SNLi

Reprinted from SNL Financial

Thain rides away a wealthy man, Lewis left with $5 shares

February 6, 2009

By Frayser White

Old notions that former Merrill Lynch & Co. Inc. CEO John Thain could one day succeed Bank of America Corp. boss Kenneth Lewis when the 61-year old banker ultimately retires were put to rest a week ago when Lewis boarded a plane for New York to accept Thain's resignation.

Since then, it has been Lewis's future in the spotlight, with shares of the bank's stock tanking to below $5.00 a share, and concerns about its potential quasi-nationalized status rife in the media.

And while BofA's publicized travails, which have continued unabated in the days since Thain's departure, have garnered the bulk of the investing public's attention, the role of former Merrill Lynch management in BofA's current predicament remains a matter of dispute.

When BofA reported an unexpectedly large fourth-quarter loss owing in large part to rapidly devaluing Merrill assets, the valuation of the deal, not to mention suspicions surrounding Thain's forthrightness during the due diligence process, raised eyebrows across Wall Street.

Keith Schooley, a former Merrill Lynch employee and author of Merrill Lynch: The Cost Could be Fatal, criticized his former company's culture as one "where anything goes" and discussed the possibility that Thain misrepresented the value of his firm to Lewis during an interview with SNL.

Conceding that Thain had only been at the firm for just over one year, Schooley said he "would not be surprised at all" if the executive and his team of managers misled Bank of America on the deal. "Wall Street is Wall Street, and I wonder how much of the slick and the fast maneuvering went on," he said.

E.E. "Buzzy" Geduld, a former Merrill Lynch employee who is senior managing member of Cougar Trading LLC, which owned 2,762,997 shares of Merrill Lynch stock as of March 31, 2008, was a longtime investor in the firm and came to the defense of its management in a recent conversation with SNL. "I don't think Thain pulled the wool over anyone's eyes," Geduld told SNL, willing to give the firm's former boss the benefit of the doubt.

"Ken Lewis and John Thain are probably the only two men who know what really happened" during the lead up to the Jan. 1 deal closing, Geduld said.

Government regulators may also have had a hand in the matter, The Wall Street Journal reported in a Feb. 5 article, fingering Washington officials as perhaps the ultimate puppet-masters in the machinations between the interested parties in the deal.

According to the paper, Lewis flew to Washington in the days leading up to the expected closing date of the deal to tell regulators that he wanted to back out based on in-house calculations that Merrill lost more than $13.3 billion in the two months since the deal was announced.

Despite a plea with former Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke on legal grounds to scrap the deal Dec. 17, Lewis was rebuffed by the regulatory powers, and, according to the Journal, was forced to go through with it or risk being potentially removed from his role as CEO if the bank backed out and subsequently needed more money from the government.

Such heavy-handedness could suggest a new status quo for institutions heavily reliant on government funding, one in which regulators call the shots and bank executives bow to the powers that be — a potential threat that no longer pertains to Thain, who is currently unemployed by either the private or public sector.

In addition to his base salary and other annual comp, Thain's tenure at Merrill Lynch earned him a $15 million signing bonus upon his Dec. 1, 2007 hire date, in addition to $68.0 million in additional equity awards in fiscal 2007, based on the fair value of the awards at the time they were granted in December of that year.

Thain's compensation for fiscal 2007, calculated by SNL at about $83.1 million, placed him atop the list of CEOs of the nine largest banks to receive capital from the U.S. government bailout. Lewis, incidentally, was near the bottom of the list, with only $20.4 million in fiscal 2007 total compensation, according to SNL.

Such statistics have been enough to raise the ire of taxpayers and policymakers alike, with questions over the legitimacy of such compensation coming under increasing scrutiny by the likes of President Barack Obama and Treasury Secretary Timothy Geithner, who unveiled a $500,000 cap on compensation for executives at companies that receive further federal assistance under TARP.

"Thain's only success in solving Merrill's problems was in selling them to BofA before it went bankrupt," Sally Morse, a FIG credit analyst in New York, told SNL. Harping on what became one of the more unsavory bones of contention clouding Thain's pre-departure conduct, Morse pointed to $4 billion in "surreptitiously pushed through" bonuses paid out to Merrill Lynch employees before the deal with BofA closed Jan. 1, well ahead of the traditional year-end bonus season.

Noting that $4 billion in bonus allocations came as Merrill was accepting $20 billion in TARP bailout funds, and that the recipients were the very bankers who caused Merrill's problems in the first place, Morse argued they should be voided. "Prior to BofA asking for $20 billion [in government money], it was only Merrill shareholders getting screwed, now it really is the American taxpayer."

In defense of the bonuses, Thain framed the nature of Merrill Lynch's compensation structure as a fundamental component of the brokerage business that is perhaps more important than ever, given the industrywide shake-up in the past year. "If you don't pay your best people, you will destroy your franchise," Thain said in a Jan. 26 interview with CNBC's Maria Bartiromo. "Those best people can get jobs other places, they will leave," he said.

Having already gone through the latter part of that equation, the question remained as to whether Thain will get a job at another firm. "Haven't thought much about that yet," he said in the interview. *i*