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

DIVISION OF
CORPORATION FINANCE

February 29, 2024

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Bank of America Corporation (the "Company")
Incoming letter dated December 22, 2023

Dear Ronald O. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Warren Wilson College and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

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

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage 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).

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

Sincerely,

Rule 14a-8 Review Team

cc: Luke Morgan
As You Sow

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December 22, 2023

VIA ONLINE SUBMISSION

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

Re: *Bank of America Corporation*
Shareholder Proposal of Warren Wilson College et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Bank of America Corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") submitted by As You Sow ("As You Sow") on behalf of Warren Wilson College, James C. Manolis (S) and the Minnesota Valley National Wildlife Refuge Trust; Arjuna Capital on behalf of Elaine Alexander; the Sierra Club Foundation; Mercy Investment Services, Inc.; the Congregation of Sisters of St. Agnes; the Adrian Dominican Sisters; Bon Secours Mercy Health, Inc.; and the Congregation of St. Joseph (collectively, the "Proponents").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

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

THE PROPOSAL

The Proposal states:

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

The Supporting Statement states:

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

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

BASIS FOR EXCLUSION

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

OVERVIEW

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

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

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

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

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

2 *Id.*

3 *Id.*

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

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

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

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

ANALYSIS

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

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies." In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, *which is designed to preserve management's discretion on ordinary business matters* but not prevent shareholders from providing *high-level direction* on large strategic corporate matters." SLB 14L (emphasis added).

In SLB 14L, the Staff also stated that in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, it may consider "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." The Staff stated that it would also consider "references to well-established national or international frameworks when assessing proposals related to disclosure" as examples of topics that shareholders are well-equipped to evaluate. *Id.*

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

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

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

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

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

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

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

[6] *See* https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf at 2.

Reporting Standard (as revised, the "Corporate Standard")[7] in order to, among other things, guide companies on preparing "a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles" and "provide business with information that can be used to build an effective strategy to manage and reduce GHG emissions."[8] For those companies that choose to report Scope 3 emissions, the group's Corporate Value Chain (Scope 3) Accounting and Reporting Standard[9] (the "Scope 3 Reporting Standard") and Technical Guidance for Calculating Scope 3 Emissions[10] (the "Technical Guidance," and together with the Corporate Standard and Scope 3 Reporting Standard, the "GHG Protocol") provide a standardized framework for assessing, categorizing and measuring their value chain emissions.

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

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

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7 *See id.*

8 Corporate Standard at 3.

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

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

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

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

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

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

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

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

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

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

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

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

- The Proposal would require the Company to alter the way it works with its clients in gathering data for purposes of evaluating the Company's pathway to net zero and reporting on its progress. The Proposal would require the Company to

[16] Approach to Zero report, at 7.

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

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

17 *Id.* at 6.

18 *Id.* at 6.

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

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

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

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

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[19] *Id.* at 4.

[20] 1998 Release, as reaffirmed in SLB 14L.

In applying the micromanagement standard under Rule 14a-8(i)(7), the Staff consistently has concurred with the exclusion of shareholder proposals attempting to micromanage a company by delving too deeply into a company's Scope 3 goal-setting and reporting process. Most recently, in *Amazon.com, Inc.* (avail. Apr. 7, 2023, *recon. denied* Apr. 20, 2023), the Staff concurred with the exclusion of a proposal that, like the Proposal here, sought to dictate how the company assessed, measured and reported on aspects of its Scope 3 GHG emissions. In *Amazon.com, Inc.*, the proposal requested that the company measure and disclose Scope 3 GHG emissions from "its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors." The company argued to the Staff that the request would replace management's judgments by dictating the content of its Scope 3 emissions inventory outside the standards of the GHG Protocol. Similarly, in *Apple Inc. (Christine Jantz)* (avail. Dec. 21, 2017), the Staff concurred that a proposal micromanaged the company when it requested an evaluation and report on the potential for the company to achieve, by a fixed date, net-zero GHG emissions across operations directly owned by the Company and its major suppliers. The company argued to the Staff that the proposal "prob[ed] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment" since the requested evaluation would necessarily require the company to evaluate and prioritize particular courses of actions and changes to its operations and business, and then to replace its own judgments about the best course of action with a course of action directed solely at meeting the specific emissions level selected by the proponent by one of the arbitrary dates selected by the proponent. *See also*, *Apple Inc.* (avail. Dec. 5, 2016) (concurring in exclusion of a similar proposal that sought to define the scope of operations that would be included in a Scope 3 net-zero GHG emission plan).

Similarly, in *The Coca-Cola Co.* (avail. Feb. 16, 2022), the proposal requested that the company submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly. The company argued to the Staff that the proposal thereby "dictate[d] the content of and process by which the [c]ompany may make certain public statements by interfering with and impermissibly limiting the fundamental discretion of management to decide upon and exercise the corporate right to speech, and instead impose[d] a time-consuming and unnecessary process." The Staff concurred with the proposal's exclusion, as it "micromanage[d] the [c]ompany." In *Texas Pacific Land Corp.* (*Recon.)* (avail. Oct. 5, 2021), the Staff granted exclusion of a proposal that would have required that the company "establish a goal of achieving a 95% profit margin." Although the Staff did not issue a response letter in connection with its concurrence that the proposal could be excluded, the company argued to the Staff that "the profit margin strategy of the [c]ompany" was a "matter fundamental to management's choices relevant to its revenues and expenditures in the context of the broader strategy of the [c]ompany," and that the proposal, by "mandating a very specific strategic goal," that was not informed by a "deep understanding of the [c]ompany's operations, growth opportunities and the industry as a whole" would "circumvent[] management's expertise and fiduciary duties," ultimately micromanaging the company. *See also SeaWorld Entertainment, Inc.* (avail. April 20, 2021) ("*SeaWorld 2021*") (concurring with exclusion of a proposal seeking a report on specific changes to the company's business to address animal welfare concerns); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment").

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

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

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

CONCLUSION

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

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

Sincerely,

Ronald O. Mueller

Ronald O. Mueller

Enclosures

cc: Ross E. Jeffries, Bank of America Corporation
Danielle Fugere, As You Sow
Natasha Lamb, Arjuna Capital
Dan Chu, Sierra Club Foundation
Mary Minette, Mercy Investment Services, Inc.

EXHIBIT A

AS YOU SOW [redacted]

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA FEDEX & EMAIL

November 3, 2023

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

Dear Mr. Jeffries,

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

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

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

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

Sincerely,

Danielle Fugere
President & Chief Counsel

Enclosures
- Shareholder Proposal
- Shareholder Authorization

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

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

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

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

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

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

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

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1 https://about.bankofamerica.com/content/dam/about/pdfs/approach-to-zero-2022.pdf
2 https://www.transitionpathwayinitiative.org/sectors/oil-gas
3 https://www.bankingonclimatechaos.org/wp-content/uploads/2023/08/BOCC_2023_vF.pdf
4 https://www.transitionpathwayinitiative.org/sectors/autos
5 https://d1io3yog0oux5.cloudfront.net/_feac4ff196b6ca5c7bbde354bbf2898d/bankofamerica/db/914/9857/pdf/BANK+OF+AMERICA+EUROPE+DACANNUAL+REPORT+AND+FINANCIAL+STATEMENTS+FOR+THE+YEAR+ENDED+31+DECEMBER+2022.pdf
6 https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf, p.9

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

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

October 30, 2023

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

Re: <u>Authorization to File Shareholder Resolution</u>

Dear Mr. Behar,

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

Stockholder: Warren Wilson College

Company: Bank of America Corp

Subject: Report on climate transition planning.

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

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

DocuSign Envelope ID: 43EA61B9-9594-4118-9B35-2C112055C9C0

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

He is available for a meeting with Bank of America Corp
regarding this shareholder proposal, at the following days/times: [Stockholder to provide 2 dates and 30-minute meeting options within the following time frame: 11/20/2023 - 12/1/2023
Monday - Friday and between the hours of 9:00am and 5:30pm Eastern Time]

DATE: 11-20-23 TIME: 12:00 pm DATE: 11-21-23 TIME: 12:00 p.m.

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

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

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

Danielle Fugere, President & Chief Counsel at [redacted]@asyousow.org
Elizabeth Levy, Climate Associate at [redacted]@asyousow.org
and to [redacted]**@asyousow.org**.

Sincerely,

DocuSigned by:
Damian Fernandez
B62D83ADB659482...

Dr. Damián J. Fernández
President

January 26, 2024

<u>VIA ELECTRONIC SUBMISSION</u>

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Bank of America Corporation Regarding Climate Transition Planning on Behalf of Warren Wilson College

Ladies and Gentlemen:

Warren Wilson College (the "Proponent"), the beneficial owner of common stock of Bank of America Corporation (the "Company" or "BofA"), has submitted a shareholder proposal (the "Proposal") seeking information from the Company on its ability to meet its 2030 greenhouse gas reduction targets. The Proponent has designated As You Sow to act as its representative with respect to the Proposal, including responding to the Company's December 22, 2023 "No Action" letter (the "Company Letter").

The Company Letter contends that the Proposal may be excluded from the Company's 2024 proxy statement on the basis of micromanagement. Proponent's response demonstrates that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it cannot concur with the Company's request.

A copy of this responsive letter is being emailed concurrently to the Company and its counsel.

SUMMARY

In response to growing climate risk, BofA has committed to reach net-zero greenhouse gas (GHG) emissions by 2050, inclusive of emissions associated with its financing activities. To ensure it reaches this goal, the Company has set interim 2030, intensity-based GHG reduction targets for three of its highest emitting portfolios – auto manufacturing, energy, and power generation. The actions necessary to meet these 2030 targets will be affected in significant part by the climate transition plans of its clients or the lack of such plans. Where client action appears to be insufficient, BofA may need to adopt additional measures to meet its emission reduction goals.

In its climate reporting, the Company discloses that it is undertaking an assessment of the climate transition plans of clients in high emitting sectors.[1] The Proposal therefore requests that BofA report to investors on the outcome of this assessment, *i.e.*, what proportion of clients are aligning with a credible 1.5°C net zero pathway; whether the proportion of unaligned clients will prevent BofA from meeting its 2030 net zero targets; and the actions BofA proposes to address any associated emissions reduction shortfalls. This information is necessary to inform investors about the credibility of BofA's GHG reduction targets, its ability to meet its targets, and the associated climate risk in its portfolio.

The Company argues that the Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal allegedly seeks to micromanage the Company by dictating specific methods for meeting its emissions reduction goals. To the contrary, the Proposal requests disclosure on information the Company is *already* collecting about the three sectors for which it has targets. Having assessed its clients' transition readiness, the Proposal asks that BofA report on the proportion of those clients that are not aligned with its own goal. The Proposal does not dictate a formula for how BofA should measure this, nor does it dictate how it must meet its reduction goals. Rather the Proposal asks BofA to report *whether* it is likely to do so given its assessment of relevant clients and, if not, what responsive measures it will take.

Ultimately, disclosure of this information is critical for investors. The requested information bears directly on the Company's likelihood of meeting its interim and long-term emissions reduction goals. It also provides valuable information to investors on the amount of climate risk to their portfolios associated with BofA. As BofA acknowledges, its clients' success in transitioning will affect its own financial performance, making it a critical strategic matter on which it is appropriate for shareholders to seek disclosure.

THE PROPOSAL

WHEREAS: Bank of America ("BofA") has established 2030 net zero emission reduction targets for financing activity in the auto, energy, and power sectors and has signed a Net Zero Banking Alliance Commitment Statement.[1] Despite investor demand for clearer disclosure of its transition planning,[2] shareholders lack sufficient information as to whether BofA is on a path to meet those targets.

Critically, BofA's annual disclosures lack clear information on the impact that non- or slow-transitioning companies in these high-emitting sectors will have on the Company's ability to meet its 2030 targets. These omissions leave investors unable to assess the potential for

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[1] *See* bulleted list in Background section I, *infra.*

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

[2] https://www.asyousow.org/press-releases/2023/4/25/shareholders-bank-of-america-disclose-climate-transition-plan

misalignment between BofA's 2030 targets and its clients' transition progress, and what actions, if any, BofA is proactively taking to address such misalignment.

Independent assessments show that most companies in these three sectors are failing to align with a 2030 net zero pathway. For example, the Transition Pathway Initiative finds that no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario.[3] This is significant because BofA is the fourth largest global lender and underwriter of fossil fuels.[4] Similarly, no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a net zero by 2030 path.[5]

The potential for misalignment carries with it significant risk. The European Banking Authority, which oversees $72 billion of BofA's assets, maintains strict greenwashing standards.[6] If BofA fails to meet its targets, it faces the possibility of litigation, reputational harms, and financial costs. Failure to meet targets will also contribute to systemic climate risk to harm investor portfolios.

BofA must have a fully informed, realistic transition plan in place to meet its goals. A first step is assessing its clients' likelihood of meeting net zero by 2030 goals. As the Institutional Investors Group on Climate Change explains, "[t]o deliver on their targets and commitments, banks should independently establish and disclose their own individual protocols and strategies specific to each business activity," which will involve "planning for phasing out financing of inconsistent activities which present particular risks . . . while pivoting financing towards climate solutions."[7] This should include criteria governing financing of misaligned clients and setting firm-wide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C aligned companies and activities.

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

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[3] https://www.transitionpathwayinitiative.org/sectors/oil-gas
[4] https://www.bankingonclimatechaos.org/wp-content/uploads/2023/08/BOCC_2023_vF.pdf
[5] https://www.transitionpathwayinitiative.org/sectors/autos
[6] https://d1io3yog0oux5.cloudfront.net/_feac4ff196b6ca5c7bbde354bbf2898d/bankofamerica/db/914/9857/pdf/BANK+OF+AMERICA+EUROPE+DACANNUAL+REPORT+AND+FINANCIAL+STATEMENTS+FOR+THE+YEAR+ENDED+31+DECEMBER+2022.pdf
[7] https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf, p.9

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

BACKGROUND

I. The Company's Climate Commitments

The Company has committed "to achieve Net Zero [greenhouse gas emissions (GHG)] before 2050 in [its] financing activities, operations and supply chain."[1] The vast majority of greenhouse gas ("GHG") emissions falling within this commitment are those associated with its financing activities — which are more than 388 times larger than the Company's operational emissions.[2]

As a "critical component" of its overall net zero ambition, the Company has also established "interim 2030 Net Zero targets, including financed emissions targets," and acknowledges the necessity of "a comprehensive plan to work toward those targets."[3] Most importantly, the Company has confirmed that "to achieve [its] 2030 targets [it] will need to work with [its] clients to assist them in achieving their own Net Zero goals."[4]

The Company repeatedly acknowledges the central importance to its net zero goal of reducing its clients' emissions. It describes the necessity of, and how it is, measuring its clients' climate transition and the importance of this information to meeting its own GHG emission reduction goals. It acknowledges the risk associated with climate, Finally, it acknowledges the need for action to meet its goals.:

- It has confirmed that it is "prioritiz[ing]" emissions reduction in the high-carbon sectors listed in the Proposal as "the most significant contributors to global GHG emissions" and therefore that "progress toward [its] sectoral targets [is] a milestone to reaching Net Zero."[5]
- It has tasked "a group of senior leaders within the Global Banking Business" with overseeing "client engagement, data collection and assessment and monitor[ing] progress" on clients' climate transitions as a way to "fortify the Business's commitment to achieving" its climate targets.[6]

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[1] Bank of America, *Managing Our Transition to a Sustainable Future*, 2023 Task Force on Climate-related Financial Disclosures (TCFD) Report ("2023 TCFD Report") at 3 (Nov. 16, 2023), https://about.bankofamerica.com/content/dam/about/report-center/esg/2023/2023_TCFD_Report.pdf.
[2] *Id.* at 49, 51. The Company reports approximately 85,000 metric tons CO_2e in combined Scope 1 and 2 emissions, and more than 33,000,000 metric tons CO_2e in financed emissions in high-carbon sectors.
[3] *Id.* at 3, 29.
[4] Bank of America, *Task Force on Climate-related Financial Disclosures (TCFD) Report: Managing our Future* ("2022 TCFD Report") at 19 (Sept. 29, 2022), https://about.bankofamerica.com/content/dam/about/report-center/esg/2022/BOA_TCFD_2022%209-22-2022-VOX220929%20split%20paragraph%20Secured.pdf.
[5] 2023 TCFD Report at 51.
[6] *Id.* at 33.

- It has acknowledged the "need to modify a number of [its] internal processes and routines to incorporate emissions data into [its] decision making."[7]
- It has confirmed its practice of "incorporat[ing] financed emissions metrics into the way we assess client relationships."[8]
- It identifies "supporting and enabling our clients to achieve Net Zero" as part of its "three-pronged approach to climate," a "key element" of its "Responsible Growth perspective to running the Company."[9]
- It emphasizes the importance of "fully evaluat[ing] the client's trajectory toward Net Zero" and "understanding our clients' transition plans and Net Zero strategies."[10]
- It has acknowledged the possibility of the Company "experienc[ing] credit losses or los[ing] market share and/or revenue associated with climate-related transition risk if [its] current or future clients do not successfully transition to a lower emissions economy."[11]
- It has emphasized its "focus[] on reducing emissions from key carbon intensive sectors" as "part of [its] Approach to Zero™ and net zero goal."[12]

II. **The Company Has Committed to the PCAF and other Climate-Related Financial Frameworks**

Despite the claims of the Company Letter, the Proposal does not require the Company to adopt new methodologies for measuring or addressing emissions sources. As the Company Letter acknowledges, the Company has not only adopted, but helped develop, certain widely accepted international frameworks that guide its climate disclosures. It has been involved with the creation of climate-related financial frameworks, including serving on "the steering group for [the Net Zero Banking Alliance ("NZBA")] which develops guidelines and requirements for credible net zero commitments and interim targets for banking members."[13] It is also a "core member of the Partnership for Carbon Accounting Financials (PCAF) which is a global partnership of financial institutions."[14]

The PCAF standards merit particular attention. The PCAF methodology addresses a wide range of activities banks undertake, including those addressed in the Proposal. PCAF's Standard consists of three parts: Financed Emissions, Facilitated Emissions, and Insurance-Associated Emissions.[15] The Financed Emissions portion addresses seven asset classes: listed equity and corporate bonds, business loans and unlisted equity, project finance, commercial real estate, mortgages, motor vehicle loans, and sovereign debt.[16] It "provide[s] . . . methodologies to measure and report the emissions [companies] finance

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[7] 2022 TCFD Report at 19.
[8] 2023 TCFD Report at 32.
[9] *Id.* at 16.
[10] *Id.* at 32.
[11] *Id.* at 46.
[12] *Id.* at 51.
[13] *Id.* at 4.
[14] *Id.* at 4.
[15] PCAF, *The Global GHG Accounting and Reporting Standard for the Financial Industry* (accessed Jan. 18, 2024), https://carbonaccountingfinancials.com/standard.
[16] *Id.*

through loans and investments in conformance with the requirements of the GHG Protocol" Scope 3 Standard.[17]

Notably, PCAF released its Facilitated Emissions Standard in December 2023, which provides "methodological guidance for the measurement and disclosure of GHG emissions associated with capital market transactions"[18] including the issuance of new public debt and public equity, equity investments in private companies, debt investments in private companies, and syndicated loans.[19]

The Company's climate disclosures repeatedly emphasize consistency with PCAF's methodology. The Company states it is "following the PCAF standard,"[20] that it has "developed methodologies in accordance with PCAF"[21] and that it is "committed to reporting each year following the requirements of . . . PCAF."[22] The Company also states that it utilizes PCAF's definition of financed emissions[23] and that its financed emissions reporting is "per the PCAF standard."[24] The Company Letter confirms these commitments. *See* Company Letter at 7 ("[I]n addressing the 2030 Financed Emissions Goals, the Company will follow the standards and methodologies developed by the PCAF . . . ."). Finally, the Company committed to supplementing its disclosures as the PCAF Standards evolve, including expanding its disclosures to capital markets in line with the recently released PCAF Facilitated Emissions Standard.[25]

ANALYSIS

The Company has disclosed more than 33,000,000 metric tons of CO2e in financed emissions from its high-carbon business sectors. It must significantly reduce these emissions to meet its 2030 greenhouse gas reduction goals. As captured above, BofA has stated that its clients' interim progress in reducing greenhouse gas emissions is an important component of its transition to net zero.

In this context, the Proposal seeks a straightforward disclosure: the Company's assessment of what proportion of the Company's financed emissions are attributable to clients not aligned with a credible net zero pathway; whether this will prevent BofA from meeting its 2030 net zero targets; and actions the Company proposes to take to address any such emissions reduction shortfalls. Notably, the Company Letter makes no argument that the

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[17] PCAF, *Financed Emissions: The Global GHG Accounting & Reporting Standard: Part A* ("PCAF Financed Emissions Standard") at 14 (Dec. 2022), https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf. The GHG Protocol is an accounting standard for measuring and reporting GHG emissions. The Proposal does not address emissions reporting.
[18] PCAF, *Facilitated Emissions: The Global GHG Accounting & Reporting Standard: Part B* ("PCAF Facilitated Emissions Standard") at 4 (Dec. 2023), https://carbonaccountingfinancials.com/files/PCAF-PartB-Facilitated-Emissions-Standard-Dec2023.pdf.
[19] *Id.* at 7.
[20] 2023 TCFD Report at 5
[21] *Id.* at 6.
[22] *Id.* at 9.
[23] *Id.* at 6.
[24] *Id.* at 7.
[25] *See* 2023 TCFD Report at 7 ("We will add capital markets activity to our 2030 targets and our broader net zero goal once a methodology is finalized and released by PCAF. We are an active participant in the PCAF working group developing this methodology and standard.").

latter two aspects of the Proposal constitute micromanagement. Rather, its argument is that the Proposal micromanages simply by requesting that BofA disclose an overall assessment of its clients' transition progress. The Company has acknowledged that it is collecting the necessary data and is, in fact, making such assessments. As such, the Proposal seeks *no* change to Company action — it is purely a disclosure request.

The Company argues, hyperbolically, that this request "seeks to alter virtually every aspect of the Company's 2030 Financed Emissions Goals" and "seeks to eliminate management's discretion by dictating specific methods for the Company's already extensive disclosures, calculations and methodologies concerning the progress and pathway the Company is on to achieving certain 2030 Scope 3 greenhouse gas ("GHG") emissions goals." Company Letter at 2.

A plain reading of the Proposal itself, however, demonstrates that this portrayal is inaccurate. The Proposal requests disclosure related to actions the Company is already taking – its assessment of clients' transition plans in the three sectors for which it has 2030 targets. This is far from eliminating management discretion or dictating specific calculations and methodologies. The Company's current disclosures indicate that it is measuring outcomes according to the PCAF standard to which the Company has committed. The Proposal asks for information on BofA's findings, i.e., what proportion of clients are not aligned with a net zero goal. There is no mandated methodology to measure this. A "proportion" is a non- specific term that requires some comparison between those clients that are on a net zero pathway to those that are not. Similarly, the Proposal asks the question of whether that proportion will affect BofA's ability to meet its own targets. BofA is free to answer that question in whatever way it chooses.

As outlined above, BofA's reporting indicates that it is undertaking this type of assessment, presumably to assure regulators and investors that it is acting responsibly. A request to provide disclosure of the results of a stated analysis is not micromanaging a company's actions, it is simply seeking the results of stated actions.

Finally, if the Company reports that client action is likely insufficient to meet its 2030 goals, the Proposal asks what additional measures it will take. It does not dictate *how* the Company will meet its 2030 goals, only that it disclose its own plan for doing so. In short, investors are not asking BofA to use new protocols for assessing or measuring client progress, nor mandating any specific responsive action, only that it disclose the information it is already gathering about the progress it is making toward meeting its targets.

The Company's argument that such a basic disclosure constitutes improper micromanagement amounts to a request that the Staff adopt a new standard at odds with Rule 14a-8. The Company's proposed rule would require that shareholders be satisfied with whatever disclosures a company is making, no matter whether such disclosures provide consistent, comparable, and decision-useful information to shareholders. Such a standard is at odds with the SEC's long-standing position that investors should be provided with reliable information to make informed investment decisions about material risk, consistent with the SEC's core mandate to protect investors.

I. The Proposal Does Not Micromanage the Company

The Company Letter describes the Proposal as "seek[ing] to alter virtually every aspect of the Company's 2030 Financed Emissions Goals." Company Letter at 4. The Company also argues that the Proposal is inconsistent with well-established national or international frameworks. *See* Company Letter at 7-9. After setting forth the relevant legal standards, this letter addresses each argument in turn.

A. Micromanagement Standard

Rule 14a-8(i)(7) generally permits the exclusion of proposals that address the company's "ordinary business operations." As the Commission has recognized, however, proposals focused on a *significant social policy issue* are not excludable even if they relate to the company's day-to-day business. *See* SEC, Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Release"). This is true even when the proposal "relates to the 'nitty-gritty of [a company's] core business." Staff Legal Bulletin No. 14H (Oct. 22, 2015).

At the same time, even proposals focusing on significant social policy issues may not "micromanage" companies by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Rule 14a-8(i)(7);1998 Release. In Staff Legal Bulletin No. 14L (Nov. 3, 2021). the Staff provided additional guidance on the scope of this micromanagement exclusion. There, the Staff noted that "proposals *seeking detail* or *seeking to promote* timeframes or *methods* do not per se constitute micromanagement." (emphasis added). Rather, the Staff looks at:

> [T]he level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Staff Legal Bulletin No. 14L.

Finally, the Staff has also provided guidance on the standards it uses to judge the appropriate level of granularity in a proposal, noting that the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic" as well as "references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate." *Id.*

B. The Proposal Does Not Inappropriately Interfere with Management Discretion

As described above, the Company and Proponent are in agreement that: (1) the Company has committed to a net zero by 2050 greenhouse gas reduction goal, inclusive of financed emissions; (2) the progress of its clients will impact its ability to meet its net zero goals; and (3) the Company must track and assess that progress, in order to develop policies that meet the Company's own climate-related goals.

The Proposal requests that the Company disclose its assessment of its clients' — and therefore its own — interim progress. Such a request falls well within the established boundaries of permissible proposals. As the Staff has explained, proponents may seek "the level of detail . . . consistent with that needed . . . to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." Staff Legal Bulletin No. 14L.

These standards are well aligned with the Proposal, which seeks the disclosure of information necessary to assess the Company's progress towards its goals and the climate risk presented to investors' portfolios associated with not meeting its climate targets. The Company itself has conceded exactly why the Proposal addresses concerns legitimately within the purview of its shareholders when it acknowledges that failure by its clients to make climate transition progress may result in the Company "experienc[ing] credit losses or los[ing] market share and/or revenue associated with climate-related transition risk if [its] current or future clients do not successfully transition to a lower emissions economy."[26] The Proposal therefore squarely confronts a matter speaking directly to shareholders' legitimate interest in judging risk in their portfolios. *See* Staff Legal Bulletin No. 14L.

The Company's arguments to the contrary are unpersuasive.

i. First, the Company argues that "the Proposal would require the Company to alter the way it works with its clients in gathering data." This is inaccurate. The Proposal seeks disclosure of *the Company's assessment* of its clients' transition progress but does not prescribe how the Company should make that assessment.

The Company's attempts to describe why this assessment would micromanage the Company strain credibility. For example, the Company Letter complains that the Proposal would "require the Company to develop a methodology . . . in which it first assesses whether" its clients are "aligned with a credible 1.5°C pathway by 2030." Company Letter at 11. Yet, the Company's reporting states that it is already doing this. BofA's 2023 TCFD report emphasizes the importance of "fully evaluat[ing] the client's trajectory toward Net Zero," garnering a "holistic view of their strategic priorities," and "understanding our clients' transition plans and Net Zero strategies."[27] Indeed, in its attempt to capture a "complete picture of the trajectory of [its] clients," the Company is "building the infrastructure to capture this information at scale an ha[s] developed a template to be able *to assess clients consistently*."[28]

Having described the Company's ongoing efforts to gather or estimate client emissions data, the Company Letter fails to meaningfully explain how those efforts are actually "[i]n contrast" with the Proposal. *See* Company Letter at 11. Certainly, nothing in the Proposal requires the Company to abandon its "develop[ment of] an internal technology system to produce decision-useful metrics." Company Letter at 11. The metrics developed by that internal technology system, if decision-useful, are presumably included in the Company's assessment of its clients' progress and therefore compatible with the disclosure requested by the proposal.

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[26] 2023 TCFD Report at 46.
[27] 2023 TCFD Report at 32.
[28] *Id.* (emphasis added).

Even if the Proposal did request that the Company "alter the way it works with its clients in gathering data," Company Letter at 10, as the Company claims, this would not automatically constitute micromanagement. Every shareholder proposal, in some way, requests that a company change some aspect of how it does business or gathers and reports data. The question under Rule 14a-8(i)(7) is whether that request is appropriately made by shareholders, based on the request's level of granularity and the discretion it leaves to the company's management. *See* Staff Legal Bulletin No. 14L. Here, the Proposal's reporting request does not seek overly granular data, does not mandate the collection methodology, and the Company is free to decide how to measure the percentage of unaligned clients.

Proposals that seek even more significant "alter[ations in] the way [a company] works with its clients" routinely survive micromanagement challenges. In *Morgan Stanley* (Mar. 25, 2022), for instance, the proposal requested that the bank "adopt a policy . . . committing to proactive measures to ensure that the Company's lending and underwriting do not contribute to new fossil fuel development." Implementation of that proposal would alter the bank's relationship with its clients, and the company argued as much. Nonetheless, the Staff correctly concluded that the proposal "d[id] not seek to micromanage the Company."[29] This is because the proposal's request that the company adopt a policy was not: (a) too granular for investors to consider, or (b) too restrictive of management's discretion to implement the request. So too here.

ii. This is closely related to the Company's next argument, which is that the Proposal micromanages the Company because it "would require a different model for reporting goals and progress toward those goals than the approach the Company has adopted." Company Letter at 11. This argument relies on an increasingly common and baseless legal argument in which companies seeking to exclude shareholder proposals argue that, because management has decided to do X, it is micromanagement for shareholders to suggest Y. This argument is especially problematic. If "seeking a change from the status quo" is a legitimate basis for exclusion, no proposals would be left standing. There is, however, no basis in the Rule or in Staff precedent to apply the micromanagement rule so broadly.

That being said, the Company Letter fails to make a case that the Proposal requires the Company to deviate meaningfully from what it is already doing. For example, the Company Letter takes issue with the Proposal's assertion that a "first step" in a "realistic transition plan" is "assessing its clients' likelihood of meeting net zero by 2030 goals," arguing that "there are many ways to have a realistic transition plan." Company Letter at 11. While true, the path the Company has chosen, as laid out in the Background section above, is the one identified in the Proposal's language: assessing its clients' transition progress to inform the bank's further climate-related action. *See supra* (quoting the Company's TCFD report in

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[29] The *Morgan Stanley* decision is consistent with numerous other Staff precedents before and since, all of which involve much more significant shareholder oversight of company-client relationships than this Proposal and many of which involve banks' or insurance companies' fossil fuel financing, investment, or underwriting. *See, e.g.*, *Chubb Ltd.* (Mar. 27, 2023) (no exclusion where proposal requested company disclose medium- and long-term Scope 3 emissions reduction targets); *J.P. Morgan Chase & Co.* (Mar. 25, 2022) and *Citigroup Inc.* (Mar. 7, 2022) (same proposal as *Morgan Stanley*); *J.P. Morgan & Chase Co.* (Feb. 28, 2020) (proposal requested company issue report describing how it intended to reduce Scope 3 emissions).

confirming that its transition plan involves moving clients toward net zero and in confirming importance of clients' interim progress).

Denying the congruence between the Company's climate action and the Proposal requires some acrobatics on the part of the Company. For example, shortly after faulting the Proposal's observation that financial institutions should "establish and disclose their own individual protocols and strategies," the Company Letter asserts demonstrates that BofA has done *exactly that*, by developing an "Approach to Zero" that marks the Company as a "leader in structuring and arranging sustainability-linked financing which "relies on five pillars" for addressing clients' climate progress, including Assisting, Advocating Analyzing, and Attesting client climate progress." Company Letter at 11-12. The Company Letter then asserts, by fiat and without explanation, that the Bank disclosing an overall assessment of its clients' net zero progress would somehow be inconsistent with its "dynamic and multi-faceted process." Company Letter at 12.

To be absolutely clear: the Company acknowledges that it is collecting and/or estimating client emissions data. Company Letter at 11. It acknowledges that it is synthesizing that data, along with qualitative analysis, into an assessment of its clients' climate transition progress. 2023 TCFD Report at 32. And it acknowledges that it is incorporating that assessment into its decisionmaking. *See* 2023 TCFD Report at 32-33; 2022 TCFD Report at 19. As the Company Letter at one point concedes, all the Proposal actually requests is a "snapshot assessment" of that information, Company Letter at 12, disclosing the proportion of the Company's financed emissions attributable to clients not aligned with a credible net zero plan. In sum, the Company is already collecting the necessary information and making the necessary assessments — the Proposal just asks the bank to disclose a snapshot of that information to investors to assist them in their decision-making. Nothing about this request, despite the Company's claims otherwise, precludes the Company from taking <u>any</u> other action. Thus, the Proposal does not interfere with management discretion.

iii. Third, the Company argues that the Proposal requires the inclusion of financing activities "currently outside the scope of the Company's 2030 Financed Emissions Goals." Company Letter at 10. The gravamen of this argument is that "tak[ing] into account all material financing mechanisms and asset classes" including "direct lending" conflicts with the Company's 2030 Financed Emissions Goals, which "are based on committed credit exposure." Company Letter at 10.

There are two main flaws to this argument — one legal and one factual. First, even accepting *arguendo* the Company's premise that the Proposal calls for the disclosure of additional metrics beyond its current commitments and disclosures, that would not constitute micromanagement. Investors are permitted to request the disclosure of additional information beyond that offered by the company. This was exactly the case in *Eli Lilly & Co.* (Mar. 10, 2023). There, the proponent requested that the company disclose additional quantitative information about "hiring, retention, and promotion of employees, including data by gender, race, and ethnicity." Echoing the Company's arguments here, Eli Lilly argued that the proposal intruded into a "broader workforce management strategy" that "include[d] multi-faceted processes guided by numerous factors," and that the proposal "limit[ed] the Company's discretion in preparing the requested report by dictating the metrics and data the report must contain." Nonetheless, the Staff concluded that the proposal "does not micromanage the company." The Company, by contrast, cites two completely inapposite precedents in *Deere & Co.* (Jan. 3, 2022) and *The Coca-Cola Co.* (Feb. 16, 2022). *Deere* involved a proposal demanding that shareholders be permitted to review every single piece of employee training material the company offered any employee, and *Coca-Cola*'s proposal demanded that shareholders literally micromanage the company by being given the authority to approve or disapprove any political statement the company wanted to make. Neither bears any resemblance to the Proposal here, and the contrast with *Eli Lilly* is instructive regarding application of the micromanagement exclusion.

Second, the Company's argument is flawed because the Proposal is not actually inconsistent with BofA's commitments. Despite the Company's attempt to complexify the issue, there is no irreconcilable conflict in the requested information. The Company Letter states that "instead of assessing emissions based on 'direct lending,' its 2030 Financed Emissions Goals are based on committed credit exposure.'" Company Letter at 10. But as that passage of the Company Letter and the underlying 2023 TCFD Report make clear, "committed credit exposure" (as an alternative to "utilized credit exposure") is a *methodology* for measuring what proportion of a client's (and a sector's) emissions the Company is responsible for.[30] By contrast, the Supporting Statement's request is to take into account all material financing mechanisms and asset classes. These are not, as the Company Letter suggests, a different methodology for measuring emissions. Although the Company attempts to make much hay of it, the Supporting Statement boils down to a simple request: that the Company "take into account all" financing activity "that contribute[s] to [its] emissions." As discussed below, this amounts to a request that the Company abide by the core principles of the PCAF framework to which it has committed.

iv. Finally, the micromanagement precedents upon which the Company Letter relies are not even good law. *Apple Inc.* (Dec. 5, 2016) requested that the Company "generate a feasible plan . . . to reach a net-zero GHG emissions status by the year 2030." The Staff concluded that the Proposal "prob[ed] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Similarly, in *Apple Inc.* (Dec. 21, 2017), Apple's no action request was successful in a proposal that requested the company "prepare a report that evaluates the potential for the Company to achieve, by a fixed date, 'net-zero' emissions of greenhouse gases." However, Staff Legal Bulletin No. 14L explicitly disavowed decisions like these, noting that "[g]oing forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals." Among the decisions explicitly called out as no longer representing the Staff's approach to micromanagement was *Paypal Holdings, Inc.* (Mar. 6, 2018), which was identical to the latter *Apple* proposal in "asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030."

Accordingly, the Proposal does not inappropriately interfere with management discretion. Rather, it is a modest disclosure request based on data the Company already collects and assessments it already makes to provide information that the Company has acknowledged

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[30] *See* 2023 TCFD Report at 7 (to set targets, Company develops "a client-level emissions intensity per unit of output" which is "then multiplied by our committed exposure to the client divided by our total exposure to the sector" (emphasis added)).

is of considerable long-term importance to the Company's strategic direction and therefore is appropriately of interest to shareholders.

C. The Proposal Is Consistent with Well-Established National or International Frameworks

The Company Letter also argues that the Proposal is inconsistent with the GHG Protocol "by delving too deeply into a company's Scope 3 goal-setting and reporting process." Company Letter at 13. Essentially, the Company is asserting that a proposal which addresses Scope 3 must necessarily in some way limit management discretion and is therefore inconsistent with the GHG Protocol, because the GHG Protocol "recognizes the complexities faced by a company" in measuring and reporting Scope 3 emissions. *See* Company Letter at 8-9. On its face, this argument is a non-starter. The GHG Protocol is a standard for how to measure GHG emissions. It does not address goal-setting in any way. Further, the Proposal simply does not ask the company to alter its Scope 3 inventory, it asks only for reporting on the Company's conclusions regarding client progress, and thus its own progress in meeting its Scope 3 targets.

The Company's GHG Protocol argument is presumably an attempt to extend last season's decision in *Amazon.com, Inc.* (Apr. 7, 2023), a precedent upon which the Company Letter relies heavily. But there is no indication that the Staff adopted such a broad precedent.[31] More importantly, this argument is largely irrelevant. The Proposal does not seek to alter the Company's Scope 3 inventory or its processes for measuring such emissions. Rather, it requests, in the Supporting Statement, that the Company assess all relevant and material financed emissions, which is a basic tenet of the PCAF Standard to which the Company ascribes and not in conflict with the GHG Protocol. *See supra* (describing the Company's commitment to the PCAF Standard).[32]

Moreover, the assumption behind this argument — that shareholders cannot propose any action that might be in addition to or differ in any way from the terms of an established framework — has no basis in Rule 14a-8. Staff Legal Bulletin No. 14L is clear that the Staff may "consider references to well-established national or international frameworks . . . *as indicative of topics that shareholders are well-equipped to evaluate*." Staff Legal Bulletin

[31] Succinctly, the Company's version of the GHG Protocol bears little resemblance to the intent of the framework and conflicts with every single Staff precedent permitting Scope 3 proposals — which is to say, too many precedents to list. The Staff should not permit issuers to patch together out-of-context language from the GHG Protocol to create a blanket ban on an important category of proposals. While the GHG Protocol framework recognizes the complexity of Scope 3 reporting, it also repeatedly emphasizes the importance of complete and accurate Scope 3 reporting. Its basic objective is "[t]o help companies prepare a *true and fair* scope 3 GHG inventory" thereby creating "*consistent* and transparent public reporting" of emissions. This is why the Scope 3 Standard is very clear that "Companies *shall* account for *all* scope 3 emissions and disclose and justify any exclusions." GHG Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard* ("Scope 3 Standard") at 4, 21 (Sept. 2011), https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf (emphasis added).

[32] *See also* PCAF Financed Emissions Standard at 36, 124 (reiterating application of GHG Protocol's completeness standard to PCAF compliance), 15 (stating that PCAF standards will evolve to include additional asset classes).

No. 14L (emphasis added). In other words, established frameworks are just *evidence* that a certain *topic* is within the appropriate level of granularity or complexity for a shareholder proposal. They do not create new substantive exclusions for proposals that depart from their guidance.

CONCLUSION

Read in the context of the Company's existing commitments and activities, the Proposal is a very modest disclosure request. It does not seek to alter the way the Company collects data, alter the Company's relationship with its clients, alter the Company's Scope 3 inventory, or otherwise limit management discretion. It simply seeks the disclosure of assessments the Company is already making based on information the Company is already collecting. Asking for disclosure of such information in a form useful to investors, i.e., by comparing the proportion of clients in alignment versus those out of alignment, does not micromanage the Company.

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

Luke Morgan
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cc:
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Ronald Mueller, Gibson, Dunn & Crutcher LLP
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