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Mary Schapiro's Say on Pay
The SEC chair tries to bully BofA on proxy access.

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The Securities and Exchange Commission recently forced Bank of America to adopt rules on compensation and disclosure that aren't required for any other public company. Luckily for SEC chair Mary Schapiro, she didn't have to live under these rules when she ran the private nonprofit corporation known as the Financial Industry Regulatory Authority.

To settle an SEC lawsuit over disclosures related to its 2008 purchase of Merrill Lynch, Bank of America agreed earlier this month to hold a nonbinding "say-on-pay" vote. Shareholders will now be asked to express their view of the compensation paid to senior BofA executives. BofA also agreed to pay $150 million, hire an independent compensation consultant and enact other changes related to its compensation, governance and disclosure for a period of three years.

According to a Bloomberg report on Thursday, the SEC chairman or her staff also wanted BofA to change the way it runs proxy elections for seats on the company's board. The chairman's office called for BofA to embrace "proxy access." This is the buzzword for allowing special-interest groups like union pension funds to promote dissident board candidates in the company's own proxy materials, even if these interests own as little as 2% of the company.

Associated Press

Securities and Exchange Commission Chair Mary Schapiro

The SEC's lawsuit had nothing to do with proxy elections. But Ms. Schapiro has been engaged in a tough slog trying to move her proxy access agenda—which is a Big Labor priority—so she tried to use her enforcement leverage to force a blue-chip company to sign on. The bank refused to go along, and even BofA shareholders who approved of the SEC suit will wonder how forcing unrelated policy changes on the bank addresses the alleged misconduct.

Congress writes laws. The SEC has authority to enact rules. If the Congress is unwilling to amend the laws on corporate governance and commissioners cannot reach consensus on new rules, the SEC chairman should not arbitrarily impose her policy wishes on a company in an unrelated enforcement action.

Ms. Schapiro is also imposing on BofA shareholders governance policies that for whatever reason she decided were not appropriate for the organization she ran until taking the SEC job in 2009.

The Financial Industry Regulatory Authority (FINRA) is a self-regulatory organization, which means it is a private organization vested with regulatory authority and enjoying the force of law. Participants in the securities industry must pay fees to FINRA to support an annual budget that approaches $1 billion, and they must live under

FINRA regulation. That regulation, or lack thereof, became briefly famous when the organization failed to uncover wrongdoing by Bernard Madoff.

FINRA enjoys an exemption from federal taxes, but neither taxpayers nor regulated brokers have a say on the pay of FINRA executives. In fact, it's a challenge even finding out what FINRA pays its senior officials.

While public companies like Bank of America are required to disclose executive compensation in exhaustive detail in their annual disclosures filed at the SEC, you won't find such information in FINRA's 2008 annual report, or anywhere on its Web site, as of this writing. After we called in a request, the organization emailed a copy of FINRA's IRS filings for 2008, but nonprofits are only required to provide the material in response to written or in-person requests.

FINRA's Form 990 for 2008 reports that Ms. Schapiro's compensation was $3.3 million, not bad for an outfit that lost almost $700 million that year thanks largely to an overly aggressive strategy of investing FINRA's portfolio in hedge funds and other exciting opportunities. Last year FINRA changed to a more conservative investment approach, but as far as we're aware it made no effort to claw back some of Ms. Schapiro's salary.

In 2009 Ms. Schapiro left FINRA with a $7.3 million retirement package. We know this because of SEC and FINRA responses to media inquiries, not due to any disclosure process akin to what profit-making public companies do. Once FINRA files its 990 later this year, industrious taxpayers will at least be able to submit formal requests to learn all the details. Perhaps an outfit like FINRA needs to pay such salaries to attract top talent, but in any case Ms. Schapiro should explain why disclosure wasn't a priority when she was the one in the executive suite.

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