



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

July 17, 2023

Monica C. Lozano
Chair, Compensation and Human Capital Committee
Board of Directors
c/o 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, North Carolina 28255
Via email: ross.jeffries@bofa.com

Re: Shareholder request to initiate clawbacks of eligible incentive compensation from executives responsible for legal violations in the CFPB's Consent Order

Dear Ms. Lozano:

I am writing, representing significant Bank of America shareholders, to address the unsettling conduct outlined in this week's Consent Order by the Consumer Financial Protection Bureau (CFPB) to Bank of America. The CFPB findings include: systematically double charging fees imposed on your customers with insufficient funds in their accounts, withholding reward bonuses explicitly promised to your credit card customers, and misappropriating your customers' personal information to open accounts without their knowledge or authorization. The impact of these allegations has been significant, causing both financial *and* reputational damage¹ to the bank, which has the potential to adversely affect long-term shareholder value.

As Comptroller of the City of New York, I am the investment advisor to, and custodian and trustee of, the New York City Retirement Systems (NYCRS), which is responsible for the retirement security of nearly 75,000 public sector workers and retirees and has \$250 billion in assets under management. We are substantial long-term Bank of America shareholders, with more than 10.5 million shares of common stock valued at approximately \$300 million. My office has a record of constructive engagement with the bank's management and directors on executive compensation, proxy access and, most recently, on financed greenhouse gas emissions, a risk that remains an engagement priority.

As substantial, long-term shareholders, we were disturbed to learn that Bank of America has been ordered to pay more than \$100 million in customer refunds and \$150 million in penalties to federal regulators. In light of the Board of Directors' Detrimental Conduct Cancellation and Clawback policy, applicable to over 19,500 employees receiving equity-based awards, as well as its Performance-based Cancellation and Incentive Compensation Recoupment policies, I believe that the Compensation and Human Capital Committee holds both the responsibility and the authority to promptly initiate the clawback of eligible incentive compensation from the executives responsible (including those in a supervisory role) for the legal violations outlined in the CFPB's order.

¹"Reputation" and "reputational harm" is repeatedly referenced in the bank's 2023 10-K, under "Risk Factors." In particular, "Harm to our reputation can arise from various sources, including actual or perceived activities of our officers, directors, employees, contractors, third parties, clients, counterparties and other representatives, such as fraud, misconduct and unethical behavior (such as employees' sales practices), adequacy of our responsiveness to fraud claims perpetrated against our customers, effectiveness of our internal controls, litigation or regulatory matters and their outcomes, compensation practices, lending practices, suitability or reasonableness of particular trading or investment strategies, including the reliability of our research and models, and prohibiting clients from engaging in certain transactions ([4Q22 10-K as filed with exhibits](#) ([bankofamerica.com](#)), page 19.)

To restore investor and customer confidence in the bank and its Board of Directors, it is crucial to promptly disclose the details of these clawback decisions, along with the findings of any internal investigations supporting such determinations. More specifically, I request that the Compensation and Human Capital Committee and the Board disclose the following:

- The details of any compensation clawed back from any senior executive, including the executive's maximum compensation that was eligible for recoupment;
- The general circumstances of any compensation clawed back from lower-level employees, including the number of employees and aggregate compensation clawed back by individual business unit or location; and
- The reports from all internal Board or company investigations relied upon by the Compensation and Human Capital Committee to reach its clawback determinations.

By holding financially accountable the executives responsible for Bank of America's costly compliance breakdowns, the Compensation and Human Capital Committee can take an important step toward re-establishing clear expectations of ethical conduct and responsible business practices. By promptly disclosing the details of its clawback determinations in a Form 8-K filed with the Securities and Exchange Commission, the Compensation and Human Capital Committee and Board can take an essential step toward restoring investor and customer confidence in the bank and its Board.

Given the urgency and importance of this matter, I kindly request a response no later than August 11, 2023. Your response should confirm whether the Compensation and Human Capital Committee or the Board intends to exercise its clawback authority and, if so, provide a date by which the results of its determinations will be disclosed to shareholders. For any further correspondence or inquiries, please direct them to Michael Garland, Assistant Comptroller for Corporate Governance and Responsible Investment, at mgarlan@comptroller.nyc.gov.

Thank you for your prompt consideration.

Sincerely,



Brad Lander
New York City Comptroller

cc: Brian T. Moynihan, Chairman and CEO
Lionel L. Nowell III, Lead Independent Director