



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ANDREW M. CUOMO
Attorney General

(212) 416-8050

February 10, 2009

Honorable Barney Frank
Chairman, House Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Re: Merrill Lynch 2008 Bonuses

Dear Chairman Frank:

I am writing to provide you and your Committee with information concerning the executive compensation investigation currently being conducted by the Office of the New York Attorney General.¹ As you know, as part of that investigation, this Office is conducting an ongoing inquiry into the 2008 bonus payments made by Merrill Lynch & Co., Inc.

On October 29, 2008, we asked Merrill Lynch to detail, among other things, their plans for executive bonuses for 2008, including the size of the bonus pool and the criteria they planned to use in determining what, if any, bonuses were appropriate for their top executives. On November 5, 2008, the Board responded and stated that any bonuses would be based upon a combination of performance and retention needs. However, Merrill did not provide my Office with any details as to the bonus pool, claiming that such details had not been determined.

Rather, in a surprising fit of corporate irresponsibility, it appears that, instead of disclosing their bonus plans in a transparent way as requested by my Office, Merrill Lynch secretly moved up the planned date to allocate bonuses and then richly rewarded their failed executives. Merrill Lynch had never before awarded bonuses at such an early date and this timetable allowed Merrill to dole out huge bonuses ahead of their awful fourth quarter earnings announcement and before the planned takeover of Merrill by Bank of America.

Merrill Lynch's decision to secretly and prematurely award approximately \$3.6 billion in bonuses, and Bank of America's apparent complicity in it, raise serious and disturbing questions. By December 8, 2008, Merrill and presumably Bank of America must have been aware that the fourth quarter and yearly earnings results were disastrous. Indeed, on January 16, 2009, the companies announced that in the fourth quarter alone Merrill Lynch has lost \$15.31 billion, and

¹ This information is being provided pursuant to Committee staff request.

more than \$27 billion for the year. In the face of these losses, federal taxpayers were forced to help Bank of America acquire Merrill. Thus, Bank of America also announced on January 16, 2009, that the federal government would invest \$20 billion in the deal and provide \$188 billion in protection against further losses primarily from the Merrill Lynch portfolio. These investments were in addition to the previous \$25 billion in TARP funding that taxpayers had given to Bank of America.

One disturbing question that must be answered is whether Merrill Lynch and Bank of America timed the bonuses in such a way as to force taxpayers to pay for them through the deal funding. We plan to require top officials at both Merrill Lynch and Bank of America to answer this question and to provide justifications for the massive bonuses they paid ahead of their massive losses. As you know, my Office recently issued subpoenas seeking the testimony of former Merrill Lynch CEO John Thain, as well as the testimony of Bank of America Chief Administrative Officer J. Steele Alphin. I expect we will also be seeking the testimony of other top executives at these firms.

What my Office has learned thus far concerning the allocation of the nearly \$4 billion in Merrill Lynch bonuses is nothing short of staggering. Some analysts have wrongly claimed that individual bonuses were actually quite modest and thus legitimate because dividing the \$3.6 billion over thousands upon thousands of employees results in relatively small amounts – estimated at approximately \$91,000 per employee. In fact, Merrill chose to do the opposite. While more than 39 thousand Merrill employees received bonuses from the pool, the vast majority of these funds were disproportionately distributed to a small number of individuals. Indeed, Merrill chose to make millionaires out of a select group of 700 employees. Furthermore, as the statistics below make clear, Merrill Lynch awarded an even smaller group of top executives what can only be described as gigantic bonuses.

Bearing in mind that Merrill moved up its bonus payments in advance of its announced \$15 billion quarterly loss and \$27 billion annual loss, we have determined that Merrill Lynch made the following bonus payments:

- The top four bonus recipients received a combined \$121 million;
- The next four bonus recipients received a combined \$62 million;
- The next six bonus recipients received a combined \$66 million;
- Fourteen individuals received bonuses of \$10 million or more and combined they received more than \$250 million;
- 20 individuals received bonuses of \$8 million or more;
- 53 individuals received bonuses of \$5 million or more;
- 149 individuals received bonuses of \$3 million or more;

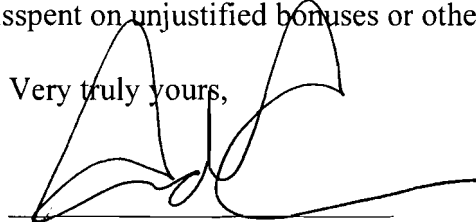
- Overall, the top 149 bonus recipients received a combined \$858 million;
- 696 individuals received bonuses of \$1 million or more.

Again, these payments and their curious timing raise serious questions as to whether the Merrill Lynch and Bank of America Boards of Directors were derelict in their duties and violated their fiduciary obligations. We will also continue to examine whether senior officials at both companies violated their own fiduciary obligations to shareholders. If they did, this raises additional serious issues with regard to the inappropriate use of taxpayer funds.

In this context, I represent the taxpayers who demand accountability, transparency, and responsibility. Taxpayers are being crushed by the losses on Wall Street and now are paying billions in bailout funds. My investigation into whether these bonus payments violated New York's fraudulent conveyance statute and whether the lack of disclosures concerning these payments and other matters violated the Martin Act will continue. We will also continue to examine the circumstances surrounding any supposed guaranteed bonuses, their justifications, and Merrill's obligations pursuant to them, once Bank of America produces more information concerning such bonuses.

I look forward to continuing to cooperate with the Committee in any way possible to ensure that taxpayer funds are not misspent on unjustified bonuses or otherwise misused.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Andrew M. Cuomo', written over a horizontal line.

Andrew M. Cuomo
Attorney General of the
State of New York

cc: Members of the House Committee on Financial Services