

**FOIA CONFIDENTIAL TREATMENT REQUESTED**  
**5 U.S.C. § 552, 12 C.F.R. § 1080.6**

**WILMERHALE**

March 28, 2019

**Daniel T. Chaudoin**

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**By E-mail**

Ms. Meghan Sherman Cater  
Enforcement Attorney  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552  
meghan.cater@cfpb.gov

Re: **Civil Investigative Demand served on Bank of America Corporation**

Dear Ms. Cater:

Attached please find a petition filed by Bank of America Corporation (the "Bank") for an order setting aside the civil investigative demand (the "CID") it received from the Consumer Financial Protection Bureau ("CFPB" or "Bureau") on March 1, 2019. The petition sets forth the Bank's objections to the civil investigative demand, including all appropriate arguments, declarations, and other supporting documentation.

I have also provided a signed statement representing that I have conferred with counsel for the Bureau, pursuant to 12 C.F.R. § 1080.6(c), in a good-faith effort to resolve by agreement the issues raised by the petition and have been unable to reach such an agreement.

Pursuant to 12 C.F.R. § 1080.6(e), we have filed this petition with the Executive Secretary of the Bureau, with a copy to the Assistant Director of the Bureau's Office of Enforcement.

We sincerely appreciate the CFPB's careful review of the Bank's petition. We also request that you notify us if there is additional information that would help you assess this petition. We believe it is important to maintain open lines of communication and a good working relationship as we move forward. Please feel free to call me at 202-663-6741.

**Request for Confidential Treatment**

The Bank respectfully requests that this petition to set aside the CID issued by the Bureau and the information and exhibits contained therein (the "Confidential Materials") be afforded confidential treatment under 12 C.F.R. §§ 1070, 1080.6(g) and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Under the Bureau's regulations, petitions to modify or set aside a CID and the Director's orders in response to those petitions "are part of the public records of the Bureau unless the

Ms. Meghan Sherman Cater  
March 28, 2019  
Page 2

Bureau determines otherwise for good cause shown.” 12 C.F.R. § 1080.6(g). However, the Bureau may determine that there is good cause for confidential treatment of all or a portion of a petition to modify or set aside a CID. In making that determination, the Bureau generally looks to the standards for withholding material from public disclosure established by FOIA.<sup>1</sup>

The petition includes confidential information, as defined in 12 C.F.R. § 1070.2, and there is good cause to withhold the entire petition from public disclosure. For one, the petition constitutes investigatory records obtained by the Bureau in connection with a potential law enforcement proceeding, such records are subject to the exemption from mandatory disclosure under Exemption 7(A) of the FOIA, 5 U.S.C. § 552(b)(7)(A). *See, e.g., NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978); *Chivilis v. SEC*, 673 F.2d 1205 (11th Cir. 1982). The petition also contains business information, trade secrets, and/or other confidential commercial information concerning the Bank and/or its personnel, and such records are exempt from mandatory disclosure by Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4) and will continue to remain exempt even after the conclusion of your inquiry. *See Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871 (D.C. Cir. 1992) (en banc).

In addition, the petition includes materials that are contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the Bureau or [REDACTED] and such records are exempt from mandatory disclosure by Exemption 8 of the FOIA, 5 U.S.C. § 552(b)(8). *See, e.g., Gregory v. FDIC*, 631 F.2d 896, 898 (D.C. Cir. 1980), quoting *Consumers Union of United States, Inc. v. Heimann*, 589 F.2d 531, 533 (D.C. Cir. 1978).

Finally, there is also a significant risk that the Bank could be prejudiced by public disclosure of the petition. The issue of sales practices misconduct has received substantial political and public attention, largely due to the Wells Fargo action. Disclosure of the Bureau's continuing investigation of the Bank could cause significant harm, as it could be understood to suggest (erroneously) that similar systemic issues exist at the Bank. That misperception could cause unwarranted reputational harm to the Bank and significantly complicate closure of the Bureau's investigation. For all of these reasons, we believe there is good cause for the Bureau to maintain the confidentiality of this petition.

In submitting the petition, the Bank does not intend to, and does not, waive any applicable privilege held by the Bank. If it were found that this petition constitutes disclosure of materials subject to a privilege held by the Bank, such disclosure would be inadvertent.

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<sup>1</sup> Consumer Financial Protection Bureau; *Decision on Request for Confidential Treatment of Joint Petition by Great Plains Lending, LLC, Mobiloans, LLC, and Plain Green, LLC* (Sept. 12, 2013).

Ms. Meghan Sherman Cater  
March 28, 2019  
Page 3

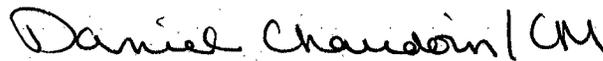
Should the Bureau receive any request for these documents, pursuant to the FOIA or otherwise, the Bank requests that the undersigned immediately be notified of such request, and be furnished a copy of all written materials pertaining to such request (including, but not limited to the request and any agency determination with respect to such request). We expect that the Bank will be given an opportunity to object to such disclosure. 12 C.F.R. § 1070.20. In addition, should the Bureau be inclined to grant the request, it is our expectation that, pursuant to the procedures required by Exec. Order 12,600, 52 Fed. Reg. 23,781 (1987), and 12 C.F.R. § 1070, we will be given ten business days' advance notice of any such decision to enable the Bank to pursue any remedies that may be available to it. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281 (1979). In such event, we request that you telephone counsel of record, rather than rely upon the United States mail for such notice. If the Bureau is not satisfied that these Confidential Materials are exempt from disclosure pursuant to the FOIA, we stand ready to supply further particulars and request a hearing on the claim of exemption.

The Bank also requests advance notice of a denial of confidential treatment, pursuant to 12 C.F.R. § 1070.46, should the Bureau determine that it will disclose or release the petition or any response thereto by the Bureau.<sup>2</sup> In that event, the Bank reserves the right to submit a redacted version of the petition for public disclosure.

\* \* \*

Please contact me at the above-referenced number if you have any questions.

Sincerely,



Daniel Chaudoin

Enclosures

cc: CFPB Assistant Director, Office of Enforcement  
Enforcement@cfpb.gov

CFPB Office of the Executive Secretary  
ExecSec@cfpb.gov

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<sup>2</sup> We recognize that the Bureau has stated that section 1070.46(b) applies only when the Director has decided to disclose confidential information, and that this rule does not apply to the disclosure of information that the Bureau has determined is not entitled to confidential treatment. However, the Bureau has noted that it will "typically provide advance notice" as a matter of general practice. *Id.*

WILMERHALE

Ms. Meghan Sherman Cater  
March 28, 2019  
Page 4

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Freedom of Information Act Officer (via regular mail w/o enclosures)  
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