

CONFIDENTIAL TREATMENT REQUESTED BY BANK OF AMERICA CORP.

**UNITED STATES OF AMERICA
BEFORE THE CONSUMER FINANCIAL PROTECTION BUREAU**

IN RE BANK OF AMERICA CORP.

2019-MISC-Bank of America Corp.-0001

**BANK OF AMERICA'S SUPPLEMENTAL SUBMISSION IN
SUPPORT OF ITS REQUEST FOR CONFIDENTIAL TREATMENT**

Pursuant to the July 19, 2019 Decision and Order, *see In re Bank of America Corp.*, 2019-MISC-Bank of America Corp.-0001 (July 19, 2019), at 8-9,¹ Bank of America ("Bank") provides this supplemental submission in support of its request for confidential treatment of the Petition to Set Aside or Modify the Civil Investigative Demand ("Petition"). As noted in the Bank's Request for Confidential Treatment,² 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. In particular, the Petition is, or contains materials that are, exempt from disclosure under Exemptions 4, 7(A), and 8 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), 552(b)(7)(A), 552(b)(8), and there is a significant risk that the Bank could be prejudiced by public disclosure of the petition.³

¹ The Bank first received notice of the Decision and Order on July 23, 2019 and is filing this supplemental submission within ten calendar days of receiving notice, as directed by the Decision and Order.

² *See* Letter from Daniel Chaudoin to Meghan Sherman Cater (Mar. 28, 2019).

³ In providing this supplemental submission, the Bank does not withdraw or waive any of its arguments in support of confidential treatment of the Petition. Rather, as directed by the Decision and Order, the submission is limited to the specific issue of the applicability of FOIA Exemption 4. We note, however, that the Petition and the Decision and Order may contain information that is the property of the Office of the Comptroller of the Currency ("OCC") and subject to restrictions on the disclosure of confidential OCC information. *See* 12 C.F.R. part 4.

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The Bank notes that the following categories of information contained in the Petition, and specific statements falling within those categories, were obtained by the Bureau from the Bank, *see* 5 U.S.C. § 552(b)(4) (exemption limited to information “obtained from a person”), and are “customarily kept private, or at least closely held,” by the Bank, *Food Marketing Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363 (2019). This information is therefore exempt from disclosure under FOIA Exemption 4, *see id.*, and “good cause” exists to withhold it under 12 C.F.R. § 1080.6(g), *see In re Heartland Campus Solutions, ESCI*, 2017-MISC-Heartland Campus Solutions, ESCI-001 (Sept. 8, 2017), at 9.

1. Internal Control Environment

- “Second, the Bank controls and monitors for misconduct and conducts vigorous internal reviews to remediate wrongdoing. As Bureau Staff are aware, the Bank [REDACTED]

[REDACTED] Pet. at 3 (footnotes omitted).

The Bank does not publicly disseminate information about its internal control environment. Declaration of John Rowan ¶ 2 (Aug. 2, 2019) (“Rowan Decl.”). Information about [REDACTED]

[REDACTED] are kept private in the ordinary course of business. *Id.*

2. Customer Complaint Process

- “Finally, the Bank collects and addresses customer complaints. [REDACTED]

[REDACTED] Pet. at 3-4.

The Bank does not publicly disseminate information about its process for handling customer complaints. Rowan Decl. ¶ 3. The manner in which the Bank addresses customer complaints is kept private in the ordinary course of business. *Id.*

3. Proprietary Business Information Developed in the Course of Responding to Regulatory Inquiries

- [REDACTED] Those results are buttressed by two analyses performed for the Bureau. An analysis [REDACTED]
[REDACTED] Pet. at 7 (footnotes omitted).
- [REDACTED] Pet. at 7 n. 14.
- “As materials previously produced to the Bureau Staff explain, [REDACTED] Pet. at 12.
- “While the Bank previously [REDACTED] Pet. at 12 n. 23.

The Bank does not publicly disseminate proprietary business information developed in the course of responding to regulatory investigations. Rowan Decl. ¶ 4. The results of such

investigations often yield information that the Bank uses to inform future business practices and are accordingly kept private in the ordinary course of business. *Id.*

4. Internal Resource Allocations

- “Since [REDACTED] the Bank has spent [REDACTED] on this investigation and others focused on sales practices issues, [REDACTED] These efforts also have significant operational impacts to the Bank: more than [REDACTED] Bank employees, approximately [REDACTED] invested more than [REDACTED] hours to complete the reviews conducted for the Bank’s other regulators.” Pet. at 9.

The Bank does not publicly disseminate information relating to its internal allocation of resources. Rowan Decl. ¶ 5. The budget and personnel brought to bear in responding to a regulatory inquiry, for instance, is kept private in the ordinary course of business. *Id.*

5. Incentive Compensation Plans

- “First, the Bank’s compensation program [REDACTED] Pet. at 3 (footnote omitted).”

The Bank does not publicly disseminate the details of its incentive compensation plans. Rowan Decl. ¶ 6. Information about particular plans is closely held among the employees subject to them or who otherwise need to know to perform their jobs at the Bank. *Id.* Statements about the kinds of activities for which Bank employees are incentivized relate to the Bank’s ability to properly incentivize and retain employees are kept private in the ordinary course of business. *Id.*

If the Bureau is inclined to deny the Bank’s request for confidential treatment, the Bank restates its request for a hearing on the claim of exemption. It also restates its request for advance notice of a denial of confidential treatment, pursuant to 12 C.F.R. § 1070.46, should the

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Bureau determine that it will disclose or release any portion of the Petition or the Bureau's Order and Decision.

August 2, 2019

Respectfully submitted,

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DECLARATION OF JOHN ROWAN

I, John J. Rowan, declare as follows:

1. I am a Senior Vice President at Bank of America Corporation (the “Bank”). In this capacity, I am familiar with the Bank’s policies and customary practices regarding the disclosure of information concerning its business operations. This declaration is based on personal knowledge and information learned in the course of my employment at the Bank.

2. It is the Bank’s custom and practice to keep information regarding its internal control environment private. Such information includes [REDACTED]

[REDACTED]

[REDACTED] For instance, [REDACTED]

[REDACTED]

[REDACTED] is kept private in the ordinary course of business.

3. It is the Bank’s custom and practice to keep information regarding its customer complaint process private. Such information includes [REDACTED]

[REDACTED]

[REDACTED] For instance, [REDACTED]

[REDACTED] is kept private in the ordinary course of business.

4. It is the Bank's custom and practice to keep information regarding proprietary business information developed in the course of responding to regulatory inquiries private. This information includes the processes for conducting, and the results of, regulator-initiated "look back" reviews. For instance, the timeframe of a look back review, the number of accounts identified as unauthorized or potentially unauthorized in that look back review, and the criteria for determining whether an account opening was unauthorized or potentially unauthorized may be used to inform the Bank's future business practices and is accordingly kept private in the ordinary course of business.

5. It is the Bank's custom and practice to keep information regarding internal resource allocations private. This information includes the amount of money and FTE hours dedicated to particular tasks, such as responding to regulatory inquiries. For instance, the Bank's budget for responding to a particular regulatory inquiry is kept private in the ordinary course of business.

6. It is the Bank's custom and practice to keep information regarding its incentive compensation plans private. Details of these plans, including the types of activities in which employees are incentivized to engage, are not made publicly available. For instance, because [REDACTED] [REDACTED] relates to the Bank's ability to optimally incentivize and retain talented employees, that information is kept private in the ordinary course of business. The particulars of specific compensation plans are generally communicated only to Bank employees who are subject to those plans or who otherwise have a need to know the plans to perform their business functions.

I declare under penalty of perjury that the foregoing is true and correct.


Executed on the 2nd day of August 2019 in Fort Lauderdale, Florida.

/s/ 
John J. Rowan

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August 2019, pursuant to 12 C.F.R. 1080.6(e), I caused the foregoing Supplemental Submission in Support of Request for Confidential Treatment to be served via email upon the Executive Secretary of the Bureau and the Assistant Director for the Office of Enforcement.

Date: August 2, 2019



Daniel Chaudoin