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U.S. SECURITIES AND EXCHANGE COMMISSION

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Securities and Exchange Commission v. Bank of America Corporation, Civil Action Nos. 09-6829, 10-0215 (S.D.N.Y)

Bank Of America Agrees to Pay \$150 Million to Settle SEC Charges

The Securities and Exchange Commission today filed a motion seeking court approval of a proposed settlement whereby Bank of America will pay \$150 million and strengthen its corporate governance and disclosure practices to settle SEC charges that the company failed to properly disclose employee bonuses and financial losses at Merrill Lynch before shareholders approved the merger of the companies in December 2008.

The SEC previously filed two sets of charges in the U.S. District Court for the Southern District of New York alleging Bank of America failed to disclose material information to shareholders prior to their vote to approve the merger with Merrill Lynch. [In the first enforcement action on Aug. 3, 2009](#), the Commission charged Bank of America with failing to disclose, in proxy materials soliciting shareholder votes for approval of the merger, its prior agreement authorizing Merrill to pay year-end bonuses of up to \$5.8 billion to its employees prior to the closing of the merger. [In the second enforcement action on Jan. 12, 2010](#), the Commission charged Bank of America with failing to disclose the extraordinary losses that Merrill sustained in October and November 2008.

Under the terms of the proposed settlement, which are subject to approval by the Honorable Jed S. Rakoff, the \$150 million penalty will be distributed to Bank of America shareholders harmed by the Bank's alleged disclosure violations. The Commission will propose a distribution plan at a later date.

The proposed settlement requires Bank of America to implement and maintain seven remedial undertakings for a period of three years:

- Retain an independent auditor to perform an audit of the Bank's internal disclosure controls, similar to an audit of financial reporting controls currently required by the federal securities laws.
- Have its Chief Executive and Chief Financial Officers certify that they have reviewed all annual and merger proxy statements.
- Retain disclosure counsel who will report to, and advise, the Board's Audit Committee on the Bank's disclosures, including current and periodic filings and proxy statements.
- Adopt a "super-independence" standard for all members of the Board's Compensation Committee that prohibits them from accepting other compensation from the Bank.
- Maintain a consultant to the Compensation Committee that would also meet super-independence criteria.
- Provide shareholders with an annual non-binding "say on pay" with respect to executive compensation.
- Implement and maintain incentive compensation principles and procedures and prominently publish them on Bank of America's Web site.

The proposed settlement includes a Statement of Facts describing the details behind the allegations in the actions based on the discovery record.

The SEC is grateful for the support and cooperation of Attorney General Andrew Cuomo and the Office of the New York State Attorney General. The SEC also thanks Attorney General Roy Cooper, Attorney General of the State of North Carolina, and his staff for their collaboration on the terms of the proposed settlement. The SEC acknowledges the assistance of the U.S. Attorney's offices for the Southern District of New York and Western District of North Carolina, the Federal Bureau of Investigation, and the Office of The Special Inspector General for the Troubled Asset Relief Program in the investigation leading to the actions.

<http://www.sec.gov/litigation/litreleases/2010/lr21407.htm>

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