



THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 10, 2009

The Honorable Dennis J. Kucinich
Chairman, Domestic Policy Subcommittee
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Kucinich:

Thank you for your April 6, 2009 letter. In your letter, you expressed your concern that the proxy statement Bank of America distributed to its shareholders in connection with the special meeting to vote on the merger between Bank of America and Merrill Lynch did not contain disclosure about bonuses to be paid to Merrill Lynch employees prior to the closing of the merger.

The federal securities laws prohibit the omission of material facts necessary in order to make statements made not misleading. While Bank of America may have expressed the view to your staff that it was not required to disclose information about the potential size of the Merrill Lynch bonuses or the expected timing of their payment to its shareholders before the December 5, 2008 meeting to approve the merger agreement with Merrill Lynch, the SEC has not expressed a view with respect to that question.

You have specifically asked for the SEC's views about whether the lack of disclosure about the Merrill Lynch bonus information in the merger proxy statement constituted a material omission by Bank of America, and, if so, under what circumstances the SEC would order Bank of America to provide the bonus information to its shareholders in advance of its 2009 annual meeting of shareholders. As a general matter, the responsibility for full and fair disclosure lies with Bank of America, as it has full possession of relevant facts about its business and corporate actions. Where the SEC believes that there has been an omission of material facts necessary in order to make the statements made not misleading, we will carry out our enforcement responsibilities with vigor and vigilance. We are carefully reviewing the Bank of America disclosure at this time. It is important to note that if we were to conclude that Bank of America failed to provide required information in the proxy statement it used to solicit votes to approve the merger agreement, the remedy would not necessarily be to include that information in a proxy statement for a subsequent annual meeting.

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I hope this information is helpful to you. Please do not hesitate to contact William Schulz, Director of the Office of Legislative and Intergovernmental Affairs, at 202-551-2010 if you have any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Mary L. Schapiro". The signature is written in a cursive, flowing style.

Mary L. Schapiro
Chairman

cc: The Honorable Jim Jordan
Ranking Minority Member
Domestic Policy Subcommittee
Committee on Oversight and Government Reform
U.S. House of Representatives
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Washington, DC 20515-6143