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Controlling the Narrative: *Bank of America's Corporate Governance Controversy*

By Shneur Wolvovsky, J.D. Candidate 2018 | October 13, 2015

Recently, Bank of America announced that its CEO, Brian T. Moynihan, will be retaining the title of Chairman, along with the title of CEO. In 2009, during the fallout of the "great recession," shareholders voted, by a slim 50.3% majority, to enact a bylaw preventing the combination of these two roles.

In 2014, the board repealed the bylaw, and elected Moynihan into both roles. Understandably, shareholders were not happy that Bank of America made the decision without a shareholder vote. To rectify the situation, Bank of America put the proposal up for a vote. On September 22, 2015, shareholders voted, with a 63% majority, to strike down the bylaw, and, thus, opening the way for Mr. Moynihan to fill both roles.

Pension funds claim that the new arrangement reduces oversight, and, therefore, it is bad corporate governance policy. Mutual funds believe that, in stable companies, combining the roles can be more efficient. As far as the perceived lack of oversight, Bank of America appointed an outside director to oversee Mr. Moynihan.

The truth is, this is not about oversight. This is simply a case of diverging investment philosophies. Pension funds prioritize stability. Mutual funds, first and foremost, strive for maximum returns. Pension funds believe that this form of corporate governance works to reduce risk in some way, and mutual funds do not. The research is inconclusive.

Institutional investors (such as pension funds,) and mutual funds own a combined 61% of Bank of America's shares. The battle comes down to who can control the narrative. With sophisticated money managers on both sides of the debate, and with both mutual funds and pension funds purportedly looking out for their clients' best interest, it is a stretch to say that either side is acting in bad faith. No heroes; No villains.