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Deal Advice on Merrill Will Be Aired

By [LOUISE STORY](#) and [ERIC DASH](#)

Facing mounting pressure from multiple investigations, [Bank of America's](#) board has voted to reveal the legal advice that the bank received late last year in its merger with [Merrill Lynch](#).

The stunning reversal, approved by the board Friday, removes a major hurdle in resolving a number of cases that have been brought against the bank, and may be part of the bank's strategy to try to exonerate several executives, including its retiring chief, [Kenneth D. Lewis](#).

Alternatively, it could provide fresh evidence of the role that the bank's lawyers and executives played in failing to reveal losses at Merrill Lynch and bonuses Merrill paid out before the firms sealed their ill-fated merger.

On Monday, the bank notified the office of [Andrew M. Cuomo](#), the attorney general of New York, of its decision in a letter that was reviewed by The New York Times.

On Tuesday, the [Securities and Exchange Commission](#) announced a similar arrangement with Bank of America.

The S.E.C. said in a statement that its agreement would provide access to details surrounding the bank's disclosure decisions, "including any relevant information previously withheld based on attorney-client or other privileges." The agreement must be approved by Federal District Judge [Jed S. Rakoff](#), who has been overseeing a settlement between the agency and the bank.

"The order would also authorize any information disclosed to the S.E.C. to be disclosed to other governmental authorities, including federal and state regulators, so that they are able to assess the same information as the S.E.C.," an agency spokesman, John Heine, said.

The disclosures may reveal the advice the bank received on the merger from its longtime law firm, Wachtell, Lipton, Rosen & Katz, as well as two general counsels: Timothy Mayopoulos, who was unexpectedly dismissed late last year, and Brian Moynihan, a senior executive who has emerged as a leading contender to replace Mr. Lewis. Several state attorneys general, Congressional lawmakers and regulators have been pressing the bank to reveal how its lawyers advised executives to deal with the disclosure of the losses and bonuses. Bank of

America has faced intense scrutiny since receiving a \$45 billion taxpayer lifeline.

The bank dug in its heels for six months, citing the privacy rules that govern conversations between clients and their lawyers, even as pressure to turn over documents grew.

The board reached a tipping point after bank executives held conversations over the last two weeks with the office of New York's attorney general, said the people briefed on the matter.

Mr. Cuomo's office threatened to charge individual bank executives, including Mr. Lewis, with wrongdoing, these people said. The bank also faced a deadline this week to provide a log of its private legal documents to a House committee.

The bank will also provide documents to investigators in Congress, Ohio and North Carolina, where the bank is headquartered. The legal and political cost of the bank's merger with Merrill, conceived in the heat of the [financial crisis](#) last fall, has threatened to overwhelm most of the benefits from the deal. Mr. Lewis, a 40-year veteran of the bank, announced his retirement two weeks ago.

At their core, the inquiries focus on why the bank kept central information about Merrill's bonuses and losses secret from its shareholders, many of whom said they might have voted against the deal before it closed on Jan. 1 if they had known the depth of Merrill's problems. The bank also negotiated a second bailout with the government last December, and it did not disclose those negotiations to shareholders.

Each of the situations raises different questions about decisions made before shareholders voted to approve the merger, as well as about how the decisions were made and why they were not revealed. But providing the legal documents to Mr. Cuomo and other investigations offers the bank an opportunity to move toward a resolution.

The decision could also turn the spotlight onto Wachtell. Bank of America consulted Wachtell on whether to keep their discussions confidential from investigators. Wachtell lobbied to keep its advice protected, while other outside lawyers from Cleary Gottlieb Steen & Hamilton as well as Paul, Weiss, Rifkind, Wharton & Garrison urged that the information be turned over, according to two people briefed on the matter.

Bank management and the board supported the idea because they had nothing to hide and wanted the bank to move on, according to a person briefed on the board's thinking.

A spokesman for Wachtell said the claim that it opposed waiving the attorney-client privilege was "totally erroneous" and maintained that Wachtell, Cleary, and Paul Weiss gave the same advice at all times. Wachtell remains a legal adviser to the bank but is working on fewer issues.

“Waiving attorney-client privilege is exposing the good, bad and the ugly,” said George B. Newhouse Jr., a former United States prosecutor who is now a lawyer with Brown, White and Newhouse. “The advice of counsel could prove embarrassing to the corporation,” he said.

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