



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

June 26, 2023

Mr. Edward D. Burbach
Foley & Lardner LLP
600 Congress Avenue
Suite 3000
Austin, TX 78701-3056

Re: Compliance with Texas Government Code, Chapter 2274, SB 19

Dear Mr. Burbach:

Thank you for your May 17, 2023 response regarding Bank of America's (BoFA) compliance with Texas Government Code, Chapter 2274. I respectfully submit these follow-up questions regarding your response to SB 19. We may also have further questions regarding your response to SB 13. Your further attention to these questions will assist us in evaluating your response as well as address additional concerns that have arisen relating to BoFA's compliance with state law.

1. In your May letter, you noted that you previously suspended entry into any contracts requiring the SB 19 verifications.
 - a. Why was this done?
 - b. Who made that decision?
 - c. Upon what grounds was it decided?
 - d. Upon what risk-based framework and/or policies was it based?
 - e. How has that risk-based framework or BoFA's policies changed so that you can now "appropriately make such written verifications"?
2. In your May letter, you state that BoFA avoids financing the manufacture of "military style" weapons that are available to civilian purchasers.
 - a. Please clarify your definition of a "military-style weapon." Can you provide an objective definition of a "military-style weapon?"
 - b. Please list specific products that BoFA classifies as "military-style weapons."

- c. Who within BofA makes the determination as to whether a product constitutes a “military-style weapon?” Please outline the internal processes for making such a determination as well as specific characteristics used to make the determination.
 - d. Please describe the internal control processes utilized to ensure the legitimacy, consistency, and uniformity of classifying products as “military-style weapons.”
 - e. If “military-style weapon” is not a clearly defined term, how does BofA ensure that it does not discriminate against firearm entities?
 - f. Upon what “traditional business purpose or reason” is this exclusion based?
 - g. Please provide the economic data and models used to make this determination.
3. In your May 17, 2023 letter, you state that “BoA’s risk-based framework does generally consider the firearms industry high-risk, with clients subject to a heightened due diligence requirement.” Additionally, as stated in your 2023 ESRP Framework document, your “Arms and Munitions Policy” establishes an enhanced due diligence standard—a “deeper analysis of issues related to client transactions and associated stakeholders”—for clients and transactions involved in arms and munitions trade finance. You also state in your May letter that you “avoid certain business transactions based on traditional business reasons.”
- a. What data have you relied on to conclude that the firearms industry is high-risk?
 - b. Please provide a copy of your “Arms and Munitions Policy.”
 - c. Explain how this “deeper analysis” works. How is this related to client transactions? Associated stakeholders? What steps are taken and what information is required of the arms and munitions (firearms) industries that are not required of other industries who are subject only to due diligence.
 - d. Explain how this “enhanced due diligence standard,” something not required for most other industries, does not constitute discrimination based solely on the firearms industry *status* as such.
 - e. What is your “traditional business purpose or reason” for using this enhanced or heightened due diligence requirement and for “avoiding certain business transactions” for an entire industry?
 - f. Please list all “business transactions” with any entity in the firearm industry which you have avoided and provide the traditional business reason for which you have avoided it.
4. As cited in your May letter, according to 12 CFR Part 30, the risk governance framework of a bank should cover the following risk categories: Credit risk, interest rate risk, liquidity risk, price risk, operational risk, compliance risk, strategic risk, and reputation risk.
- a. Please explain how the firearms industry, or the financing of “military style weapons,” presents any of these risks to your company.

- b. More specifically, which of these risks requires you to label the firearms industry as “high risk” or requires you to refuse to finance the manufacture or sale of certain types of guns?
 - c. What other industries have similar or greater risks?
5. In your May letter, you also state that “BofA’s risk-based framework requires consideration of specific types of risk that federal law and regulators direct it to consider.” Other than those listed in 12 CFR Part 30, what other federal laws or regulations, if any, require you to label the firearms industry as “high risk” or require you to refuse to finance the manufacture or sale of certain types of guns?
6. Explain how any risk profile of the firearm industry materially jeopardizes the adequacy of your earnings, liquidity, or capital more than other industries and provide evidence of same.
7. Under BofA’s risk-based framework, does an entity’s or organization’s status as a “firearm entity” or “firearm trade association” increase the risk associated with traditional banking services provided by BofA, such as processing credit card transactions, maintaining checking and savings accounts, and issuing business credit lines?
 - a. For example, how would BofA assess a potential relationship with a firearm entity that seeks to open a business checking account at a BofA bank?
 - b. Would such a business relationship present a heightened risk to BofA outside of the E&S context? If so, why?
8. What data, information, or analysis do BofA’s risk committees consider or rely on to determine whether BofA will initiate or maintain a business relationship with a firearms manufacturer or retailer? Please provide specific examples of the types of data and analysis the committees consider in their decision-making process.
9. Does BofA’s risk-based model account for the geographical location of an existing or prospective client in the firearm and ammunition industry and the particular regulatory environment of the location?
10. The following questions apply to all BofA risk-related committees, teams, or advisory groups:
 - a. Do these groups report to the overall executive team or do they report to someone at each individual bank?
 - b. Who serves on these groups?
 - c. How long have each one been in existence?
 - d. How often do these groups meet?

- e. How is it determined whether a risk committee or independent manager will consider a business relationship with a particular client or potential client?
 - f. Please describe the risk review process.
11. Who is the independent risk manager and, if she has a team, who comprises the independent risk management team? Who selected that person or team? What qualifications and credentials are used to make that selection?
 12. Please list the members of the National Community Advisory Council (NCAC) and indicate within what area they advise BofA and how their input affects BofA's relationship with potential clients who are in the firearms industry. Are there any members of the NCAC from the firearms industry or a gun owners organization?
 13. Do the risk-related groups receive legal analysis from in-house or outside counsel concerning the specific risks BofA faces? If so, can you provide examples of legal analysis documenting these risks for any particular firearms manufacturer or retailer?
 14. Do you consider your policies regarding the firearms industry social policies? If so, you state in your ESRP Framework that you have "benchmarked all of your existing social policies and positions against industry best practices." How do you define "industry best practices" and upon what do you base that definition? What is the "industry best practice" regarding firearms? Where is this found?
 15. Relating to decisions made regarding the firearms related industries, please provide the following information:
 - a. Any formal, written risk governance framework that is designed by independent risk management
 - b. The risk limits established for material activities of firearm companies
 - c. Instances where independent risk management's assessment of risk differed from that of a front-line unit
 - d. Material risks and significant instances where independent risk management's assessment of risk differed from the Chief Executive Officer
 - e. The written strategic plan developed by the chief executive officer which includes a comprehensive assessment of risks that currently have an impact on the bank or could have one in the future
 - f. Identify your set of policies, supported by appropriate procedures and processes, designed to provide risk data aggregation and reporting capabilities
 14. It does not appear that the firearms industry, or any specific firearm, is mentioned in your 2022 Annual Statement, your 2022 Proxy Statement, or on any of your webpages, as a potential risk or concern, nor is that information apparently shared with any shareholder in a meeting or other communication. If that is not correct, please share any documents in which you related to your shareholders, or

the public at large, that dealing with the firearms industry creates a “high risk” to BofA.

We understand that this may take some time to gather but would appreciate if you could get this information to us within the next 45 days.

Sincerely,

A handwritten signature in blue ink that reads "Austin Kinghorn". The signature is fluid and cursive.

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