BANK OF AMERICA CORP /DE/
Form DEFA14A
September 09, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

Filed by the Registrant x   Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

¨ Definitive Proxy Statement

x Definitive Additional Materials

¨ Soliciting Material Pursuant to §240.14a-12

Bank of America Corporation

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

PAYMENT OF FILING FEE (Check the appropriate box):

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September 2015
Board Leadership and
Corporate Governance Practices

We Are Holding This Vote in Response to Investor Feedback
2

The Board believes the flexibility afforded by the current bylaws continues to assure independent oversight by the Board and is in the best interests of Bank of America and its shareholders

Through engagement with shareholders, the Board heard a clear desire for shareholders to have a vote on the bylaw amendment, and the Board has called a Special Meeting for September 22 to promptly follow through on its commitment to shareholders

The amended bylaws provide the same flexibility that 97 percent of the S&P 500 companies[1] already have in determining their leadership structure

Bank of America s current structure includes a newly established Lead Independent Director role, with authority, duties and responsibilities that extend beyond industry practice and exceed industry norms. In addition, the Board continues to adopt corporate governance enhancements through engagement with shareholders and in direct response to feedback

The Board recognizes and respects that investor views on the appropriate board leadership structure vary, which is why the Board committed to putting the matter to a vote and acting in accordance with the vote outcome

Note: This presentation may also include quotations from or citations to third-parties; permission was neither sought nor obtai
1
Source: Spencer Stuart Board Index, November 2014.
The
Board
recommends
that
shareholders
vote
FOR
the
bylaw
amendment

Product-focused company

Range of non-core activities

Legacy mortgage issues

High expense base

Bloated balance sheet

Capital challenges

Challenging operating and economic
environment

Reorganized around eight client-
focused lines of business

Simplified corporate structure
eliminated >1,000 legal entities

Divested / exited $73B of non-core
businesses and assets

Achieved $8B in annualized cost savings
through New BAC

Distributed $~10 of capital through
common share repurchases and
dividends

Customer-focused company

Growing in our core businesses

Addressed significant legacy issues

Reduced expenses and enhancing
culture of efficiency

Strengthened balance sheet and
financial foundation

Returning capital

Improving economic environment

Of 31 sell-side analysts covering BAC, 25
rate the company a Buy, five rate it a
Hold and one rates it a Sell
1
Our Progress
Where We Are Today
Where We Started (2010)
3
Since 2010 We Have Undergone a Strategic Transformation

1
As of September 9, 2015.
2
Business Insider, Jonathan Marino, Warren Buffett just gave the CEO of Bank of America a vote of confidence at a critical ti

3
CNBC, September 8, 2015. http://video.cnbc.com/gallery/?video=3000418189&play=1

On September 2, one of our largest investors, Warren Buffett, was quoted on his views regarding Bank of America s progress and transformation, indicating that he is:

100% in support of Mr. Moynihan and believes he is doing an outstanding job for Bank of America shareholders.

When [Mr. Moynihan] took over as CEO, he was handed one of the toughest jobs in the history of American banking.
2

CLICK HERE:
Warren Buffett
Speaks in Favor of
Bylaw
Amendment
3

$256
$55
4Q09
2Q15
4

1
4Q09
reflects
12/31/09
information
adjusted

to include the 1/1/10 adoption of FAS 166/167 as reported in our SEC filings, which represent non-GAAP financial measures. On a GAAP basis, long-term debt was $439B, total assets were $2,230B and quarterly net charge-offs were $8.4B in 4Q09. See reconciliations to GAAP financial measures on pages 13

2 Tangible common equity ratio represents a non-GAAP financial measure. On a GAAP basis, the common equity ratio was 8.7

3 Value at Risk (VaR) model uses historical simulation approach based on three years of historical data and

an
expected
shortfall
methodology
equivalent
to
a
99%
confidence level.
5.0%
7.6%
4Q09
2Q15
$2,324
$2,149
4Q09
2Q15
$11.3
$1.1
4Q09
2Q15
$992
$1,150
$523
$243
4Q09
2Q15
Deposits
Long-term debt
$214
$484
4Q09
2Q15
Strengthened Capital
Tangible Common Equity Ratio
1, 2
Improved Credit Quality
Quarterly Net Charge-offs ($B)
1
Reduced Balance Sheet
Total Assets ($B)
1
Average
VaR
($MM)
3
Enhanced Funding Structure
Deposits and LT Debt ($B)
Built Record Liquidity
Global Excess Liquidity Sources ($B)

Today We Are a Leaner, Stronger and Simpler Company
1

$90.1
$92.3
$90.2
$86.4
$69.3
$77.4
$82.3
$82.1
2011
2012
2013

2014
Revenue excluding net DVA/FVA and market-related NII adjustments
Less net charge-offs (excl. net DVA/FVA and market-related NII adjustments)
Focused on Improving Shareholder Returns
Shift to a More Sustainable Revenue Stream
Revenue (FTE, $B)
$77.1
$72.1
$69.2
$75.1
$71.5
$66.8
$63.1
$58.7
2011
2012
2013
2014
Grew TBV While Absorbing Significant Legacy Costs
Tangible Book Value per Share
Share Price Performance
$11.31
$12.98
$12.95
$13.36
$13.79
$14.43
2009
2010
2011
2012
2013
2014
3

1
Represents a non-GAAP financial measure. On a GAAP basis, revenue was $93.5B, $83.3B, $88.9B and $84.2B for 2011, 201
2011,
2012,
2013
and
2014,
respectively.
On
a
GAAP
basis,
book
value
per

share
was
$21.48,
$20.99,
$20.09,
$20.24,
$20.71
and
$21.32
for
2009,
2010,
2011,
2012,
2013
and
2014,
respectively.
See
reconciliations
to
GAAP
financial
measures on pages 13-16.
2
Includes $1.1B of provision for the Independent Foreclosure Review (IFR) Acceleration Agreement in 4Q12 that we entered i
commenced pursuant to a consent order entered into by Bank of America with the Federal Reserve and by BANA with the OC
3
Tangible Book Value per Share (TBVPS) reflects the 12/31/09 information adjusted to include the 1/1/10 adoption of FAS 16
financial measures on pages 13-16.
Lowered Expenses
Noninterest Expense, Excl. Goodwill ($B)
13%
0%
13%
30%
11%
11%
(27%)
35%
37%
12%
(11%)
(58%)
109%
34%
15%
2010
2011
2012

2013
2014
S&P 500
US G-SIFI Peer Average
BAC
1
1
5
DVA=Debit Valuation Adjustment FVA=Funding Valuation Adjustment NII=Net Interest Income
Noninterest expense excl. goodwill
Noninterest expense excl. goodwill and litigation
2
1
1

1
Source:
SNL
branch
data.
U.S.
deposit
market
share
(retail
domestic
deposits)
based

on
June
2014
FDIC
deposit
data,
adjusted
to
remove
commercial
balances.
2
Source: Keynote, 4Q14 Mobile Banking Scorecard, November 2014.
3
Competitor 1Q15 earnings releases.
4
Source: Dealogic as of March 31, 2015.
5
Source: Institutional Investor 2014.
Industry Leading Positions Across Our Businesses

#1 retail deposit market share in our footprint

#1 in mobile banking
with 17.6MM mobile users

#3 in U.S. credit card balances

#1 Home Equity Lender

#1 wealth management market position across client
assets, deposits, loans, and net income before taxes

Top tier middle market advisor with #2 ranking in
US/Canada

#2 in 2014 Global Investment Banking fees
4

#1 leading global research firm for 4 consecutive years
5
6
Top Tier Ranked Businesses in Every Segment in Which We Compete
We Serve Three Groups of Customers Through Eight Lines of Business
People.
Institutions.
Companies.
Retail
Preferred &
Small

Business
Merrill Lynch
U.S. Trust
Business
Banking
Commercial
Banking
Global
Corporate &
Investment
Banking
Global
Markets
1
3
3
3
2

7

In October 2014, the Board amended our bylaws to provide for Board leadership flexibility. On the same date, the Board named Brian Moynihan Chairman, established the Lead Independent Director position and the independent members elected Jack Bovender to the role

Jack Bovender represented the Board in our shareholder engagement efforts regarding our Board leadership structure leading up to the 2015 annual meeting

During that engagement, a number of investors voiced the opinion that shareholders should be given the opportunity to vote on the bylaw change. In May 2015, Jack Bovender and Brian Moynihan sent a letter to shareholders on the Board s behalf and committed to holding a shareholder vote to ratify the bylaw amendment no later than the 2016 annual meeting

Jack Bovender and members of management subsequently re-engaged our significant shareholders to gather additional feedback on our Board leadership structure and potential timing of the ratification vote

The Board has committed to act in accordance with the shareholders voting decision and to continue to engage with shareholders

Shareholder Engagement Has Informed This Special Meeting Vote

Since 2009, the Board has implemented considerable changes in its recruiting and selection process to enhance the Board s experiential diversity and independence to align with its transformation

As part of the nomination process, director candidates are reviewed by Bank of America s primary bank regulators

Of the 13 directors, seven have international experience, nine have CEO experience (including two who previously served as CEOs of financial institutions), nine have served on another U.S. public company board in the last five years, two are African-American and four are women, one of whom is Hispanic

Board composition features a substantial majority of independent directors

11 of 13 members are independent

Seven of those 11 independent members joined the Board in the last three years

A substantial majority of independent members have had leadership roles at a financial institution or have experience in a highly regulated industry

The Board is refreshed on a regular basis. Average Board tenure at 5 years is below the 8.4 year market average

1

Lead Independent Director role with responsibilities beyond industry norms

Regular Board assessment of optimal leadership structure

Independent and non-management directors meet in executive session at each regularly scheduled Board meeting

14 executive sessions have occurred over the past 11 months

Lead Independent Director presides at each meeting

Lead Independent Director has authority to call an executive session of independent directors at any time

8

Bank of America s Board has undergone a significant transformation in the past five years and has implemented practices that enhance independent oversight of management

Strong Board Independence

Enhanced Board Recruitment
Active Independent Oversight
Practices
Independent Oversight through Current Leadership Structure

1
Source: Spencer Stuart Board Index, November 2014.

9
The Corporate Governance Committee regularly assesses the needs of the Board and the company
to recruit directors who meet increasing regulatory requirements, and
have the right skills and experiences to oversee our businesses and strategy
Directors Contribute Valuable Range of Expertise, Diversity and Perspectives to the Boardroom
Five of our Board members (including Mr.
Moynihan), or 39%, have served as senior
executives at financial institutions
Four directors, or 31% have served as senior
executives at banks
Our three closest peer companies average 4.7
directors, or 36%, who have served as senior
executives of financial institutions, and 2.0

directors, or 16%, who have served as senior
executives of banks
Directors with experience in regulated industries
other than financial services have managed
businesses subject to governmental oversight,
bringing insight that complements our directors
who have specific experience in banking or
financial services, and enhance the diversity of the
Board
Board Composition Provides Balance of Skill Sets, Including Financial
Expertise and Other Experience Relevant to Our Business
Gender Diversity

1
Source: Based on review of public SEC filings.
8
New independent directors
elected since 2009
Fresh Perspectives
7
New independent directors
elected in the last 3 years
Independent
85%
Director Independence
Insider
15%

Audit/Financial Reporting

Risk Management

Strategic Planning

Operational Risk

Consumer Banking

Regulated Business Expertise

Corporate Governance

Cybersecurity Risk

Business Development

Financial Services Industry Experience

International Perspective

Social Responsibility and Diversity
Female
31%
Male
69%
1

Lead Independent Director with Responsibilities Beyond Industry Norms
Jack Bovender, Lead Independent Director

Jack s breadth of knowledge in management, operations, and corporate governance led independent directors to appoint him to this Board leadership role

Former long-time Chairman, CEO and COO of HCA Inc., which operates over 200 hospitals and surgery centers throughout th United States and England, with 169,000 employees; HCA is a complex organization in a highly regulated industry subject to substantial regulatory and government oversight
The authority, duties and responsibilities of our Lead Independent Director extend beyond industry practice and expectations and exceed ISS criteria for determining comprehensive lead director duties

In determining these responsibilities, the Board benchmarked against peers at
leading S&P 500 financial services, consumer and industrial companies and the ISS criteria

Board Leadership

Presides at all meetings when Chairman is not present

Calls meetings of independent directors

Provides leadership if CEO / Chairman s role may be in conflict

Board Culture

Serves as a liaison between CEO and independent directors

Establishes relationship with CEO, providing support, advice and feedback

Acts as a sounding board
and advisor to CEO

Board Focus

Helps ensure Board focuses on key issues facing Bank of America

Assists in promoting corporate governance best practices

Contributes to annual performance review of CEO and participates in
CEO succession planning

Board Meetings

Plans, reviews and approves Board meeting agendas and schedules in
coordination with CEO

Advises CEO of Board information needs, and approves information sent to
Board

Develops discussion topics for Board executive sessions

Board Performance & Development

Helps ensure efficient and effective Board performance and functioning

Consults with Corporate Governance Committee on annual Board self
assessment

Provides guidance on ongoing director development

Consults in identification and evaluation of director candidates,
committee members and committee chairs

Stockholders & Other Stakeholders

Available for consultation and direct communication, to the extent requested
by major stockholders

Regularly communicates with primary bank regulators to discuss
appropriateness of Board s oversight of management and company

10

Note: LID duties highlighted in blue are additional duties beyond ISS criteria.

Enhanced executive compensation governance and transparency
Enhanced business and sustainability reporting, including commitment to provide:

Business Standards Report

Political activities disclosure

Sustainability and greenhouse gas emission disclosure, including a new coal policy
Board adopted proxy access right at a 3%/3 year ownership threshold

At
time

of
adoption,
Bank
of
America
was
one
of
only
10
US
companies
to
establish
proxy
access
at
a
3%/3
year
threshold

Demonstrates commitment to constructive engagement with investors and the evolving landscape of shareholder rights
Board implemented special meeting right at 10% ownership threshold
Majority vote standard for director elections
Annual election of directors
Annual Board and Committee self-evaluations
No supermajority provisions
Corporate Governance Committee considers director candidates recommended by shareholders
Enhanced executive compensation governance: 94.8% shareholder support for say on pay at the 2015 annual meeting
Clawback policy
Adopted an enhanced shareholder engagement program that includes the active involvement of our Lead Independent Director and other independent directors
11
Efforts to enhance engagement with shareholders and responsiveness to shareholder feedback as reflected by
the Board s adoption of corporate governance changes and enhanced disclosures
Adoption of
Proxy Access
Reporting &
Disclosures
Shareholder
Rights &
Director
Accountability
Enhanced
Shareholder
Engagement
Governance Enhancements Informed by Shareholder Feedback

APPENDIX
Reconciliation of Non-GAAP Financial Measures

13
Reconciliation of Non-GAAP Financial Measures
$ in millions
4Q09
2Q15
Reconciliation of period-end long-term debt
Long-term debt
438,521
$
243,414
$
Adjustment related to 1/1/10 adoption of FAS 166/167
84,356

-
Adjusted long-term debt
522,877
$
243,414
$
Reconciliation of period-end assets
Assets
2,230,232
$
2,149,034
$
Adjustment related to 1/1/10 adoption of FAS 166/167
100,439
-
Adjusted assets
2,330,671
$
2,149,034
$
Reconciliation of net charge-offs
Net charge-offs
8,421
$
1,068
$
Adjustment related to 1/1/10 adoption of FAS 166/167
2,926
-
Adjusted net charge-offs
11,347
$
1,068
$

14

---

1 In 2008, the U.S. Treasury created the TARP to invest in

certain eligible financial institutions in the form of non-voting, senior preferred stock. We participated in TARP by issuing to the U.S. Treasury non-voting perpetual preferred stock (TARP Preferred Stock) and warrants. In 2009, we received approval to repay the investment. We then repurchased all shares of the TARP Preferred Stock

by
using
excess
liquidity
and
$19.2
billion
in
proceeds
from
the
sales
of
1.3
billion
units
of
Common
Equivalent
Securities
(CES).
In
2010,
the
CES
ceased
to
exist.
Reconciliation of Non-GAAP Financial Measures (continued)

Tangible common equity ratio measures and utilizes an adjusted common shareholders equity amount which has been reduced by goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities. The company uses this measure to evaluate the amount and use of equity.
$ in millions
4Q09
2Q15
Reconciliation of period-end common shareholders' equity to period-end
tangible common shareholders' equity
Common shareholders' equity
194,236
$
229,386
$
Common
Equivalent
Securities
19,244
-
Goodwill
(86,314)

(69,775)
Intangible assets (excluding mortgage servicing rights)
(12,026)
(4,188)
Related deferred tax liabilities
3,498
1,813
Adjustment related to 1/1/10 adoption of FAS 166/167
(6,270)
-
Tangible common shareholders' equity
112,368
$
157,236
$
Reconciliation of period-end assets to period-end tangible assets
Assets
2,230,232
$
2,149,034
$
Goodwill
(86,314)
(69,775)
Intangible assets (excluding mortgage servicing rights)
(12,026)
(4,188)
Related deferred tax liabilities
3,498
1,813
Adjustment related to 1/1/10 adoption of FAS 166/167
100,439
-
Tangible assets
2,235,829
$
2,076,884
$
Common equity ratio
8.7%
10.7%
Tangible common equity ratio
5.0%
7.6%
1

15
$ in millions
2011
2012
2013
2014
Reconciliation of revenue
Revenue
93,454
$
83,334
$
88,942
$

84,247
$
FTE adjustment
972

901

859

869

DVA/FVA adjustment
(4,320)

7,584

1,158

240

Market-related NII adjustments
-

510

(766)

1,081

Revenue excluding net DVA/FVA and market-related NII adjustments (FTE basis)
90,106
$
92,329
$
90,193
$
86,437
$
Net charge-offs
(20,833)

(14,908)

(7,897)

(4,383)

Revenue excluding net DVA/FVA, market-related NII adjustments and net charge-offs (FTE basis)

69,273
$
77,421
$
82,296
$
82,054
$
Reconciliation of noninterest expense
Noninterest expense
80,274
$
72,093
$
69,214
$
75,117
$
Goodwill
(3,184)

-

-

-

Noninterest expense excluding goodwill
77,090
$
72,093
$
69,214
$
75,117
$
Litigation
(5,616)

(4,228)

(6,096)

(16,370)

Provision for IFR acceleration
-

(1,100)

-

-

Noninterest expense excluding goodwill and litigation
71,474
$
66,765
$
63,118
$
58,747
$
Reconciliation of Non-GAAP Financial Measures (continued)

The company believes managing the business with net interest income on an FTE basis provides a more accurate picture of the interest margin for comparative purposes. We also believe the exclusion of net DVA / FVA and market-related NII adjustments enhances period-to-period comparability. Revenue less net charge-offs (excluding net DVA/FVA and market-related NII adjustments) is a measure the company uses to evaluate the level of risk embedded within the revenue stream.

The company believes the exclusion of goodwill impairment and litigation expense provides additional clarity in assessing the expenses of the company for comparative purposes.

16

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1 In 2008, the U.S. Treasury created the TARP to invest

in certain eligible financial institutions in the form of non-voting, senior preferred stock. We participated in TARP by issuing to the U.S. Treasury non-voting perpetual preferred stock (TARP Preferred Stock) and warrants. In 2009, we received approval to repay the investment. We then repurchased all shares of the TARP Preferred

Stock
by
using
excess
liquidity
and
$19.2
billion
in
proceeds
from
the
sales
of
1.3
billion
units
of
Common
Equivalent
Securities
(CES).
In
2010,
the
CES
ceased
to
exist.
Reconciliation of Non-GAAP Financial Measures (continued)

Tangible Book Value per Share utilizes an adjusted common shareholders equity amount which has been reduced by goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities. The company uses this measure to evaluate the amount and use of equity.
$ in millions, except per share information; shares in thousands
2009
2010
2011
2012
2013
2014
Reconciliation of period-end common shareholders' equity
to period-end tangible common shareholders' equity
Common shareholders' equity
194,236
$
211,686
$
211,704
$

218,188
$
219,333
$
224,162
$
Common
Equivalent
Securities
1
19,244
-
-
-
-
-
Goodwill
(86,314)
(73,861)
(69,967)
(69,976)
(69,844)
(69,777)
Intangible assets (excluding mortgage servicing rights)
(12,026)
(9,923)
(8,021)
(6,684)
(5,574)
(4,612)
Related deferred tax liabilities
3,498
3,036
2,702
2,428
2,166
1,960
Adjustment related to 1/1/10 adoption of FAS 166/167
(6,270)
-
-
-
-
-
Tangible common shareholders' equity
112,368
$
130,938
$
136,418

$
143,956
$
146,081
$
151,733
$
Reconciliation of period-end common shares outstanding to
period-end tangible common shares outstanding
Ending common shares outstanding
8,650,244
10,085,155
10,535,938
10,778,264
10,591,808
10,516,542
Assumed
conversion
of
common
equivalent
shares
1
1,286,000
-
-
-
-
-
Tangible common shares outstanding
9,936,244
10,085,155
10,535,938
10,778,264
10,591,808
10,516,542
Book value per share of common stock
21.48
$
20.99
$
20.09
$
20.24
$
20.71
$
21.32
$
Tangible book value per share of common stock

11.31
$
12.98
$
12.95
$
13.36
$
13.79
$
14.43
$