

In re Bank of America Securities Litigation

COURT: United States District Court for the Southern District of New York
CASE NUMBER: 09-MDL-2058
CLASS PERIOD: 09/18/2008 - 01/21/2009
CASE LEADERS: Max W. Berger, Hannah Ross, John Rizio-Hamilton, Jonathan D. Uslaner, Katherine M. Sinderson

Lead Plaintiffs enter into settlement for \$2.425 billion and corporate governance changes to be implemented by Bank of America

The parties in the Bank of America consolidated securities class action reached an agreement to settle the action for a total of \$2.425 billion in cash and certain corporate governance enhancements to be implemented or continued by Bank of America Corporation ("BoA"), which has been approved by the Court.

On April 5, 2013, the Honorable P. Kevin Castel held a hearing to consider the Settlement and related matters. Following the hearing, Judge Castel entered a Judgment approving the Settlement, an Order Approving Plan of Allocation of Net Settlement Fund, and an Order Awarding Attorneys' Fees and Expenses.

Update: Claims processing in connection with the settlement of this litigation has been completed. On April 13, 2015, the Motion for Approval of Distribution Plan was filed. On May 4, 2015, the Court entered the Order Approving the Distribution Plan. On June 26, 2015, the initial distribution of the Net Settlement Fund was made to all Authorized Claimants whose Claims were approved by the Court and whose distribution amount was \$20 or more. The second distribution occurred in November 2017. The third distribution occurred in June 2020. The fourth distribution occurred in September 2021.

Background

Securities class action on behalf of shareholders of Bank of America Corporation ("BoA") arising from materially misleading statements and omissions concerning BoA's acquisition (the "Acquisition") of Merrill Lynch & Co., Inc. ("Merrill"). The Class consists of all persons and entities who (i) held BoA common stock as of October 10, 2008, and were entitled to vote on the Acquisition; (ii) purchased or otherwise acquired BoA common stock from September 18, 2008 through January 21, 2009, inclusive, excluding any shares of BoA common stock acquired by exchanging Merrill stock for BoA stock through the Acquisition; (iii) purchased or otherwise acquired January 2011 call options on BoA common stock from September 18, 2008 through January 21, 2009, inclusive; or (iv) purchased BoA common stock issued under the Registration Statement and Prospectus and October 7, 2008 Prospectus Supplement of BoA, in the common stock offering that occurred on or about October 7, 2008, and were damaged thereby. The full definition of the Class is set forth in paragraph 1 of the [Settlement Notice](#).

On September 25, 2009, Co-Lead Plaintiffs filed their Consolidated Amended Class Action Complaint (the "Complaint"). The gravamen of the Complaint is that, throughout the Class Period, Defendants, including BoA CEO Kenneth D. Lewis, made a series of highly material false statements and omissions, including in the Proxy Statement mailed to shareholders in connection with the Acquisition, concerning tens of billions of dollars of losses which Merrill had suffered before the shareholder vote, and a secret agreement allowing Merrill to pay up to \$5.8 billion in bonuses before the merger closed, despite these losses. Oblivious to these facts, BoA shareholders voted on December 5, 2008 to approve the Acquisition.

Following the shareholder vote, but before the Acquisition closed on January 1, 2009, Defendants continued to conceal numerous additional highly material facts from shareholders, including that (i) almost immediately after the shareholder vote, BoA decided it had grounds to terminate the merger because of the magnitude of Merrill's losses; (ii) senior federal regulators had threatened to terminate Defendant Lewis and BoA's Board unless they agreed to proceed with the merger, thus placing these Defendants under an irreconcilable conflict of interest; and (iii) in order to consummate the merger, Defendant Lewis asked for and received a highly-dilutive \$138 billion taxpayer bailout to prevent BoA's own collapse.

The truth about Merrill's financial condition and its materially adverse impact on BoA was not revealed until mid-January 2009, when BoA announced that Merrill had suffered a loss of more than \$21 billion during the fourth quarter of 2008 and, as a result, BoA had sought and accepted a \$138 billion taxpayer bailout. On January 21, 2009, it was further reported that, despite Merrill's staggering losses, BoA had allowed Merrill to pay \$3.6 billion in bonuses before the merger closed, ahead of Merrill's normal schedule, thus ensuring that Merrill's value and financial condition were depleted even further.

As these facts became known, the price of BoA common stock plummeted from \$12.99 per share to a low of \$5.10 per share, causing a market capitalization loss of approximately \$50 billion.

On August 27, 2010 the Court issued an Order sustaining many of the claims in Co-Lead Plaintiffs' Consolidated Amended Class Action Complaint. While the Court determined that BoA's senior executives failed to disclose the highly material information of Merrill's losses to shareholders, it nevertheless dismissed certain of Co-Lead Plaintiffs' fraud claims on the grounds that the Amended Complaint failed to allege that BoA and its executives had withheld this information recklessly. On September 25, 2010, Co-Lead Plaintiffs filed a Second Amended Class Action Complaint (the "SAC"). On July 29, 2011, the Court issued an Order sustaining the vast majority of Lead Plaintiffs' claims.

On October 17, 2011, Lead Plaintiffs filed a motion to certify a Class of Bank of America investors. On February 6, 2012, the Court granted the motion and certified the Class. Click [here](#) to obtain a copy of the [Notice of Pendency of Class Action](#).

On June 3, 2012, Lead Plaintiffs moved for partial summary judgment in *In re Bank of America Corp. Securities Litigation*. Click [here](#) to view documents.

Case Documents

- May 4, 2015 - Order Approving Distribution Plan
- April 13, 2015 - Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan
 - ▲ Exhibits C-1 to the Cirami Declaration
 - ▲ Exhibits C-3 to the Cirami Declaration
 - ▲ Exhibits C-2 to the Cirami Declaration
 - ▲ Exhibits D to H to the Cirami Declaration
 - ▲ Exhibits A, B, and B-1 to B-15 to the Cirami Declaration

- April 13, 2015 – Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan
- April 13, 2015 – Lead Plaintiffs' Notice of Motion for Approval of Distribution Plan, including the proposed Order Approving Distribution Plan attached thereto
- April 8, 2013 - Order Approving Plan Allocation of Net Settlement Fund
- April 8, 2013 - Order Awarding Attorneys' Fees and Expenses
- April 8, 2013 - Judgment Approving Class Action Settlement
- December 24, 2012 – Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Settlement Notice")
- June 3, 2012 - Declaration of Steven B Singer In Support of Lead Plaintiffs' Motion for Partial Summary Judgment (Exhibits 48-62)
- June 3, 2012 - Declaration of Steven B Singer In Support of Lead Plaintiffs' Motion for Partial Summary Judgment (Exhibits 32-47)
- June 3, 2012 - Declaration of Steven B Singer In Support of Lead Plaintiffs' Motion for Partial Summary Judgment (Exhibits 16-21)
- June 3, 2012 - Declaration of Steven B Singer In Support of Lead Plaintiffs' Motion for Partial Summary Judgment (Exhibits 1-15)
- June 3, 2012 - Declaration of Steven B. Singer In Support of Lead Plaintiffs' Motion for Partial Summary Judgment
- June 3, 2012 - Statement of Undisputed Facts Pursuant to Local Civil Rule 56.1 In Support of Lead Plaintiffs' Motion for Partial Summary Judgment
- June 3, 2012 - Lead Plaintiffs' Memorandum of Law in Support of their Motion for Partial Summary Judgment
- March 21, 2012 - Notice of Pendency of Class Action
- February 6, 2012 - Memorandum and Order Certifying Class and Appointing Representatives and Class Counsel
- October 22, 2010- Consolidated Second Amended Class Action Complaint
- September 25, 2009 - Amended Class Action Complaint
- January 22, 2009 - Class Action Complaint