

CHARLOTTE, N.C. -- Ken Lewis was ousted as chairman of Bank of America Corp. Wednesday after shareholders angry about the company's acquisition of Merrill Lynch & Co. voted to separate the job from that of chief executive.

Lewis will remain the CEO of the bank, but board member Walter E. Massey, the president emeritus of Morehouse College in Atlanta, will become BofA's chairman.

Shareholders narrowly voted at the bank's annual meeting Wednesday to split the jobs following months of rancor over the Merrill Lynch acquisition. After the deal was sealed Jan. 1, Merrill Lynch reported \$15 billion in fourth-quarter losses and it was learned that Bank of America had approved the early payout of billions of dollars in bonuses to Merrill Lynch employees.

Lewis, who was chairman and CEO since 2001, has spent much of this year defending his actions -- and did so again during the angry four-hour meeting.

Results of the voting were delayed for several hours, and Bank of America issued a statement that the board of directors had met Wednesday, elected Massey as chairman and unanimously voted to keep Lewis as CEO.

The bank said the shareholder proposal to separate the chairman and CEO jobs had passed 50.34 percent to 49.66 percent; it was the only shareholder proposal to be approved. Shareholders re-elected all 18 of Bank of America's directors, including Lewis.

Big investors including California's employee pension fund had called for shareholders to oust Lewis and his fellow directors at the meeting, which was attended by more than 2,000 people. Shareholders lined up early in the gathering to speak at microphones, with many hurling criticism at Lewis and the Bank of America board for the government-brokered purchase of Merrill Lynch.

"I find it incredible you didn't have the guts to stand up to the U.S. government," said Judith Koenick of Chevy Chase, Md., who said she lost thousands of dollars when BofA shares plunged after the Merrill Lynch purchase.

The government pressured Bank of America into buying Merrill Lynch during the same weekend in September that another investment bank, Lehman Brothers Holdings Inc., collapsed, setting off one of the most intense periods of the financial crisis.

Shareholder Gerald Abrams, of Boca Raton, Fla., also had an exchange with Lewis about the deal, asking, "what happened to due diligence" in Bank of America's investigation of Merrill Lynch's finances.0D

Lewis responded that Bank of America didn't anticipate the worsening credit conditions in the country, which elicited from Abrams, "why do the deal?" Lewis replied that it wasn't in the best interest of shareholders for Bank of America to pull out of the agreement.

Later, Abrams told a reporter, "I listened to Lewis and he came off like a good guy and a knowledgeable guy, but I just can't see him staying."

In another announcement:

Bank of America Corp, today said that Walter Massey was named chairman after a proposal to split the chairman and chief executive positions was narrowly approved with 50.3 percent of the vote at the company's annual shareholder meeting.

Ken Lewis, who had previously been chairman, will remain president and chief executive officer. The bank said "the board unanimously expressed its support for Lewis to continue in that role."

Massey is president emeritus at Morehouse College in Atlanta and has been a director since 1998.

All 18 board members, including Lewis and lead director Temple Sloan, were re-elected. A source familiar with the situation had told the Observer that all directors had been re-elected, but the vote on the shareholder proposals had not been revealed until a news release this afternoon. Typically, the vote is released at the meeting, but the bank said it needed more time.

Earlier in the day at the four-hour annual meeting, shareholder =0
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activists has said there would be a cloud over the vote if directors who won re-election needed the help of shares cast by brokers vote on behalf of their clients. These are typically voted automatically with management.

The broker vote accounts for about 25 percent of the votes count, CtW Investment Group estimates, meaning Lewis, Sloan and Ward needed those shares to get a majority vote.

Shareholder activists also said that splitting the chairman and CEO was needed to reign in risky deal making by the board. In particular, shareholders have been upset about the purchase of Merrill Lynch, which has helped spur a steep drop in the bank's stock price.

"It's a clear message to the board of directors of what they think of Ken Lewis as chairman," said Michael Garland, director of value strategies at the CtW Investment Group, which represents unions with pension investments in Bank of America.

Before the vote was announced, Jon Finger, whose family investment firm wanted Lewis and Sloan voted out and the chairman and CEO split, said he thought the dissident shareholders made their point, even if they didn't prevail on all issues.

"I think the board is more aware of its duty to shareholders," said Finger, whose father sold his Houston-based bank to a Bank of America predecessor in 1996.

Before today's meeting, two former Bank of America CEOs expressed support for Lewis.

Referencing the remarks of Gordon Dowling, a 92-year-old Washington state shareholder who voiced support for Lewis, Hugh McColl Jr. said: "You don't remove the captain of the ship in the middle of the storm."

If asked to become chairman, McColl said he would decline. "If you look at someone as old as me, we're not capable," McColl, 73, said.

If there were a change in chairman, he said it's best to have someone who understands a complex company like Bank of America and who has no "personal ambitions."

Former CEO Tom Storrs, McColl's predecessor, also said he backed Lewis. "I have great faith in the chief executive," he said. Asked about a change in chairmanship, he said: "You can make anything work."

Shareholder Tom Lockhart said that splitting the positions is common sense, especially for a board like Bank of America's, which is known for

acquiescing to the CEO.

“Even during Hugh's days, they said it was a good ol' boys system who did whatever Hugh wanted,” said Lockhart, who lives in Charleston but worked at Charlotte's Cansler & Lockhart law firm for years. He voted in favor of all eight shareholder proposals and against Lewis, Sloan and director Jackie Ward.

Support for separating the jobs has been slowly growing in the U.S. for the past decade, but the financial crisis has brought it new momentum. Angry legislators and investors have fumed that lax directors rubberstamped banks' risky practices. Wachovia, Bear Stearns and Washington Mutual hastily split the positions in 2008 in an attempt to show shareholders they were serious about recovery, though the move couldn't save any of them. Citigroup also split the position in late 2007.

Last year, 39 percent of S&P 500 companies had separate positions - up from 16 percent in 1998, according to the Spencer Stuart Board Index.

At Bank of America, this was the fourth consecutive year that a shareholder proposed splitting the jobs. Last year, the measure gained 38 percent of the votes cast.

During the meeting, Lewis used his prepared remarks to defend his controversial acquisitions of Merrill Lynch and Countrywide Financial, which he noted were strong contributors to first-quarter earnings. “When economic conditions return to normal, no one will be better positioned than Bank of America to thrive and win,” he said.

The 62-year-old company lifer said he couldn't comment in detail on the Merrill acquisition because of litigation, but he addressed revelations last week that the federal government threatened to oust management in the board if Bank of America backed out. “People of good intentions, in both the private sector and the government, worked in good faith in late 2008 to prevent a financial meltdown,” he said.

A handful of protesters from the Rainforest Action Network and the SEIU gathered on Tryon Street before the 10 a.m. meeting. Judith Koenick, a Maryland shareholder who said she's a former teacher, wore a shirt that said “Fire them all!!! Kenneth Lewis and the board of directors. Make a clean sweep.”

The environmental protesters oppose the bank's lending to coal powered energy plants. The SEIU a labor group said it has collected 100,000 "taxpayer proxies" from people who want Lewis fired.

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