Mayday? Payday! Hit the Silk!

By Timothy L. O'Brien
New York Times
January 8, 2005

PITY Sammy Sosa. If the Chicago Cubs dump him after his contract expires this year, Mr. Sosa, the struggling slugger, will receive only a $4.5 million buyout payment and $3.5 million in severance.

True, his send-off would be more lucrative than the one recently awarded to a group of baseball umpires: several got about $400,000 each to settle a severance dispute. And it is far better than the severance pay state officials want for 1,100 blue-collar workers at Great Northern Paper, a bankrupt company in Portland, Me. The state is suing the company's owner, seeking an average of about $23,000 for each of its former employees.

But Mr. Sosa's prospective goody bag seems meager when compared with the retirement piñata that the Bank of America plans to bestow on Charles K. Gifford when he steps aside as its chairman at the end of this month. An amiable, dedicated manager with a decidedly mixed track record as chief executive, Mr. Gifford, 62, has managed to survive strategic misfires, one bungled merger and another merger that kept him in the top ranks of the bank but no longer in control.

For his ministrations, Mr. Gifford is promised a $16.36 million cash payment, up to an additional $8.67 million in "incentive payments" for work done over the last 13 months and $3.1 million a year for life. If he dies before his wife, she will receive $2.3 million a year, also for life.

That's not all. The bank guarantees him $50,000 a year in consulting fees, 120 hours of free flight time a year on the company's jet, and an office and a secretary, according to federal securities filings. All of this is on top of $38.4 million in company stock that he has accrued over his 38-year career.

Wait. There is more: Mr. Gifford, a Bostonian, has also been offered the right to buy 60 Red Sox tickets from the bank annually for the rest of his life. Now exhale.

Executive retirement pay is in the spotlight again, thanks to the controversial departure of Franklin D. Raines from Fannie Mae, the mortgage giant that is mired in an accounting scandal and criminal investigation. Despite Fannie Mae's woes, its board allowed Mr. Raines, the chief executive, to retire rather than be fired, making him eligible for $1.4 million in annual retirement pay and other perks. Federal regulators and legislators will review that payout.

In most cases, however, detailed information about how big a retirement package chief executives are eligible to receive is harder to track down than one of Mr. Sosa's towering home runs. Public companies are required to publish a fairly detailed list of the more

obvious forms of compensation: annual pay, bonuses and stock awards. But shareholders and securities lawyers say that there is a dearth of clear, concise information about retirement pay from most companies.

And now that other forms of compensation are simpler for investors and shareholders to scrutinize, critics are concerned that chief executives may be quietly bundling potential riches in outsized retirement plans. The Securities and Exchange Commission said in October that it planned to examine retirement compensation disclosure more closely.

"There are no statistical studies of retirement packages, because all of the data the economists use are based on the compensation tables, and retirement pay doesn't show up there," said Jesse Fried, a law professor at the University of California, Berkeley. "Firms should be required to put a dollar value on these stealth compensation packages and disclose that in a compensation table."

Despite the brouhaha surrounding Mr. Raines, it is unclear whether corporate compensation committees plan to push for greater retirement disclosure and more modest payouts. Warren E. Buffett, the billionaire investor who is a longtime critic of corporate compensation practices, has said that getting clubby boards to question enormous executive paydays is like expecting well-behaved guests to start "belching at the dinner table."

In their book, "Pay Without Performance" (Harvard University Press), Professor Fried and his co-author, Lucian Bebchuk, a Harvard Law School professor, contend that retirement pay is just the most recent hiding place for excessive compensation and that executive contracts are intentionally drafted to keep things quiet. "Compensation plan designers have an incentive to obscure or make more opaque the total value of an executive's compensation package," they wrote, "as well as to disguise the extent to which the form of compensation deviates from what best serves shareholders' interests."

Some compensation specialists said the debate over excess was misplaced, largely because the packages that pop into the open are statistical outliers and do not reflect the serious steps that boards have taken to turn off the corporate spigot and to moderate compensation. Moreover, they said, market forces drove compensation practices in recent years, when competition for superstar chief executives was intense.

People tend to focus on the few pay packages that are extraordinary, "but continuity of leadership and the interests of the company are important," said Sue Holloway, a compensation specialist at WorldatWork, a firm in Scottsdale, Ariz. "It's much more free-agent now, and when you have difficulty attracting talent, the price goes up. It's just like sports."

FOR its part, Bank of America said that Mr. Gifford's retirement package reflected his long career and stellar managerial contributions to the company. Mr. Gifford once ran the BankBoston Corporation, which fell into the arms of the Fleet Financial Corporation in a 1999 merger that created the FleetBoston Financial Corporation. That merger went awry,

and the combined company suffered heavy losses under Mr. Gifford's leadership. Bank of America bought FleetBoston in 2003.

"Chad Gifford spent 38 years building FleetBoston into an extremely valuable company for its customers, employees, shareholders and community," a Bank of America spokeswoman, Alexandra Trower, said. "As chairman, he was actively involved in ensuring the success of the Bank of America merger into the Northeast. Going forward, he will continue to serve on the company's board of directors and will consult with the company on its significant civic and philanthropic activities in New England."

Robert Stickler, a spokesman for Bank of America, said that the bank had gone to great lengths to provide ample information on senior executives' retirement packages - including financial tables that break out and quantify post-employment payments - and that those agreements are in the company's public filings. "We think the disclosure is pretty transparent and pretty thorough," he said.

He also said that Mr. Gifford's retirement benefits were disclosed in a federal filing in March last year, in addition to a disclosure that Bank of America made last month. The more recent disclosure, however, had dollar figures directly linked with the benefits, something largely missing from the earlier filing. A clear and concise portrait of Mr. Gifford's retirement package was apparent only after he was already heading out the door; earlier disclosures required anyone reading them to connect a number of financial dots.

Equilar Inc., a compensation research firm in San Mateo, Calif., that was asked by Sunday Business to examine the retirement packages of Mr. Gifford and several other former Bank of America executives, said that the quality of the bank's disclosures had improved recently, but that those of earlier years had required quite a bit of homework and interpretation. Mr. Stickler attributed the previous murkiness to the large number of mergers that Bank of America has orchestrated over the years.

Buried amid those Bank of America mergers, however, were some sweet retirement deals. In 1998, David A. Coulter, who agreed to let NationsBank acquire his company, the BankAmerica Corporation, to form Bank of America, got a new employment contract in exchange for trading in his chief executive's title for the lesser role of president.

Mr. Coulter, 50 at the time, was promised a new retirement package that included annual pension payments equal to 95 percent of his 1997 salary and bonus at BankAmerica - making him eligible to receive annual payments of $4.98 million from his retirement until his death. His wife was eligible to receive $3.7 million annually until her own death if Mr. Coulter died before her. Under his previous contract, Mr. Coulter's pension was worth $810,153 a year.

His retirement would come quickly. Six months after the merger was announced, he resigned from Bank of America as the company's performance started to lag, and began receiving benefits.

Mr. Coulter did not stay on the golf course after his departure, however. He soon popped up at a financial advisory firm, and in 2000 joined J. P. Morgan Chase, where he ran the company's retail bank and took on other responsibilities. He was recently reassigned to oversee J. P. Morgan's West Coast operations, and a spokesman said Mr. Coulter has no plans to retire - again.

Analysts say the issue of bounteous retirement pay goes beyond mere disclosure. The size of the payouts, they say, reflects a lack of vigilance on the part of corporate boards that are supposed to negotiate and monitor the packages.

"Mr. Gifford will be paid $3.1 million per year for sitting on the bench until he dies," wrote Richard X. Bove, an analyst at Punk, Ziegel & Company, a research firm in New York, in a recent note to investors. "Then his wife, who presumably has provided valuable services to Bank of America, will be paid $2.3 million per year until she dies. One can only wonder at the amounts of money, perks, and stock being offered to players who have been benched some time ago at Bank of America and who never really provided service to the company (unless, of course one wants to argue that FleetBoston's performance under Mr. Gifford's tutelage demonstrated solid management skills). The meaning of all of this is that shareholders may never get an even break from company boards of directors intent on paying off whomever."

Before Mr. Gifford's and Mr. Raines's retirement packages drew scrutiny, the most notable retirement pay dust-up was in 2002, when John F. Welch Jr., General Electric's former chief executive, was embroiled in a nasty divorce dispute. His wife's lawyers filed court papers detailing Mr. Welch's previously undisclosed retirement perks. Among the benefits was the use of a pricey Manhattan apartment owned by G.E., including wine, food, laundry services, toiletries and newspapers. Mr. Welch also received free New York Knicks basketball tickets, seats at the U.S. Open, and satellite television at four homes he owned.

After the perks spilled into public view, Mr. Welch, who had led G.E. through years of robust annual growth before his retirement in 2001, defended his right to the benefits. He said that he believed he had negotiated fairly for them with G.E., but that the publicity had convinced him to assume some of those costs himself.

Last September, G.E. settled charges by the S.E.C. that the company had failed to adequately disclose Mr. Welch's retirement benefits. The commission said that the undisclosed value of the benefits totaled about $2.5 million in just the first year after Mr. Welch retired, but that investors had little way of finding or deciphering that information. As part of the settlement, G.E. agreed to improve its disclosure practices.

The term "golden parachute" entered the popular lexicon in the 1980's, during a wave of corporate takeovers. The parachutes were lucrative severance payments that corporate boards instituted for chief executives whose tenures were threatened by imminent takeovers of their companies.

In earlier times, analysts said, chief executives often had year-to-year contracts, and when an executive left or retired, appropriate severance was determined after an informal, chummy board review. The takeover boom changed that culture and brought about the heavily promoted notion of super-C.E.O.'s: singular, all-knowing, uniquely talented leaders who, given the right incentives, could turn any lagging company into a dynamo.

In theory, golden parachutes were meant to ensure that executives would stay focused on their managerial knitting and would not be swayed by raiders who were dangling fat takeover prices in front of them. In practice, critics say, the packages were boardroom jackpots that offered big payoffs for a job poorly done.

AMONG the first headline-grabbers were golden parachutes strapped to the backs of William M. Agee and 43 other executives in the midst of a 1982 takeover battle between the Bendix Corporation and Martin Marietta. Mr. Agee, the chairman of Bendix, was given a parachute that looks somewhat quaint now: $805,000 a year for five years. In 1983, after months of corporate jockeying, AlliedSignal swooped into the picture and bought Bendix. Mr. Agee departed with a $5 million severance payment.

Mr. Agee's package, and others like it, spurred Congress to enact a new law imposing an excise tax on golden parachutes. If a departing executive's severance pay was more than three times his or her average annual compensation over the previous five years, an excise tax of 20 percent of the entire package would have to be paid.

"This didn't put the brakes on severance at all," said Carol Bowie, a research director at the Investor Responsibility Research Center, an organization in Washington that tracks corporate governance issues. "In fact, it spurred the practice of awarding the severance agreements and legitimized the whole concept of formal severance arrangements."

Boards also found ways around the limitations. To blunt the excise-tax hurdle, they added "gross up" provisions to contracts that reimbursed executives for their extra tax payments.

Another round of compensation criticism, in the late 1980's and early 90's, resulted in regulatory requirements mandating clear, tabular disclosure of salary, stock and option grants to corporate executives - but not their retirement packages. But analysts said that richer, undisclosed retirement pay came into vogue in the early to mid-1990's as an attempt to circumvent the harsh glare of the compensation tables. In the merger boom of the 1990's, generous retirement pay emerged as a tool for takeover artists to seduce chief executives of targets, analysts said. So the curtain rose on a period of large payouts, even to executives who failed to deliver on goals after mergers.

In 2001, Michael Bonsignore retired early as the chief executive of Honeywell International after presiding over a postmerger string of restructuring charges and earnings warnings that disappointed analysts and caused the company's stock price to plummet. According to the Corporate Library, a research group in Portland, Me., Mr. Bonsignore's retirement haul included a $9 million cash payment, which amounted to

about three times his annual salary and bonus, as well as an annual pension of $1.7 million. Honeywell also forked over a $5.2 million "retirement enhancement payment" to Mr. Bonsignore and forgave about $350,000 in interest payments on loans he owed to the company.

Other nonmonetary retirement benefits began cropping up in the 1990's. Among the most popular were an office, a secretary and free flight time on company aircraft, usually granted in exchange for a nominal consulting contract. While federal regulators require companies to disclose the types of nonmonetary benefits they give to their top five departing executives, they are not obligated to state the cost of the benefits or even describe them extensively.

Last August, the S.E.C. also required companies to disclose the value of a retirement package as soon as a top executive left. But companies do not have to provide more elaborate disclosure in the years before an executive heads for the exits.

As the backlash against huge excessive pay gained momentum in the last few years, disclosed compensation has appeared to moderate. Paul Hodgson, a compensation analyst at the Corporate Library, said that in 2001, about 60 percent of the companies in the S.& P. 500 awarded departing executives with three years of salary, plus bonuses and benefits. In 2004, he said, less than 40 percent of those companies offered the three-year packages.

Nonetheless, in a 2003 study he conducted of golden parachutes, Mr. Hodgson also found that chief executives who departed from S.& P. 500 companies in 2001 and 2002 received $16.5 million in severance, on average. Undisclosed retirement benefits did not figure into the mix.

Some specialists say that criticism of pay practices is unwarranted. "There is a tendency now to take a more democratic approach and give senior management severance based on the same formula as everyone else in the company," said Doug Matthews, an executive vice president at Right Management Consultants, a Philadelphia firm that advises clients on pay issues.

Others, however, say excess is still a problem. For example, they point to Home Depot, the retail giant. According to the Corporate Library, Robert L. Nardelli, who has been Home Depot's chief executive since December 2000, is to receive a $20 million payment if he loses his job without cause. If and when he departs, he is also eligible to receive stock and deferred compensation worth about $48.7 million - a handsome retirement package for a relative newcomer to the company.

Home Depot would also forgive the principal and interest on a $10 million loan to Mr. Nardelli, who received a salary and bonus of $6.5 million in 2003. The company said in its most recent proxy statement that Mr. Nardelli's deferred compensation account had been set up to replace retirement benefits he forfeited when he left G.E. to join Home Depot. But company securities filings do not detail the value of the G.E. benefits he gave

up nor the value and interest rate guaranteed on the deferred-compensation account, which appears to be worth tens of millions of dollars. A Home Depot spokesman declined to comment.

Critics of big retirement pay say that in addition to greater disclosure, more voices should be heard when executive contracts are drafted. "Most of these contracts don't have to be approved by shareholders," said Oliver Hart, a Harvard Law School professor specializing in contract economics. "Usually, only the board is involved. It might be useful to have severance contracts, and C.E.O. compensation more generally, approved by shareholders."

Analysts said Fannie Mae never detailed all the elements of Mr. Raines retirement payout until his departure was announced last month. The retirement benefits tally sheet that Fannie released was an unusual document, one that analysts said more companies should use - and well before senior executives hit the road.

In addition to the $1.4 million in annual pension payments that are headed Mr. Raines's way, he is also owed $8.7 million in deferred compensation. Mr. Raines, 55, has vested options for 1.6 million Fannie Mae shares, options for 368,800 shares for which he becomes eligible upon retirement and a $5 million life insurance policy that converts to a $2.5 million benefit after age 60.

EVEN now, though, not all of Mr. Raines's retirement perks are fully disclosed in public filings. Professor Fried at the University of California said that Mr. Raines's deferred compensation account would continue to accumulate tax-free and that Fannie Mae would give him an undisclosed "market return" on the money, according to a payout schedule that lasts until 2020.

Moreover, Fannie Mae itself pays a corporate tax on the income it must generate to keep funding Mr. Raines's deferred account - thereby continuing to subsidize the former chief executive's pension plan even after he has left the company. Deferred-compensation accounts have drawn special criticism from analysts, who have said that the funds accumulate outsized, guaranteed returns that fatten executives' wallets, deplete corporate resources and are unavailable to average company employees.

Analysts said Mr. Raines might have been more concerned about legal issues surrounding his departure than about the amount of cash he can take home. Retiring, rather than being fired, suggests less possible culpability in relation to Fannie Mae's accounting scandal, of no small import given that the Justice Department's investigation of the company could lead to criminal charges.

"The issue is more that they allowed him to take early retirement rather than fire him," said Mr. Hodgson, at the Corporate Library, of Mr. Raines's departure from Fannie Mae. "You and I, of course, could live forever on what Raines is getting, but by comparison to other packages out there the money is not excessive and he's already earned most of it."

Comparing the expensive farewell to Mr. Raines to other recent retirement hauls is indeed instructive. Start with Hollywood, where Michael S. Ovitz received about $140 million when he resigned in 1995 after 14 months as president of the Walt Disney Company, prompting a high-profile shareholder lawsuit that continues today.

Then there is Wall Street. In 2003, Richard A. Grasso retired as chairman of the New York Stock Exchange with a $139.5 million retirement and severance package that is also in dispute. Much of Mr. Grasso's payout was undisclosed until he left his post.

"These kinds of payments should be rarer than they are, and when they are used shareholders should have the right to approve them," said Elliot Schwartz, research director at the Council of Institutional Investors, a group in Washington that represents large pension fund investors. "You want executives to be compensated and incentivized to perform for the company, but what's the point of paying somebody after they're gone?"