# A Perk Takes Off

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When Charles K. Gifford stepped down as chairman of **Bank of America** Corp. in January, he could look forward to a comfortable retirement.

Mr. Gifford will receive an annual pension of $3.1 million for life. As the former chief executive of Fleet Financial Group, he also took home $16.4 million stemming from the 1999 merger with BankBoston that formed FleetBoston Financial Corp., which Bank of America bought last year.

And the 62-year-old former executive will receive perks, potentially for life, including choice tickets for as many as 15 Boston Red Sox baseball games a year.

If Mr. Gifford isn't in Boston on game day, he needn't worry. He can summon a private jet, provided by Bank of America, to fly him and a handful of friends there in time for the first pitch. Mr. Gifford has access to as many as 120 hours of flight time a year. He doesn't even need to be on board -- he can dispatch a plane to ferry his guests.

Bank of America said in filings with the Securities and Exchange Commission that this perk is in part compensation to Mr. Gifford for his continued availability to provide the Charlotte, N.C., company with services including advice and consulting. That's a common justification, along with security concerns, for giving retired executives use of corporate jets.

But some observers see this perk as a form of stealth compensation -- one that attracts less attention than compensation given while an executive is still working.

Whatever it represents, though, it's clear that it has become a more popular perk, and for a number of reasons. For one, it often hasn't been apparent in company disclosures -- unlike Bank of America's -- shielding it from protests by shareholders who feel executives are overcompensated. And former executives have long found this benefit enticing in part because, while they pay income tax only on the value of each flight, the amounts they have had to report under federal guidelines have been only a fraction of the true value of this service.

Closer scrutiny from the SEC and new tax regulations may stem the surge in the popularity of this perk, or even reverse it. But it isn't clear yet what the effect of these new regulatory factors will be.

Perhaps the most prominent retired executive with lifetime use of a company jet is Jack Welch, the former chairman and chief executive of **General Electric** Co. He is far from alone, though. Business titans such as Sanford Weill, who retired as **Citigroup** Inc.'s CEO in October 2003 and will remain chairman of the banking group until 2006, can expect use of a corporate jet for the rest of his life, according to company filings with the SEC. So can Lawrence Bossidy, who retired as chairman and CEO of **Honeywell International** Inc. in 2002. For some, the perk is

limited: Don Tyson, who retired as senior chairman of the board at **Tyson Foods** Inc. in 2001, after earlier giving up the titles of chairman and CEO, is entitled to use of a company jet for 10 years after his departure, according to filings with the SEC.

In Mr. Gifford's case, he has use of a jet and other perks, independent of his pension payment, largely in return for being available to Bank of America as a consultant for the next five years. No minimum amount of service to the company is spelled out, and this arrangement will be automatically extended in one-year increments unless either Mr. Gifford or Bank of America opts to end the relationship. In other words, Mr. Gifford could wind up with access to a corporate jet for the rest of his life, as long as he remains available as a consultant.

**On Call, but Not Called?**

One reason some people take issue with such arrangements is that the executive often gets to use the plane just for being available -- not necessarily for actually providing a service, says Lucian Bebchuk, a Harvard law professor and co-author of the book "Pay Without Performance."

"The new CEO often doesn't like to get the advice of the old CEO," says Mr. Bebchuk. Since that means the old CEO rarely provides such advice, he says, "it makes sense that this compensation is really for past services. It is being packaged as a postretirement benefit to hide the compensation."

Bank of America spokesman Bob Stickler acknowledges that the company's agreement with Mr. Gifford recognizes the executive's past service at Fleet. But he says Bank of America continues to leverage Mr. Gifford's experience and connections, particularly in the Northeast. Mr. Gifford meets with some large customers and acts as an ambassador for the company, particularly at philanthropic events, Mr. Stickler says.

While the ability to be whisked away at a moment's notice in a private jet certainly has its allure, this benefit has had an added attraction: Often only a fraction of its true value has been disclosed and taxed.

These executives have had to pay taxes on the value of any flights they have taken, which is counted as a form of income just like salary and bonus. That value has been calculated using a federally mandated formula that accounts for factors like airport terminal charges, miles traveled and the weight of an aircraft in an attempt to arrive at a value that approximates the cost of a first-class ticket for each passenger. Left out of the calculation, though, have been numerous other costs to the company, such as staffing, insurance and depreciation on the aircraft.

On the companies' side, this perk often hasn't been spelled out in annual disclosure statements. Under SEC guidelines, companies are required to disclose any compensatory plan or arrangement that results from an executive officer's retirement if the amount involved exceeds $100,000. But the SEC rules leave room for interpretation. In some cases, companies have taken to the practice of disclosing the terms of an executive's retirement contract when the deal is struck, then making only opaque references to the executive's compensation in subsequent years.

That was the case with GE's Mr. Welch. In 1996, when Mr. Welch and the company signed a retirement agreement, GE estimated the costs of his retirement benefits at about $1 million per year, exclusive of any consulting fees. The following year, the company didn't put a dollar value on Mr. Welch's benefits, but said he would have access to "facilities and services" that would be "comparable" to those he received when he worked for the company. Similar disclosures were made in proxy statements filed through 2002, the last proxy statement where GE made disclosures concerning the agreement.

In September 2004, the SEC issued a cease-and-desist order to GE. The order said GE violated the agency's reporting provisions by not fully disclosing the "facilities and services" Mr. Welch would receive in retirement. The Fairfield, Conn., company -- which says it neither admitted nor denied the SEC's findings -- was ordered to be more up front about these benefits in the future. Meanwhile, Mr. Welch has agreed to reimburse the company any time he uses the plane.

The GE case and a speech in October by Alan Beller, the director of the SEC's division of corporate finance, have put companies on notice that the SEC believes its guidelines call for fuller disclosure of retirement benefits than some companies have given in their filings with the agency. Mr. Beller called for board compensation committees to take a "fresh look" at their disclosure of executive compensation in general, and specifically cited the GE case as an illustration of the agency's position on disclosure of retirement benefits.

**More or Less?**

The SEC hasn't spelled out exactly what level of detail it is looking for in disclosures of compensation for retired executives. But some compensation experts believe that growing scrutiny from the agency will discourage at least some companies from giving departing executives the keys to the corporate jet.

Meanwhile, a tax bill passed in October could make personal use of corporate jets much more expensive for either companies or executives, some tax attorneys say. Detailed regulations have yet to be issued by the Treasury Department, however, so it isn't clear yet how much of an effect the new law will have on retiring executives. "It will take some time to see changes" in reaction to the new rules, "if indeed we do," says Alan Johnson, managing director of Johnson Associates, New York-based compensation consultants.

Already, though, there are signs that some companies are rethinking this perk. Several companies recently disclosed in filings with the SEC that their former executives won't be flying around on the company's dime. For example, Orin Smith, who left his post as president and chief executive of **Starbucks** Corp. last month, will continue to work as a consultant to the Seattle coffee company for the next two years. He'll get a fully appointed office and administrative support, but he won't have access to any company aircraft unless he is traveling with a member of the company's current top brass on a business trip.

Some compensation experts and corporate-governance experts expect the jet-use perk to remain popular among retiring executives, however.

"There are two schools of thought on disclosure," says Paul Hodgson, a senior research associate at the Corporate Library, an independent research firm in Portland, Maine, that collects corporate-governance data. "Some expect exposure of these practices to shareholders will force boards to think twice about what might result from providing poorly defensible benefits." However, he says, others see disclosure fueling the clamor for similar benefits: Executives who see others getting this perk will want similar bragging rights, and boards will feel compelled to match this level of compensation in order to hold on to their executives -- despite the potential for negative reactions from shareholders.

Some proponents, meanwhile, argue that flights on company jets for retirees can be justified on security grounds, particularly as concerns about terrorism have grown in recent years.

If executives are successfully able to argue there is a security concern, they don't have to pay taxes on the value of a flight, because it is considered to be a legitimate business expense. However, the Internal Revenue Service says it is taking a harder look at these claims, given the surge in the number of people making them. This increased scrutiny may make it harder for all executives, but especially retired ones, to make this case.