approval Policy"), which the Company's Board of Directors ("Board") adopted effective April 24, 2002, following the Company's 2002 Annual Meeting of Shareholders, at which the Company's shareholders approved a shareholder proposal virtually identical to the Proposal.[1] The Severance Agreement Approval Policy addresses the concerns raised in both the 2002 shareholder proposal and the instant Proposal and provides: "It shall be the policy of the Board to seek Stockholder Approval for Future Severance Agreements[2] with Senior Executives that provide Severance Benefits in an amount exceeding the Severance Benefit Limitation." The "Severance Benefit Limitation" is defined to mean "two (2) times the

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[1] The shareholder proposal included in the Company's 2002 proxy statement read:
"RESOLVED: That the shareholders of Bank of America ('Bank of America' or the 'Company') urge the Board of Directors to seek shareholder approval for future severance agreements with senior executives that provide benefits in an amount exceeding two times the sum of the executive's base salary plus bonus. 'Future severance agreements' include agreements renewing, modifying or extending existing severance agreements or employment agreements containing severance provisions."

[2] Future Severance Agreements, as discussed below, includes future employment agreements.

sum of such Senior Executive's Base Salary and Bonus." A copy of the Severance Agreement Approval Policy is attached hereto as Exhibit B.

ANALYSIS

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

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

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has "substantially implemented" the proposal. The SEC stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976) ("1976 Release"). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the SEC recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) ("1983 Release"). Therefore, in the 1983 Release, the SEC adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented," and the SEC codified this revised interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998) (the "1998 Release").

Applying this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the shareholder proposal has been "substantially implemented" and may be excluded as moot. The Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff had not required that a company implement the action requested in a proposal exactly in all details but had been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the proposal had been satisfied. The company further argued, "[i]f the mootness requirement [under the

predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice." Therefore, if a company has satisfactorily addressed both the proposal's underlying concerns and its "essential objective," the proposal will be deemed "substantially implemented" and, therefore, may be excluded. *See, e.g.*, *Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

The Staff has concurred that, when substantially implementing a shareholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. For example, the Staff has previously taken the position that a shareholder proposal requesting that a company's board of directors prepare a report pertaining to environmental, social, or governance issues may be excluded when the company has provided information about the initiative in various public disclosures. *See PPG Industries Inc. (Congregation of the Sisters of St. Joseph of Peace)* (avail. Jan. 16, 2020) (concurring with the exclusion of a proposal requesting that the board of directors prepare a report on the company's processes for "implementing human rights commitments within company-owned operations and through business relationships" where the requested information was already disclosed in the company's global code of ethics, global supplier code of conduct, supplier sustainability policy, and sustainability report, and other disclosures that addressed the requested information); *The Wendy's Company* (avail. Apr. 10, 2019) (concurring with exclusion of a proposal requesting that the board of directors prepare a report on the company's process for identifying and analyzing potential and actual human rights risks of operations and supply chain where the company already had a code of conduct for suppliers, a code of business conduct and ethics, and other policies and public disclosures concerning supply chain practices and other human rights issues that achieved the proposal's essential objective); *The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014) (concurring with the exclusion of a proposal requesting that the company prepare a report assessing short- and long-term financial, reputational and operational impacts that the legacy Bhopal disaster may reasonably have on the company's Indian and global business opportunities and reporting on any actions the company intends to take to reduce such impacts, where the company had published a "Q and A" regarding Bhopal and disclosed other actions it had taken and would continue to take).

In Exchange Act Release No. 95267 (July 13, 2022), the Commission proposed to amend Rule 14a-8(i)(10) to provide that proposals would be excludable if a company has already implemented the "essential elements" of the proposal. While the Commission has not yet

adopted that proposed amendment, and it is therefore not applicable to the Staff's review of this letter, it is notable the Commission stated that even under the proposed standard, "a proposal need not be rendered entirely moot, or be fully implemented in exactly the way a proponent desires, in order to be excluded. A company may be permitted to exclude a proposal it has not implemented precisely as requested if the differences between the proposal and the company's actions are not essential to the proposal."

B. Overview of the Company's Severance Agreement Approval Policy

As announced in the Company's proxy statement for its 2003 Annual Meeting of Shareholders,[3] the Company adopted the Severance Agreement Approval Policy in 2002. The Severance Agreement Approval Policy requires shareholder approval of employment or severance agreements with the Company's senior executives that provide severance benefits exceeding two times the sum of the executive's base salary and bonus.

The Severance Agreement Approval Policy applies to all employment and severance agreements entered into after April 24, 2002 with any of the Company's senior executives that provide for severance benefits, including any renewal, modification or extension of any existing employment agreement or severance agreement that was in effect as of the effective date of the policy. Agreements for future services other than as an employee, such as consulting agreements, or agreements requiring the senior executive to refrain from certain conduct, such as restrictive covenant agreements, are not treated as employment or severance agreements under the Severance Agreement Approval Policy.

For purposes of determining whether the amount of severance benefits to be provided exceeds the two times multiple under the Severance Agreement Approval Policy, severance benefits include: (i) severance benefits payable in cash (including cash amounts payable for the uncompleted portion of an employment agreement), (ii) special benefits or perquisites provided for periods following termination of employment, and (iii) accelerated vesting of outstanding equity awards in connection with such termination of employment, other than "Permitted Equity Vesting" (described below).

Severance benefits under the Severance Agreement Approval Policy exclude accrued benefits, which are defined as compensation and benefits earned, accrued or otherwise provided for employment services rendered through the date of termination and any post-termination benefits provided under plans applicable to broader groups of employees (such as retiree

[3] See the Company's 2003 proxy statement at page 18, *available at* https://www.sec.gov/Archives/edgar/data/70858/000095016803000950/ddef14a htm.

medical). In addition, the accelerated vesting of equity awards that otherwise would have vested during the 24-month period following termination of employment, defined as "Permitted Equity Vesting," is not counted when determining the aggregate amount of severance benefits payable to the senior executive.[4]

C. The Company's Severance Agreement Approval Policy Substantially Implements The Proposal

The Severance Agreement Approval Policy substantially implements the Proposal within the meaning of Rule 14a-8(i)(10) because it fulfills the Proposal's essential objective by requiring shareholder approval of "new or renewed pay packages" that provide the Company's senior executives with "severance or termination payments" with an estimated value "exceeding" the 2.99 times multiple specified in the Proposal. Notably, the Severance Agreement Approval Policy covers severance benefits that exceed *two* times the executive's base salary and bonus — a lower and more restrictive multiple that is within, and satisfies, the not-to-exceed 2.99 multiple requested by the Proposal. As a result, the Company's previous actions, taken in response to similar proposals submitted more than 20 years ago, have implemented the Proposal and present precisely the scenario contemplated by the SEC when it adopted the predecessor to Rule 14a-8(i)(10) "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." 1976 Release.

When a company has already acted favorably on an issue addressed in a shareholder proposal, Rule 14a-8(i)(10) does not require the company and its shareholders to reconsider the issue. In this regard, *PACCAR Inc.* (avail. Jan. 31, 2020) is particularly relevant. There, the proposal requested that the board of directors "adopt a policy for improving board and top management diversity . . . requiring that the initial lists of candidates from which new management-supported director nominees and chief executive officers . . . recruited from outside the company are chosen by the board or relevant committee . . . should include qualified female and racially/ethnically diverse candidates." Although the proposal requested action with regard to both directors *and* chief executive officers, the company argued it had substantially implemented the proposal by approving changes applicable only to directors.[5] Regarding chief executive officer succession, the company noted that lists regarding external searches for candidates were "not relevant" because the company's actual practice for chief executive officer appointments consisted of internal promotions to the position. Therefore, the company asserted

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[4] As discussed in part II.C. below, the Company only provides for accelerated equity upon death.

[5] In *PACCAR*, the board of directors approved changes to the board membership guidelines, which then stated "initial lists of candidates from which new director nominees are chosen will include qualified female and racially/ ethnically diverse candidates."

that while the proposal requested a diversity policy regarding external chief executive officer searches, the proposal's essential objective was nonetheless accomplished through its internal diversity and inclusion programs, including diversity councils and leadership programs. The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(10). *See also IDACORP, Inc.* (avail. Apr. 1, 2022) (Staff concurred that company's report substantially implemented the proposal even though the proponent's counsel asserted that the company's actions did not implement the guidelines or essential purpose of the proposal).

Here, the Proposal requests that the Board "seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus." The Company's Severance Agreement Approval Policy requires shareholder approval of employment or severance agreements with executive officers that provide severance benefits exceeding two times base salary and bonus, thus imposing a more stringent multiple that falls within and satisfies the limit requested by the Proposal. The Proposal requests that the policy apply to "any senior manager's new or renewed pay package" and the Severance Agreement Approval Policy applies to any named executive officer's employment agreement or severance agreement (as defined) entered into or renewed after April 24, 2002. The Proposal states that the requested policy need not apply to "life insurance, pension benefits, or deferred pay earned and vested prior to termination," and consistent with that request the Severance Agreement Approval Policy does not apply to accrued benefits, as defined in the policy.

The Proposal also requests that the policy apply to "cash, equity or other pay that is paid out or vests due to a senior executive's termination for any reason." Similarly, the Severance Agreement Approval Policy applies to payments made in the form of cash, special benefits or perquisites paid or provided following termination of employment. In fact, as reported in the Company's proxy statement for its 2022 Annual Meeting of Shareholders, the Company "do[es] not have any agreements with our named executive officers that provide for cash severance payments upon termination of employment or a change in control."[6]

With respect to equity compensation, the Company's equity awards are subject to, and conform and comply with, the Severance Agreement Approval Policy and the policy requested in the Proposal. In this regard, it is important to understand that the Company's equity awards will continue to settle following termination of employment to the same extent they would have during employment if an executive has at least 10 years of service and his or her age and years of

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[6] The 2022 Proxy Statement is available at https://www.sec.gov/Archives/edgar/data/70858/000119312522067335/d222593ddef14a.htm. The relevant pages of the 2022 Proxy Statement are attached hereto as Exhibit C.

service add up to at least 60 (referred to as "Rule of 60 vesting"), and provided that the executive continues to comply with covenants regarding non-solicitation, detrimental conduct, and compliance with anti-hedging/derivative transactions policies (such awards also remain subject to the Company's clawback policies). On account of the Rule of 60 vesting provisions, the equity awards are "accrued benefits" (within the meaning of the Severance Agreement Approval Policy) that are earned while the executive is employed based on the executive's age and years of service, and are settled over time following separation of employment, subject to continued compliance with certain covenants.[7] The Rule of 60 vesting terms do not contravene the policy requested in the Proposal, and are specifically permissible under the Proposal, which states that "[s]everance or termination payments" do not include "life insurance, pension benefits, or *deferred pay earned and vested prior to termination*" (emphasis added). As such, whereas the express language of the Proposal is addressed to equity compensation that "vests *due to* a senior executive's termination," these equity awards vest *due to* meeting years of service requirements while employed, and are subject to continued compliance with certain covenants.[8] The Company's equity awards also are eligible to continue to vest on the original schedule following termination on account of disability or a termination following a change in control. These awards are not "equity awards [for which] vesting is accelerated . . . due to termination" and also do not vest "*due to*" termination of employment within the scope of the Proposal; they continue to vest regardless of whether the executive's employment continues or terminates and remain subject to the same forfeiture provisions that apply during the course of employment if an executive fails to comply with covenants regarding non-solicitation, detrimental conduct, and compliance with anti-hedging/derivative transactions policies.

The only circumstance in which vesting of the Company's equity awards is accelerated is upon an award holder's death. While the Proposal does not expressly address compensation that is triggered by death, the Proposal states that the "[s]everance or termination payments" do not include life insurance payments, suggesting that the policy requested under the Proposal need not apply to compensation triggered by death. Moreover, regardless of whether the Proponent would

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[7] As reported on page 80 of the Company's 2022 proxy statement, the age plus years of service of each of the Company's 2022 named executive officers exceeded 60, so all of its named executive officers had vested in their equity awards and the amounts reported in the proxy statement reflect the end of year value of these accrued benefits that will continue and be settled following a termination of employment. Notably, these equity awards would also continue to settle to the in the same manner if an executive's employment did not terminate, subject to compliance with the same covenants.

[8] In addition, by specifically mentioning that severance benefits are calculated by including "benefits not vested under a plan generally available to management employees" (see the Proposal's definition of "Estimated total value"), the Proposal implies that its principal concern is with benefits available to management and not with arrangements available to the general employee population. The Company's Rule of 60 vesting terms are applicable to broad populations of non-management participants of the Company's equity plan.

have preferred that the treatment of equity awards upon death be handled differently, which is not clear from the Proposal and its Supporting Statement, under the currently applicable standards of Rule 14a-8(i)(10) and the proposed Rule 14a-8(i)(10) standards, the Company has substantially implemented the Proposal, including each of its key elements, and the Severance Agreement Approval Policy, as implemented by the Company, satisfies the essential objectives of the Proposal. The minor distinctions between the Severance Agreement Approval Policy and the policy requested by the Proposal are comparable to the distinctions at issue in *PACCAR*: PACCAR's policy did not apply to both directors and executive officers, but the Staff agreed that the proposal had nonetheless been substantially implemented because PACCAR's existing practices in regard to executive officers satisfied the essential objective of the proposal.

The Staff has consistently concurred in the exclusion of shareholder proposals that, like the Proposal, ask the company to adopt a specific executive compensation policy that has already been implemented by the company's existing policies or executive compensation arrangements. *See*, *e.g.*, *eBay Inc.* (avail. Mar. 29, 2018) (concurring, over the proponent's objection, that the company's executive compensation programs substantially implemented a proposal requesting that the board report on the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company's compensation incentive plans); *International Business Machines Corp.* (avail. Jan. 17, 2018) (concurring over the proponent's objection that the company's executive compensation program substantially implemented the proposal requesting that the board adopt a policy that it will not utilize earnings per share, or its variations, or financial ratios, in determining a senior executive's incentive compensation or eligibility for such compensation, unless certain conditions are met). *See also, Amazon.com, Inc. (Öhman Fonder)* (avail. Mar. 27, 2020) (concurring with the exclusion of a proposal requesting the company's board adopt a "comprehensive policy applicable to Amazon's operations and subsidiaries that commits the company to respect human rights" where the company had a well-established human rights policy); *The Wendy's Co.* (avail. Apr. 10, 2019) (concurring with the exclusion of a proposal requesting that the company report on its "process for identifying and analyzing potential and actual human rights risk of operations and supply chain" where "the [c]ompany's public disclosures compare[d] favorably with the guidelines of the [p]roposal"); *Exelon Corp.* (avail. Feb. 26, 2010) (concurring with exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions").

As with the company policies and practices addressed in the foregoing precedent, the Severance Agreement Approval Policy, when evaluated in light of the Company's existing

policies, including its equity award practices, already accomplishes the Proposal's essential objective of requiring that the Company obtain shareholder approval of executive severance payments above a specified value (and, in fact, does so by imposing a lower multiple triggering shareholder approval than required under the Proposal). Accordingly, because the Company's Severance Agreement Approval Policy substantially implements the Proposal, and, consistent with the well-established precedent cited above, the Proposal may properly be excluded under Rule 14a-8(i)(10).

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 2023 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
John Chevedden

EXHIBIT A

JOHN CHEVEDDEN
PII
[redacted]

Mr. Ross Jeffries
Corporate Secretary
Bank of America Corporation (BAC)
100 North Tryon Street
Charlotte, North Carolina 28255
PH: 704-386-5681
FX: 704-625-4463

Dear Mr. Jeffries,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

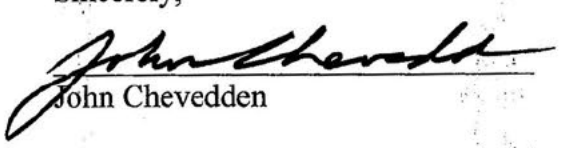
This proposal is for the next annual shareholder meeting.

I intend to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Sincerely,



John Chevedden

September 9, 2022
Date

cc: Ross Jeffries <ross.jeffries@bankofamerica.com>
Kristen Gest <kristen.gest@bofa.com>

[BAC: Rule 14a-8 Proposal, September 9, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other pay that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred pay earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities, perquisites or benefits not vested under a plan generally available to management employees, post-employment consulting fees or office expense and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can sometimes be justified but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target short-term bonus better aligns management pay with shareholder interests.

For instance at one company, that does not have this policy, if the CEO is terminated he could receive $44 million in termination pay – over 10 times his base salary plus short-term bonus. In the event of a change in control, the same person could receive a whopping $124 million in accelerated equity payouts even if he remained employed.

It is in the best interest of Bank of America shareholders and the morale of Bank of America employees to be protected from such lavish management termination pay for one person.

It is important to have this policy in place so that Bank of America management stays focused on improving company performance as opposed to seeking a business combination simply to trigger a management golden parachute windfall.

This proposal topic received between 51% and 65% support at:
FedEx (FDX)
Spirit AeroSystems (SPR)
Alaska Air (ALK)
AbbVie (ABBV)
Fiserv (FISV)

Please vote yes:
Shareholder Ratification of Termination Pay – Proposal 4
[The above line – *Is* for publication.]

Notes:
"Proposal 4" stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [redacted]PII.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

This proposal is not intended to be more than 500 words. Should it exceed 500 words then the words that exceed 500 words would be taken out of the proposal starting with the last sentence of the proposal and moving upwards as needed to omit full sentences.

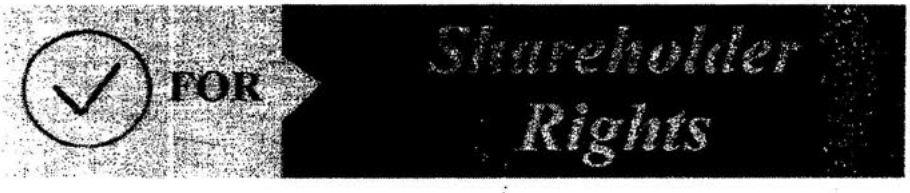


EXHIBIT B

EXHIBIT A

BANK OF AMERICA CORPORATION
CORPORATE POLICY REGARDING SEEKING
STOCKHOLDER APPROVAL OF FUTURE SEVERANCE AGREEMENTS

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1. Policy Statement: It shall be the policy of the Board to seek Stockholder Approval for Future Severance Agreements with Senior Executives that provide Severance Benefits in an amount exceeding the Severance Benefit Limitation.

2. Definitions: As used in this Policy Statement the following terms shall have the following meanings:

"Accrued Benefits" means compensation and benefits earned, accrued or otherwise provided for employment services rendered through the date of termination of employment (e.g., pro rata bonus, accrued vacation, accrued retirement benefits, etc.) or any post-termination benefits provided under plans, programs or arrangements of the Corporation applicable to one or more groups of employees in addition to the Senior Executives (e.g., retiree medical). In that regard, "Accrued Benefits" includes any sign-on bonus paid to an executive intended to attract the executive to the Corporation (whether payable in the form of cash or property, such as shares of the Corporation's common stock), regardless of whether there is any potential repayment obligation related to such sign-on bonus.

"Base Salary" means:

(i) with respect to an Employment Agreement, the annual rate of base salary payable from time to time to the Senior Executive pursuant to such Employment Agreement, and

(ii) with respect to a Severance Agreement, the annual rate of base salary payable to the Senior Executive immediately prior to the effective date of such Severance Agreement.

"*Board*" means the Board of Directors of the Corporation.

"*Bonus*" means the greater of (i) the highest Total Annual Incentive Award actually awarded to the Senior Executive by the Corporation for any of the three (3) fiscal years of the Corporation immediately preceding the fiscal year in which the Senior Executive's termination of employment occurs, or (ii) the "target" Total Annual Incentive Award for such Senior Executive for the fiscal year in which the Senior Executive's termination of employment occurs.

"*Corporation*" means Bank of America Corporation, a Delaware corporation.

"*Effective Date*" means April 24, 2002, the effective date of this Policy Statement.

"*Employment Agreement*" means an agreement between the Corporation (or one of its subsidiaries) and a Senior Executive pursuant to which the Senior Executive renders services to the Corporation (or one of its subsidiaries) as an employee (and not as a consultant or other independent contractor). For purposes of this definition, a person shall be considered a Senior Executive if the person is a Senior

Executive for the year that the agreement is entered into or if the person will be a Senior Executive for the immediately following year.

"*Future Severance Agreement*" means an Employment Agreement or Severance Agreement entered into after the Effective Date providing for Severance Benefits to a Senior Executive, and includes any renewal, modification or extension made after the Effective Date to an Employment Agreement or Severance Agreement that is in effect as of the Effective Date.

"*Permitted Equity Vesting*" means the accelerated vesting pursuant to a Future Severance Agreement related to:

(i) any equity award that was outstanding as of the Effective Date, or

(ii) any equity award granted after the Effective Date to the extent it would have vested during the twenty-four (24) month period following the Senior Executive's termination of employment.

"*Senior Executive*" means an executive officer of the Corporation whose compensation is reported in an annual proxy statement of the Corporation furnished to the stockholders of the Corporation after the Effective Date.

"*Severance Agreement*" means an agreement between the Corporation (or one of its subsidiaries) and a Senior Executive related to such Senior Executive's termination of employment with the Corporation and its subsidiaries. For purposes of this definition, a person shall be considered a Senior Executive if the person is a Senior

Executive for the year that the agreement is entered into or if the person was a Senior Executive for the immediately preceding year. A Severance Agreement does not include an agreement for future services to be rendered to the Corporation (e.g., consulting arrangements) or an agreement to refrain from certain conduct (e.g., covenants not to compete, covenants not to solicit, etc.)

"*Severance Benefits*" means and includes (i) severance benefits payable in cash (including cash amounts payable for the uncompleted portion of an Employment Agreement), (ii) the value of special benefits or perquisites provided to a Senior Executive for periods following termination of employment, and (iii) the value of any accelerated vesting of any outstanding equity award in connection with the termination of such Senior Executive's employment other than any Permitted Equity Vesting. The term "Severance Benefits" does not include any Accrued Benefits.

"*Severance Benefit Limitation*" means, with respect to a Senior Executive, two (2) times the sum of such Senior Executive's Base Salary and Bonus. Whether the Severance Benefits provided under an Employment Agreement exceed the Severance Benefit Limitation shall be determined by ascertaining whether the Severance Benefits payable to a Senior Executive at any time following termination of employment would exceed the Severance Benefit Limitation. Whether the Severance Benefits provided under a Severance Agreement exceed the Severance Benefit Limitation shall be determined by ascertaining whether the Severance Benefits payable to a Senior Executive under such Severance Agreement exceed the Severance Benefit Limitation. If a Senior Executive enters into more than one Future Severance Agreement (e.g., both an

Employment Agreement and a Severance Agreement), the Severance Benefit Limitation shall be applied against the aggregate Severance Benefits payable under all such agreements.

"Stockholder Approval" means, with respect to a Future Severance Agreement, the approval by the affirmative vote of a majority of the votes represented by the aggregate of all of the shares of Common Stock, Series B Preferred Stock and ESOP Preferred Stock of the Corporation cast with respect to such Future Severance Agreement at a duly convened meeting of the stockholders of the Corporation.

"Total Annual Incentive Award" means the total annual incentive awarded to a Senior Executive for a fiscal year of the Corporation, including the portion immediately payable in cash (whether or not any portion of such amount is deferred under any qualified or non-qualified deferred compensation plan of the Corporation) and, if applicable, the portion payable in the form of restricted stock or restricted stock units.

3. Valuations. The determinations of the value of non-cash items, as well as the present value of any cash or non-cash benefits payable over a period of time, shall be determined by the Board in its sole discretion using commercially reasonable valuation techniques and principles.

4. Examples:

Example A: The Board determines that it is in the best interest of the Corporation and its stockholders to enter into "change in control agreements" with the Senior Executives after the Effective Date. Upon a Senior Executive's qualifying

termination of employment following the occurrence of a "change in control," Severance Benefits would be payable that exceed the Severance Benefit Limitation. These agreements would constitute Future Severance Agreements for purposes of this Policy Statement. Under the Policy Statement, the Corporation would condition such change in control agreements on Stockholder Approval.

Example B: The Corporation enters into an agreement and plan of merger with XYZ Corporation after the Effective Date. Under the terms of the transaction the chief executive officer of XYZ Corporation would become a Senior Executive of the Corporation on the effective date of the merger (because the executive's compensation will be reported in the Corporation's proxy for the year in which the merger is effective or the following year). The proposed employment agreement with the chief executive officer of XYZ Corporation would have a term of five years and provides that in the event the chief executive officer's employment with the Corporation is terminated "without cause" or the chief executive officer terminates employment with the Corporation for "good reason" during the term, then the chief executive officer would be entitled to collect the Base Salary and Bonus amounts provided for in the employment agreement for the remainder of the employment agreement term. This employment agreement would constitute a Future Severance Agreement for purposes of this Policy Statement. Because it would be possible for Severance Benefits to be paid in an amount more than the Severance Benefit Limitation, the Corporation would condition the agreement on Stockholder Approval.

Example C: The Corporation recruits an executive laterally from another organization after the Effective Date and enters into an employment agreement

that annually "renews" for one-year terms which could, under certain circumstances, provide Severance Benefits following a qualifying termination of employment in excess of the Severance Benefit Limitation. The executive is not a Senior Executive (because the executive's compensation is not reported in the Corporation's proxy for the year in which the executive is hired or the following year). This employment agreement would not be subject to Stockholder Approval because it is entered into with an executive who is not a Senior Executive.

Example D: Same facts as Example C above except that five years after initial employment the executive is promoted and becomes a Senior Executive of the Corporation. The terms and conditions of the executive's original employment agreement remain in effect. The original employment agreement would not be subject to Stockholder Approval under the Policy Statement because at the time the original employment agreement was entered the executive was not a Senior Executive of the Corporation.

Example E: The Corporation desires to laterally recruit a high-level executive from a competitive financial services organization after the Effective Date. The executive would be a Senior Executive of the Corporation upon initial employment (because the executive's compensation will be reported in the Corporation's proxy for the year in which the executive is hired or the following year). Under the terms of a two-year employment agreement entered into with the executive, the executive receives (i) a guaranteed level of Base Salary and Bonus for a period of two years, (ii) a "sign-on bonus" intended to compensate for benefits with the executive's current employer that would be forfeited upon the executive's separation from service, (iii) a supplemental

retirement arrangement under which the executive accrues a certain retirement income benefit for each year of service rendered, and (iv) certain equity awards that have vesting schedules associated with them in excess of the two-year term of the agreement but which provide for full vesting upon the executive's termination of employment "without cause" to the extent the awards would have vested during the twenty-four (24) month period following termination of employment. The Board determines at the time the employment agreement is entered into that the Severance Benefits provided by the agreement do not exceed the Severance Benefit Limitation because (i) the guaranteed Base Salary and Bonus could not result in the payment of Severance Benefits in excess of the Severance Benefit Limitation and (ii) the other elements of the agreement would not constitute Severance Benefits under the Policy Statement. Specifically, the sign-on bonus and benefits accrued under the supplemental retirement arrangement would constitute Accrued Benefits, and any additional vesting of the equity awards would constitute Permitted Equity Vesting. Accordingly, the employment agreement would not be submitted for Stockholder Approval.

5. Reservation of Right to Amend. The Board reserves the right to amend this Policy Statement from time to time in its sole discretion.

EXHIBIT C

Table of Contents

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

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to § 240.14a-12

Bank of America Corporation

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if O her Than the Registrant)

PAYMENT OF FILING FEE (Check the appropriate box):

☒ No fee required.

☐ Fee paid previously with preliminary materials.

☐ Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11

Potential payments upon termination or change in control

We do not have any agreements with our named executive officers that provide for cash severance payments upon termination of employment or a change in control. In addition, under our policy regarding executive severance agreements, we will not enter into employment or severance agreements with our executive officers that provide severance benefits exceeding two times base salary and bonus (as defined under our policy), unless the agreement has been approved by our shareholders.

Potential payments from equity-based awards

Our equity-based awards to our named executive officers include standard provisions that cause awards to vest or be forfeited upon termination of employment, depending on the reason for termination. These provisions for awards granted in 2021 are described in more detail on page 73, and those details can be found for awards granted in prior years in our prior proxy statements.

In general, our awards provide for continued payments on the original schedule after certain types of termination of employment, subject to the following conditions, as applicable in individual award agreements:

- In case of a “Qualifying Termination” (sometimes referred to in prior years as “Rule of 60”), the award continues to be paid according to the award’s payment schedule if the executive complies with certain covenants, including not working for a competitive business. A Qualifying Termination means any voluntary or involuntary termination (other than for death, disability, or cause) after the executive has met certain specified age and/or service requirements. For most of the named executive officers, the executive must have at least 10 years of service and his or her age and years of service must add up to at least 60. Mr. Montag, who retired from the company effective February 28, 2022, had a special eligibility standard set forth in his applicable offer letter, which he had satisfied at his retirement, but otherwise met the general age and service standard. Currently, each of the named executive officers meets the applicable requirements for a Qualifying Termination (including Mr. Montag upon his retirement).
- Awards remain subject to performance-based cancellation prior to payment, and may be cancelled in whole or in part if losses occur. Awards also can be cancelled or recouped if the executive engages in detrimental conduct. Further, under our Incentive Compensation Recoupment Policy, the Board can require reimbursement of any incentive compensation paid to an executive officer whose fraud or intentional misconduct causes our company to restate its financial statements. Awards also will be subject to any policies we may adopt to implement final, released, and effective rules implementing Section 954 of the Dodd-Frank Act.

Awards to our named executive officers under the BACEP are generally designed to be paid per schedule if an executive’s employment is terminated without “cause” or for “good reason” within two years after a change in control. This change in control treatment is often referred to as “double trigger” vesting, because it requires both: (i) a change in control and (ii) a subsequent involuntary termination (either by our company without “cause” or by the executive for “good reason”). The BACEP does not provide our executive officers “single trigger” vesting upon a change in control.

If a named executive officer is terminated for “cause,” our equity-based awards provide that the awards will be forfeited.

The following table shows the value of equity awards that would have been payable, subject to the non-compete or compliance with covenants, as applicable, for a termination of employment as of December 31, 2021. For this purpose, restricted stock units were valued at our closing price as of December 31, 2021, which was $44.49 per share. Due to a number of factors that affect the nature and amount of any benefits provided upon termination of employment, any actual amounts paid or distributed may vary from the amounts listed below. Factors that could affect these amounts include the time during the year of any such event, any accrued but unpaid cash dividend equivalents and related interest, and the price of our common stock.

Potential payments from restricted stock units

	Death	Disability		Termination with good reason or without cause within two years following change in control[2]	All other terminations except for cause
Name	Payable immediately ($)	Payable immediately ($)	Payable per award schedule, subject to conditions ($)[1]	Payable per award schedule, subject to conditions ($)	Payable per award schedule, subject to conditions ($)[1]
Brian T. Moynihan	68,441,479	1,585,490	66,855,989	66,855,989	66,855,989
Alastair M. Borthwick	29,992,961	0	29,992,961	29,992,961	16,155,442[3]
Paul M. Donofrio	25,106,729	0	25,106,729	25,106,729	25,106,729
James P. DeMare[4]	37,105,834	0	37,105,834	37,105,834	37,105,834[3]
Matthew M. Koder	55,986,233	0	55,986,233	55,986,233	28,711,718[3]
Thomas K. Montag[5][6]	40,362,860	0	40,362,860	40,362,860	40,362,860

(1) The conditions for payment include: (i) compliance with covenants regarding non-solicitation, detrimental conduct, and compliance with anti-hedging/derivative transactions policies; (ii) the performance-based cancellation described above; and (iii) compliance with the Qualifying Termination conditions described above (other than in case of Disability), as provided in individual award agreements. Where applicable, the table includes the value of PRSUs granted in 2020 and 2021, assuming the maximum number of units are earned, although actual payout is dependent upon the future achievement of specified performance standards. The value of the portion of the 2019 PRSUs that were earned as of December 31, 2021 is also included, which was 96% of the units granted.

(2) If, within two years following a change in control, the executive's employment is terminated by our company without "cause" or by the executive for "good reason," the executive's PRSU awards will be immediately earned at the 100% standard level and paid per the original schedule. TRSUs will continue to be paid per the original schedule. Payment of the PRSUs is subject to performance-based cancellation. The definition of "cause" is described in more detail under the "Grants of Plan-Based Awards Table." The definition of "good reason" for this purpose means: (i) a material diminution in the executive's responsibility, authority, or duty, (ii) a material reduction in the executive's base salary (with certain exceptions), or (iii) a relocation greater than 50 miles. Certain notice and cure requirements apply in order to claim "good reason." The definitions of "cause" and "good reason" applicable to Mr. Montag are described in footnote (3) to this table.

(3) Awards granted to Messrs. Borthwick, DeMare, and Koder, provide that these executives' equity-based awards may continue to vest according to their original schedule if the executive's employment is terminated due to a workforce reduction or divestiture. In the event of such a termination, the value of the equity-based awards payable as of December 31, 2021, would have been $29,992,961 for Mr. Borthwick, $37,105,834 for Mr. DeMare, and $55,986,233 for Mr. Koder; subject to conditions for payment including compliance with covenants regarding non-solicitation, detrimental conduct, and compliance with anti-hedging/derivative transaction policies.

(4) Mr. DeMare is entitled to an award of cash-settled TRSUs on the first business day following his termination. These cash-settled TRSUs will replace any restricted stock units that Mr. DeMare previously received but which lack Qualifying Termination provisions and therefore are forfeited upon his termination. The cash-settled TRSUs will vest on the same schedule as the restricted stock units that are forfeited upon Mr. DeMare's termination, subject to Mr. DeMare's compliance with certain covenants, including not engaging in detrimental conduct and not working for certain competitive businesses.

(5) Under Mr. Montag's 2008 offer letter, his equity awards must continue to vest per the vesting schedule, subject to any conditions in the applicable award agreements (other than a non-compete) for any involuntary termination without "cause" or resignation for "good reason." Mr. Montag's offer letter defines "cause" as: (i) his engagement in (a) willful misconduct resulting in material harm to our company or (b) gross negligence in connection with the performance of his duties; or (ii) his conviction of, or plea of nolo contendere to, a felony or any other crime involving fraud, financial misconduct, or misappropriation of company assets, or that would disqualify him from employment in the securities industry (other than a temporary disqualification). For Mr. Montag, "All other terminations except for cause" includes a resignation by him for "good reason" under his 2008 employment agreement, defined as a resignation following: (i) a meaningful and detrimental alteration in the nature of the executive's responsibilities or authority; or (ii) a material reduction in the executive's total annual compensation that is not experienced generally by similarly situated employees.

(6) Mr. Montag retired from the company effective February 28, 2022. As a result of his retirement, he will receive his outstanding restricted stock units, which had a value of $43,640,742, according to the closing price of our common stock, $44.20 per share, at the time of his retirement, and will be paid in the same manner as set forth in the "All other terminations except for cause" column above.

Other potential payments

Following termination of employment, our named executive officers receive payment of retirement benefits and nonqualified deferred compensation benefits under our various plans in which they participate. The value of those benefits as of December 31, 2021 is set forth in the sections above entitled "Pension benefits table" and "Nonqualified deferred compensation table." There are no special or enhanced benefits under those plans for our named executive officers, and all of our named executive officers are fully vested in the benefits discussed in those sections.

We make tax and financial planning advisory services available to our named executive officers during their employment with us. The standard form of this benefit continues through the end of the year in which the executive ceases employment, including preparation of that year's tax returns. This benefit may continue for an extended term of up to five years if the executive meets the age and service standard for a Qualifying Termination and does not engage in any full-time employment. The benefit offered during the extended term will end during the calendar year any other full-time employment begins; the benefit, however, will end immediately following termination for cause, or if the executive engages in detrimental conduct or begins employment with a named competitor.

Bank of America employees who retire and meet the applicable requirements for a Qualifying Termination have access to continued coverage under our group health plan, but the employee generally must pay for the full cost of that coverage on an after-tax basis without any employer subsidy. By legacy agreement, Mr. Montag, who retired from the company effective February 28, 2022, will now be able to access non-subsidized retiree medical coverage, so long as he does not work for or accept another position with a competitor.

An employee who is a former NationsBank employee and who was hired before January 1, 2000 is eligible for an annual supplement to help cover the cost of retiree medical benefits if they meet the "Rule of 75" at termination. The amount of this supplement equals $30 per year of service. An employee meets the Rule of 75 if they retire after age 50, with at least 15 years of vesting service under our pension plan, and with a combined age and years of service of 75 or more. As of the end of the last fiscal year, the only named executive officer eligible for these benefits was Mr. Donofrio. The amount of the annual retiree medical benefit supplement for Mr. Donofrio based on his years of service through December 31, 2021 is $630. If Mr. Donofrio predeceases his spouse, this supplement will continue at a rate of 50% for the life of his surviving spouse.

Also, all eligible employees hired before January 1, 2006 who meet the Rule of 75 when they terminate receive $5,000 of retiree life insurance coverage. As of December 31, 2021, Mr. Donofrio was the only named executive officer who would have qualified for this benefit.

January 1, 2023

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

 # 1 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Shareholder Ratification of Termination Pay
John Chevedden

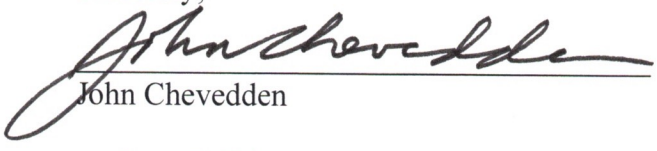
Ladies and Gentlemen:

This is in regard to the December 19, 2022 no-action request.

It is sad that the policy mentioned in the 2022 annual meeting proxy does not include where to find the so-called policy. The 2022 annual meeting proxy does not even give a title for the so-called policy. Based on Exhibit A there may be only one copy of the policy in a 3-ring binder at company headquarters. A policy that cannot be readily located is of little value.

At minimum a golden parachute policy should be readily accessible through a quick search of the company website.

Sincerely,



John Chevedden

cc: Ross Jeffries

[BAC: Rule 14a-8 Proposal, September 9, 2022]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other pay that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred pay earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities, perquisites or benefits not vested under a plan generally available to management employees, post-employment consulting fees or office expense and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can sometimes be justified but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target short-term bonus better aligns management pay with shareholder interests.

For instance at one company, that does not have this policy, if the CEO is terminated he could receive $44 million in termination pay – over 10 times his base salary plus short-term bonus. In the event of a change in control, the same person could receive a whopping $124 million in accelerated equity payouts even if he remained employed.

It is in the best interest of Bank of America shareholders and the morale of Bank of America employees to be protected from such lavish management termination pay for one person.

It is important to have this policy in place so that Bank of America management stays focused on improving company performance as opposed to seeking a business combination simply to trigger a management golden parachute windfall.

This proposal topic received between 51% and 65% support at:
FedEx (FDX)
Spirit AeroSystems (SPR)
Alaska Air (ALK)
AbbVie (ABBV)
Fiserv (FISV)

Please vote yes:
Shareholder Ratification of Termination Pay – Proposal 4
[The above line – *Is* for publication.]

January 12, 2023

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

 # 2 Rule 14a-8 Proposal
Bank of America Corporation (BAC)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 19, 2022 no-action request.

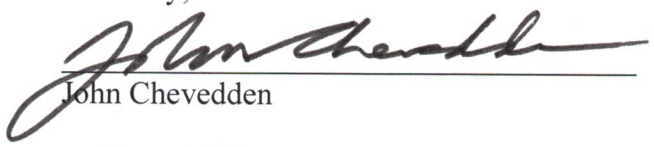
With company websites in widespread use for more than a decade, it would not be reasonable for a company to get credit for implementing a 2002 NEO pay policy that is not readily accessible on the company website.

The BAC director now with the longest tenure did not begin to serve until 2006.

It is sad that the policy mentioned in the 2022 annual meeting proxy does not include where to find the so-called policy. The 2022 annual meeting proxy does not even give a title for the so-called policy. Based on Company Exhibit A there may be only one copy of the policy in a 3-ring binder at company headquarters. A 2002 NEO pay policy that cannot be readily located is of little value.

At minimum a golden parachute policy should be readily accessible through a quick search of the company website.

Sincerely,



John Chevedden

cc: Ross Jeffries