

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK :  
by ERIC T. SCHNEIDERMAN, Attorney General :  
of the State of New York, : Index No. 450115 / 2010  
:  
Plaintiff, : Assigned to Friedman, J.S.C.  
:  
- against - :  
:  
BANK OF AMERICA CORPORATION, :  
KENNETH D. LEWIS and JOE L. PRICE, :  
:  
Defendants. :  
:  
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**STIPULATION OF SETTLEMENT**

**THIS STIPULATION OF SETTLEMENT** (“Stipulation”) is entered into this 25<sup>th</sup> day of March, 2014, by and between the Attorney General of the State of New York (“NYAG”) and Bank of America Corp. (“BAC”). The NYAG and BAC are collectively referred to herein as the “Parties” or individually as a “Party.”

WHEREAS, on September 15, 2008, BAC agreed to acquire Merrill Lynch & Co. Inc. (“Merrill”) in a stock-for-stock transaction (the “Merger”); BAC issued a Definitive Proxy Statement on or about November 3, 2008 to shareholders recommending that they approve the issuance of shares to effect the transaction and, on December 5, 2008, BAC shareholders voted to approve the issuance of these shares;

WHEREAS, in or about January 2009, the NYAG commenced an investigation, pursuant to Executive Law § 63(12) and General Business Law §§ 352 *et seq.* (the “Martin Act”), into the

conduct of BAC and others related to the Merger, including BAC's alleged failure to disclose Merrill's fourth-quarter losses prior to the shareholder vote;

WHEREAS, in the course of the investigation, the NYAG examined over 70 persons and reviewed voluminous documentary evidence;

WHEREAS, on February 4, 2010, the NYAG filed a complaint (the "Complaint") in Supreme Court, New York County ("the Court"), Index No. 450115/2010 (the "Action"), asserting, *inter alia*, that BAC and others violated the Martin Act and the Executive Law by allegedly failing to disclose: (1) financial losses at Merrill known to it prior to the shareholder vote, and (2) the timing, amount, and criteria for Merrill's \$3.6 billion bonus payments for 2008;

WHEREAS, beginning in January 2009, numerous securities class actions (the "Securities Class Actions") and shareholder derivative actions (the "Derivative Actions") related to the Merger were filed in various jurisdictions against BAC and Merrill, certain of their affiliates, their officers and directors and certain other defendants, and subsequently were consolidated in the United States District Court for the Southern District of New York (the "District Court"), captioned *In re Bank of America Corp. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MD 2058 (PKC);

WHEREAS, on August 27, 2010, the District Court dismissed certain of plaintiffs' section 10(b) claims in the Securities Class Actions and class plaintiffs relied upon information uncovered by the NYAG during its investigation to amend their complaint on October 22, 2010;

WHEREAS, on January 24, 2013, the District Court entered an Order approving a settlement in the Derivative Actions providing for a payment of \$62.5 million to BAC,

implementing a program of corporate governance reforms, and releasing the defendants from all claims asserted in the Derivative Actions;

WHEREAS, on April 9, 2013, the District Court entered an Order approving a settlement in the Securities Class Action for a total of \$2.425 billion in cash and certain corporate governance enhancements, and releasing the defendants from all claims asserted in the Securities Class Actions;

WHEREAS, the parties wish to resolve the Action and provide for the dismissal of the Action;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**I. Corporate Governance Reforms**

1. BAC shall agree to adopt the following corporate governance reforms, and except where otherwise mentioned, keep them in effect for at least three years from the date of this Settlement Agreement.

***Corporate Development Committee Charter***

2. BAC shall create a new board-level Corporate Development Committee (the “Committee”) with responsibility for overseeing certain acquisition-related activities of BAC for transactions valued at \$2 billion or more. The Committee will provide oversight of transactions within its purview to ensure that management vets such transactions carefully and performs appropriate due diligence. For transactions ultimately approved by the full BAC Board of Directors, the Committee will also provide oversight of management’s integration- and

transition-related activities. The responsibilities and authority of the Committee have been or will be set forth in its charter. BAC shall maintain this Committee for at least five years from the date of this Settlement Agreement.

3. BAC shall include in the first paragraph of the section entitled “Committee Authority and Responsibilities” of its Corporate Development Committee Charter the following language after the first sentence:

Among other things, the Committee shall ensure that the Chief Executive Officer and the Board are informed with respect to any bonus or incentive compensation agreements with an actual or estimated aggregate value exceeding 5% of the acquisition price at the time the Applicable Transaction is announced, which agreements have been negotiated in connection with an Applicable Transaction and are based on or otherwise related to such Applicable Transaction.

4. BAC shall include in the second paragraph of the section entitled “Committee Authority and Responsibilities” of its Corporate Development Committee Charter the following language after the word “shall” in the first sentence:

“hold at least one meeting prior to the Applicable Transaction’s closing, and shall”

5. BAC shall include in the section entitled “Committee Authority and Responsibilities” of its Corporate Development Committee Charter the following language as the last paragraph:

In connection with the approval of each Applicable Transaction, the Committee shall ensure that the General Counsel and Chief Financial Officer shall have reported to the Committee and to the Board with respect to the transaction and addressed, among other relevant issues, the structure of the transaction, the material risks and/or disclosure issues, if any, presented by the transaction, and

the extent to which the transaction differs from prior transactions entered into by BAC.

***Audit Committee Charter***

6. BAC shall insert as paragraph 3 of Section A of the section entitled “Committee Duties and Responsibilities” of its Audit Committee Charter the following language:

Pursuant to the Settlement Agreement between the Attorney General of the State of New York and the Company dated March 25, 2014, ensure that the Independent Registered Public Accounting Firm conducts an assessment of whether management's assertion of the effectiveness of the Company's disclosure controls and procedures is fairly stated, in all material respects, for fiscal years 2013 and 2014.

7. BAC shall amend the third paragraph of the section entitled “Access to Records and Advisors” of its Audit Committee Charter as follows:

The Committee shall retain counsel with expertise in disclosure issues (“Independent Disclosure Counsel”) and at all scheduled Committee meetings discuss in executive session with Independent Disclosure Counsel the adequacy of the Company's disclosures in its public Disclosure Statements (as defined in the Company's Disclosure Committee Charter) ~~for a period of three years ending February 24, 2013~~ through March 25, 2015.

***Disclosure Committee Charter***

8. BAC shall amend Section I of its Disclosure Committee Charter to provide that the Disclosure Committee shall (i) have responsibility to review and consider the accuracy, completeness and timeliness of disclosures required in connection with any acquisitions that fall within the purview of the Corporate Development Committee; and (ii) conduct a semi-annual review to identify for implementation industry-leading oversight practices in connection with BAC's disclosures (including acquisition-related disclosures) and to review progress on such

goals. BAC agrees to keep this amendment in effect for at least five years from the date of this Settlement Agreement.

### ***Corporate Governance Guidelines***

9. BAC shall include in Section 3, “Director Qualifications and Selection – Majority Voting for Directors,” of its Corporate Governance Guidelines the following highlighted language:

***Majority Voting for Directors.*** The Company has adopted majority voting in the uncontested election of directors and plurality voting in contested elections. In an uncontested election, a director who fails to receive the required number of votes for re-election in accordance with the Bylaws shall offer to resign. In addition, a director whose resignation is under consideration shall abstain from participating in any recommendation or decision regarding that resignation. The Corporate Governance Committee shall make a recommendation to the Board as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Corporate Governance Committee and the Board, in making their decisions, may consider any factor or other information that they deem relevant. The Board shall act on the tendered resignation, taking into account the Corporate Governance Committee’s recommendation, and shall ~~publicly~~ promptly disclose its decision regarding the resignation and the basis for the decision on Form 8-K within ninety (90) days after the results of the election are certified. If the resignation is not accepted, the director will continue to serve until the next annual meeting of stockholders and until the director’s successor is elected and qualified, or until the earlier of the director’s death, resignation or removal. The Board shall not nominate such director to stand for re-election at the next annual meeting of stockholders.

The Board nominates for election or re-election as directors only candidates who tender irrevocable resignations that will be effective upon (a) the failure of the candidate to receive the required vote at the next annual meeting at which they are nominated for re-election, and (b) Board acceptance of such resignation. In addition, the Board fills director vacancies and new directorships only with candidates who tender the same form of resignation tendered by other directors in accordance with this Guideline.

10. BAC shall include in Section 6, “Board Operations – Director Orientation and Continuing Education,” of its Corporate Governance Guidelines the following language for at least five years from the date of this Settlement Agreement:

This orientation will include presentations regarding corporate governance best practices and an overview of director duties, as well as presentations by senior management to familiarize new directors with the Company’s strategic plans, its significant financial, accounting and risk management issues, and its compliance programs, corporate governance practices, conflict policies, Code of Ethics, Insider Trading Policy and other policies.

Management prepares additional educational sessions for directors, at least twice annually and more frequently as appropriate, on matters relevant to the Company and its business, including sessions relating to corporate governance best practices and director duties.

11. BAC shall provide in Section 8, “Other Matters – Minimum Stock Ownership by Executive Officers and Directors,” of its Corporate Governance Guidelines that (i) the stock ownership and retention requirements for the CEO extend for one year following retirement and (ii) the stock ownership and retention requirements for each of the other executive officers extend until retirement.

12. BAC shall include in Section 8, “Other Matters – Stock Ownership and Retention Requirements for Executive Officers and Directors,” of its Corporate Governance Guidelines, the following highlighted language as the last two sentences of the first paragraph:

The Company shall disclose in its annual proxy statement the failure of any director to comply with these stock ownership requirements. In the event of a stock split or reverse split, the minimum share holding requirements for the CEO and other executive officers shall be adjusted in the same ratio as the stock split or reverse split (e.g., if there is a 2-for-1 split, the CEO’s holding requirement shall be at least 1,000,000 shares).

13. BAC shall amend Section 8, “Other Matters – Incentive Compensation Recoupment Policy,” of its Corporate Governance Guidelines by adding after the second sentence the following language:

Additionally, this policy incorporates by reference the requirements of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recovery of erroneously awarded compensation) and any implementing rules and regulations thereunder.

***Corporate Governance Committee Charter***

14. BAC shall amend Section D of the section entitled “Committee Duties and Responsibilities” of its Corporate Governance Committee Charter as follows:

In such a manner as the Committee deems appropriate to fulfill its purposes, the Committee shall oversee the self-evaluation of the Board by conducting an annual review of the Board’s performance and lead itself and ~~the Audit, Compensation and Benefits, Credit, and Enterprise Risk~~ each of the Board’s other Committees of the Board that meets during the calendar year pursuant to its charter in ~~an~~ the annual assessment of ~~their~~ its performance.

***Enterprise Risk Committee Charter***

15. BAC shall amend the section entitled “Meetings” of its Enterprise Risk Committee Charter by inserting as the last paragraph the following language:

In the normal course of business and barring exigent circumstances, BAC’s Chief Risk Officer or equivalent shall be expected to attend all regular Enterprise Risk Committee (“ERC”) meetings, and BAC’s Chief Compliance Officer shall be expected to attend ERC meetings at least twice per year.

BAC agrees to keep this amendment in effect for at least five years from the date of this Settlement Agreement.

### ***Miscellaneous***

16. BAC shall implement and maintain incentive compensation principles and procedures and prominently publish them on its web site.

### **II. Payment**

BAC shall pay \$15 million (the "Payment") by wire transfer to the State of New York, within 10 business days of the execution of this Settlement Agreement. This Payment is to reimburse the fees and costs incurred during the course of the Attorney General's investigation and subsequent litigation.

### **III. Release and Dismissal of Litigation**

Excluding the obligations of BAC under this Settlement Agreement, effective after the NYAG's receipt of the Payment, the NYAG, in consideration of this Payment, releases BAC and its present and former direct or indirect parents, subsidiaries, divisions, partners and affiliates, and, with the exception of Kenneth D. Lewis and Joe L. Price, their present and former stockholders, officers, directors, employees, managers, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, trustees, successors and assigns of each of the foregoing) (collectively, the "Released Parties") from any and all manner of claims, demands, rights, actions, suits, causes of action, damages whenever occurred, liabilities of any nature whatsoever, including costs, expenses, penalties or attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that the NYAG ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity and which arise out of, relate in any way to, or involve, directly or indirectly, any of the

actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that are, were, could have been, or in the future can or might be alleged, asserted, set forth, claimed, embraced, involved or referred to in the Complaint and relate to, directly or indirectly, the subject matter of the Complaint, including, without limitation, any and all claims which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, the Merger.

It is further agreed that upon receipt by the NYAG of the payment required pursuant to Section II above, the NYAG shall deliver to counsel for BAC an executed Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit A and shall concurrently file said Stipulation of Discontinuance with Prejudice with the Clerk of the Court.

#### **IV. Additional Terms**

1. This Settlement Agreement shall not prejudice, waive or affect any claims, rights or remedies of the NYAG with respect to Kenneth D. Lewis and Joe L. Price, all of which claims, rights and remedies are expressly reserved.

2. To the extent not already provided under this Settlement Agreement, BAC shall, upon request by the NYAG, provide all documentation and information reasonably necessary for the NYAG to verify compliance with this Settlement Agreement.

3. This Settlement Agreement may not be amended except by an instrument in writing signed on behalf of all the Parties.

4. This Settlement Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

5. Any action arising under this Settlement Agreement shall be heard by the courts of the State of New York. BAC consents to the jurisdiction of the courts of the State of New York in any proceeding or action to enforce this Settlement Agreement.

6. No failure or delay by the NYAG in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

7. BAC enters into this Settlement Agreement voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the NYAG or any member, officer, employee, agent or representative of the NYAG to induce BAC to enter into this Settlement Agreement.

8. This Settlement Agreement constitutes the entire agreement between the NYAG and BAC and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Settlement Agreement.

9. This Settlement Agreement may be executed in one or more counterparts, each of which shall be considered the same as if a single document shall have been executed, but shall become effective and binding only when such counterparts have been signed by each of the Parties.

10. BAC and its counsel represent and warrant, through the signatures below, that BAC has duly approved the terms and conditions, and execution of this Settlement Agreement. Neither this Settlement Agreement nor any acts performed or documents executed in furtherance of this Settlement Agreement may be deemed or used as an admission of, or evidence of, the

validity of any alleged wrongdoing, liability or omission of BAC in any civil, criminal or administrative proceeding in any court or administrative or other tribunal.

11. In the event that any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Settlement Agreement.

12. The NYAG retains the right under New York Executive Law Section 63(15) to compel compliance with this Settlement Agreement. Evidence of a violation of this Settlement Agreement shall constitute *prima facie* proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the NYAG.

13. Should the NYAG prove in a court of competent jurisdiction that a material breach of this Settlement Agreement by BAC has occurred, BAC shall pay to the NYAG all costs, expenses and reasonable attorney's fees of enforcing this Settlement Agreement.

Dated: New York, New York  
March 25, 2014

THE PEOPLE OF THE STATE OF NEW  
YORK BY ERIC T. SCHNEIDERMAN,  
ATTORNEY GENERAL OF THE STATE  
OF NEW YORK

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# **EXHIBIT A**