

Civil Rights and Non-Discrimination Audit Proposal

Resolved: Shareholders of the Bank of America Corporation (“the Company”) request that the Board of Directors commission a racial equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

Supporting Statement: Tremendous public attention has focused recently on workplace practices and employee training. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.¹ Where adopted, however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.²

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer and CVS.³

This concern, disagreement and controversy creates massive reputational, legal and financial risk. If the Company is, in the name of racial equity, diversity and inclusion, committing illegal discrimination against employees deemed “non-diverse,” then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

¹ <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/fdx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58

² <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>

³ <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ>

In developing the audit and report, the Company should consult civil-rights groups – but it must not compound error with bias by relying only on left-leaning civil-rights groups. Rather, it must consult groups all across the spectrum of viewpoints. This includes right-leaning civil rights groups representing people of color, such as the Woodson Institute⁴ and Project 21.⁵ It must also include groups that defend the civil rights and liberties of *all* Americans, not merely the ones that many companies label “diverse.” All Americans have civil rights; to behave otherwise is to invite disaster.

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too often employers like those mentioned above have initiated discriminatory programming that itself chills contributions from employees who disagree with the premises of the programming, and then have pretended that the employees who have been empowered to express themselves by the programming represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.

⁴ <https://woodson.as.virginia.edu/>

⁵ <https://nationalcenter.org/project-21/>