Bank of America

William J. Mostyn III
Deputy General Counsel and
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October 2, 2007

Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Subject: **File Number S7-16-07**
Shareholder Proposals
Securities and Exchange Commission Release No. 34-56160 (the "Release")

Dear Ms. Morris:

Bank of America Corporation (the "Corporation") appreciates the opportunity to comment on the proposed amendments (the "proposal") to Rule 14a-8 under the Securities Exchange Act of 1934 (the "Rule") as discussed in the Release. The Corporation is one of the world's largest financial institutions, serving individual consumers, small and middle market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The Corporation's common stock is listed on the New York Stock Exchange ("NYSE") under the trading symbol "BAC." The Corporation has approximately 2,000,000 shareholders.

The Corporation strongly believes in protecting and respecting shareholder rights. The Corporation also commends the U.S. Securities and Exchange Commission (the "Commission") for its efforts to listen to issuers and shareholders on important matters such as those discussed in the Release. As noted in the Release, the Commission's role in the federal proxy area is to "reinforce state law rights" and not to "supplant state law" or expand state law rights.[1] The Commission has generally struck a good balance between these concepts. In this instance, however, the Corporation believes that the proposal goes beyond reinforcement of rights and creates new rights for shareholders. Additionally, such expansion of rights is unnecessary since investors already have substantial rights and means to nominate directors and solicit proxies under state law. The proposal will only create confusion and a more cumbersome disclosure system. The proposal effectively takes the current

[1] See Release, page 7.

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election contest disclosure regime and forces it into a company's proxy materials. Finally, the proposal negates the important work of the Commission and the stock exchanges, and the companies that have changed their procedures to comply with these rules, with respect to nominating committees because shareholder nominees are immune from nominating committee scrutiny, even though they are presented in a company's proxy statement.

Substantial Rights Already Exist

Under state law, a company's governing documents and the existing proxy rules, investors have substantial rights pursuant to which they may appear at a shareholder meeting, nominate directors, solicit proxies and otherwise communicate with other investors. In addition, most companies provide a process for shareholders to submit nominations for consideration by the nominating committee of the board of directors. A description of that process is now required in a company's proxy statement. The exercise of all of these rights is fairly simple and, under today's rules, fairly inexpensive.

Further, the proposed rules would require essentially the same disclosures required by the current rules. If a shareholder complies with the proposed rules, substantially all of its proxy statement would be complete. With little additional cost and effort, a proxy could be mailed or otherwise made available to shareholders at large. Therefore, the proposed rules offer no additional benefit to a company's shareholders at large, but merely pass on the cost of the contest to all shareholders.

Finally, shareholders that would be eligible to submit such nominations (i.e., those that own 5% of a company's common stock) cannot make a serious argument that the costs are prohibitive. These shareholders are sophisticated and have significant financial and legal resources.

Creation of Confusion and Burdensome Disclosure Package

The Corporation believes that the proposal would result in bulky and confusing disclosure. As noted above, the proposal merely takes the current election contest disclosure and moves it into a company's proxy materials. As a result of proxy rule amendments over the past few years, the proxy statement and related disclosure for most companies has grown significantly. For the 2007 Annual Meeting, the Corporation's proxy statement was 50 pages long. The proposal would increase the length of the proxy and related disclosure even further. Reading and understanding the proxy statement has become a daunting task to many shareholders; the proposal will make the task even harder. The Corporation believes some investors would also find a proxy statement presenting multiple sets of director nominees confusing, as the Corporation would presumably be recommending a vote for the election of some directors and against others.

Typically, in a proxy contest solicitation, there is absolute clarity as to which party is soliciting a vote for which candidates. Only one director slate is presented and the proxy statement provides the

relevant disclosure regarding those nominees and their plans for running the company. Under the proposed amendment, the clarity provided by separate proxy statements is lost. Contributing to the potential confusion, material information will be provided in a separate Schedule 13G filing with the Commission that will not be in the same disclosure envelope with the proxy statement. Instead, investors will be required to separately acquire the related Schedule 13G filings in order to access material information. In the normal election contest proxy, this disclosure is provided directly to each investor in the proxy materials.

Any amendment adopted by the Commission should retain the 500 word limitation for the proposal and supporting statement. As noted above, proxy statements have grown in size significantly over the last few proxy seasons.

Other than as mentioned below regarding the appropriateness of Form 13G for this purpose, the scope of the proposed new disclosure for the Schedule 13G and proxy statement is generally suitable, but should be included in a separate shareholder's proxy statement.

Further, the Corporation suggests that the nominating shareholder clearly state that its nominee has not been approved by the board or directors of the company or its nominating committee and may not otherwise meet the criteria that company nominees are required to meet.

Schedule 13G is not an Appropriate Disclosure Venue

The Corporation believes the use of the Schedule 13G is inconsistent with the nomination of directors (or a bylaw that facilitates such nomination in the future). Assuming some form of the proposal is adopted, the proper disclosure venue would be the Schedule 13D. It is inconsistent for an investor to nominate one or more directors on the one hand, and claim he or she has no intention to influence the control of the company on the other. For what other purpose would a person nominate a director if not to exercise some level of control? Even if an investor did not "control" the nominee, it would be unrealistic to think the nominee would be totally neutral and disinterested in the investor's goals. In addition, if a new nominee is presented each year, at what point does the intent to influence control become established? The current proposal does exactly what the Commission indicates it wants to avoid--the use of Rule 14a-8 to inappropriately circumvent the election contest disclosure rules. The use of Schedule 13G only furthers the end-run around the disclosure rules by presuming one can nominate a director yet have no interest or intent to influence control over the company.

The Corporation does agree that the 5% (or higher) ownership threshold is appropriate for all companies, if any amendments are ultimately adopted. There is also some merit to the argument that the threshold should be 10% to coincide with the level of ownership of insiders. Regardless of the

threshold, a Schedule 13D should be filed. Given the abuses that generally exist under Rule 14a-8, these expanded rights, if given, should be very limited to avoid unnecessary additional abuses.

Nominating Committee Rendered Irrelevant

The Commission and stock exchanges have spent significant time and effort establishing a corporate governance framework that includes the establishment of an independent nominating committee. The Commission has recognized the critical function of nominating committees by requiring detailed disclosure regarding the nomination process.[2] In addition, the NYSE has stated that a "nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees."[3]

Under the NYSE listing standards, companies are required to have a nominating committee composed of independent directors and such committee must have a written charter. The nominating committee's responsibilities must include, at a minimum, the identification of "individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders"[4] In short, the Commission and the NYSE (as well as NASDAQ), have determined that nominating committees are critical to the selection of board members and nominees. However, under the proposal, the importance of the nominating committee appears to disappear. The proposal permits a shareholder nominee to be included in the company's proxy statement, but the shareholder nominees gets a free pass from nominating committee scrutiny. Why would the important work of the nominating committee be critical for company nominees but not for shareholder nominees?

Under the current system, director nominees presented by a company in its proxy statement must be vetted through a rigorous nominating committee process that the Commission and the stock exchanges have deemed critical. Shareholder nominees, not subject to the nominating committee review process, are presented in a separate proxy statement. As a result, it is clear that the shareholder nominee is operating outside the company's review procedures.

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[2] See SEC Release No. 33-8340 (January 1, 2004).

[3] See NYSE Listed Company Manual Sect. 303A.04.

[4] Id.

Under the proposal, the shareholder nominees would be presented in a company's proxy materials but would continue to be outside the nominating committee process. This will create confusion by having the appearance of company approval where no such approval exists.

Holding Period

The Corporation believes that the proposed one-year holding period to nominate a director is too short and is inconsistent with the notion that the shares are held by a shareholder with no intention to influence control. A one-year holding is an insufficient time horizon in which to determine that the current board membership is inadequate or that additional board members are necessary. In addition, a short holding period lends to the appearance that the shares were in fact purchased and held with a desire to influence control. Finally, the one-year holding period has been abused by some proponents under Rule 14a-8. These proponents target companies for various corporate and other campaigns and pursue initiatives that are not supported by, or in the best interest of, the shareholders at large. Rather than acquiring shares for investment and seeking to increase overall shareholder value, they attempt to use Rule 14a-8 as a bargaining chip for their personal agendas. This abuse would be taken to a whole new level if these shareholders could use the Rule to take over board seats and influence control by board representation.

The Corporation believes a three-year holding period is more appropriate to address the concerns noted above. Further, each member of a group should individually meet the holding period; otherwise, the holding period is irrelevant and any one straw-shareholder could manipulate the Rule to feign compliance for the group.

Investor Communications; Electronic Forums and Related Liability

The Corporation is in favor of shareholder communications, shareholder forums and rules that facilitate such communication. The caveats are as follows: (i) the anti-fraud rules should apply to such communications and forums; (ii) the Corporation should have no liability with respect to any shareholder communications or forums (absent evidence of Corporation participation in the communications or forums); (iii) the Corporation should have no express or implied duty to address, correct or acknowledge in any way, any investor communications or forums; and (iv) the Corporation should have no responsibility for hosting, sponsoring or providing any necessary technology or infrastructure that could facilitate investor communications or forums. In addition, in the event the shareholder is soliciting proxies or votes for a proposal in a company's proxy on a forum, that shareholder should be required to file its soliciting material with the Commission. The Corporation also supports the 60-day limitations on forum participation and communications prior to a shareholder meeting,

Similarly, the Corporation agrees that companies should have no liability for any disclosure included in its proxy materials that relates to the nominating shareholder and shareholder nominees.

No Impact on Majority Independent Status

The Corporation requests that the Commission coordinate with the stock exchanges to provide that any determination of whether a board is composed of a majority of independent directors should be made without regard to any shareholder nominee that may be elected. Any independent director committees should also be evaluated without regard to any shareholder nominee that may be elected. In the event the Commission adopts the proposal, it would be difficult for companies to annually juggle board composition and regulatory compliance to accommodate a director that was not vetted by the nominating committee to ensure proper board and committee composition and regulatory compliance.

Additional Disclosures and Requirements

The Corporation suggests the following additional disclosures: (i) other companies for which the shareholder has nominated one or more directors and why such companies were selected; (ii) how the shareholder group was formed; and (iii) plans for future nominees at the subject company. These disclosures would provide material information regarding the motivation and intentions of the nominating shareholder.

Disclosure concerning the relationship between a company and the nominating shareholder or nominee should be for 24 months and longer for a relationship that may be material to investors.

Proxy Advisory Firm Disclosures

As a prerequisite for inclusion of a shareholder nominee in a company's proxy statement, proxy advisory firms should be required to analyze each shareholder nominee and provide a reasoned recommendation for or against each shareholder nominee if such a recommendation is provided with respect to company nominees. It would create an uneven playing field to carry both sets of director nominees on a single proxy statement and have a proxy advisory firm recommending for or against only the company nominees. Any discussions between a proxy advisory firm and the shareholder or nominee should be disclosed as well as any relationships that may exist.

No Preliminary Filing

The Corporation disagrees with the proposal that would require a preliminary proxy statement to be filed when one would otherwise not be required. The Corporation would propose the following: (i) inclusion of a check box on the cover of the Schedule 14A that would flag the existence of a

contested election proposal in a company's proxy statement; (ii) Commission review and comment on the contested disclosure as necessary, presumably on an accelerated basis; and (iii) dissemination of additional definitive solicitation materials as necessary. This approach is consistent with the outside solicitations contemplated in the Release.

In any event, if the Commission requires a preliminary filing, the Corporation urges that the review of the preliminary filing be expedited to not more than 10 days, as is normally done in the proxy contest situation. A 30-day review period would cause significant delays in the normal printing and mailing schedule and should be avoided.

Bad Faith Exceptions and Multiple Nominations

The Corporation suggests that some exclusionary mechanisms be put in place that would prohibit the use of a company's proxy for nominees by certain shareholders acting in bad faith or without regard to shareholders at large. This would operate in a manner similar to Rule 14a-8(i) (4) if a nomination is actually designed to address a personal grievance or to further a personal benefit not shared by shareholders at large. No company should be required to carry a director nominee of a shareholder acting in bad faith. Of course, an excluded shareholder could still solicit its own proxies through its own proxy statement. Questions of exclusion could be resolved through the typical Rule 14a-8 no-action letter process that exists today.

In addition, the Corporation believes that any amendments should limit the number of nominees that must be included in any given year, possibly using the first in time rule applied under Rule 14a-8(i) (11). Depending on the eligibility thresholds, it would be possible for multiple groups of shareholders to submit multiple shareholder nominees or for large groups to break apart and submit multiple nominations.

Increase Ownership and Resubmission Thresholds

The Corporation believes that the ownership threshold for submission of regular proposals (i.e., not nominee related) is too low. The Corporation suggests the appropriate level of ownership should be $100,000 for large, accelerated filers and graduated lower levels for smaller companies. For the Corporation, that amount would represent a share ownership of only 2000 shares. A smaller increase will not have a meaningful effect on the level of proposals that we receive each year. As of June 30, 2007, the Corporation had outstanding approximately 4.4 billion shares of common stock. For large companies like the Corporation, the current level of $2,000, or approximately 40 shares, is simply too low a threshold to tie up the resources of the Corporation and the time of senior management and the board of directors.

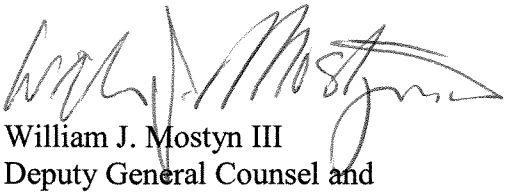
In addition, the Corporation believes the appropriate resubmission thresholds should be increased to 10%, 15% and 20%. Typically, well thought out proposals, such as best practice corporate governance proposals (like the majority vote proposals) garner significant support immediately and will not be excluded under the higher thresholds. If a proposal cannot obtain at least 10% of the vote, it is probably not worthy of resubmission. This view is based on the Corporation's recent history with proposals that have been submitted for shareholder approval.

Conclusion

Other than as set forth herein, the Corporation generally believes that Rule 14a-8 operates effectively at this time and is clearly understood by participants. The Corporation does not believe that the amendments proposed in the Release are necessary.

Again, the Corporation would like to thank the Commission for the opportunity to comment on these important matters.

Respectfully,



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