BLB&G Recovers Record-Setting $2.425 Billion for Shareholders in Action Arising from Bank of America's Acquisition of Merrill Lynch

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After nearly four years of intense litigation and with a trial date looming weeks away, BLB&G unveiled an unprecedented settlement with Defendant Bank of America Corporation ("BAC") in which BAC has agreed to pay $2.425 billion in cash and to implement significant corporate governance reforms to resolve all claims in the *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*. BLB&G serves as Co-Lead Counsel for the Class of Bank of America shareholders.

The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with BAC's acquisition of Merrill Lynch. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay up to $5.8 billion in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted on December 5, 2008 to approve the acquisition.

According to BLB&G's former partner Steven Singer, “We've obtained over $2.4 billion on behalf of investors – an absolutely historic recovery by any measure. It’s the largest recovery in history where there was no financial restatement or criminal convictions, by far the largest recovery to come out of the financial crisis, and one of the largest payments ever by a corporate defendant.” The recovery is also the single largest securities class action recovery ever resolving a Section 14(a) claim – the federal securities provision designed to protect against misstatements in connection with a proxy solicitation.

Commenting on the significance of the corporate governance reforms included as an integral component of the settlement, BLB&G partner Max Berger explains, “Our clients were adamant that this litigation result in reforms to BoA’s management practices so that this would not happen again. Management was faced with a decision: conceal the massive losses that Merrill had suffered before the shareholder vote, or tell the Company’s shareholders the truth. The temptation for this kind of deception will always exist, but the corporate governance reforms we have obtained, including the historic monetary recovery, will help to prevent this from reoccurring and will improve the company for shareholders going forward.”

BLB&G partner Hannah Ross praised the efforts of the institutional investor plaintiffs who led the litigation under their counsel. “We could not be more proud of the collective effort of our clients, and our trial team…[They] sent a huge message to corporate america today: management must respect the shareholder franchise. If it does not, as this case proves, there will be a huge price to pay. Together we vigorously prosecuted this case to the end – we were literally weeks away from trial.”

According to BLB&G partner Mark Lebovitch, “This case demonstrates clearly that private enforcement of the securities laws is absolutely essential to maintaining healthy capital markets. Regulators are always fighting an

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uphill battle – government just does not have the resources to sufficiently police the market itself. The SEC did not prosecute any individual defendant and recovered only $150 million for investors – barely 6% of our recovery."

Lead Plaintiffs for the Class are the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, the Teacher Retirement System of Texas, Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V., and Fjärde AP-fonden. The case is currently pending in the United States District Court for the Southern District of New York before Judge P. Kevin Castel.

The settlement, currently pending Court approval, is to be paid on top of the $150 million recovered by the SEC from BAC for the same misconduct which has already been distributed, and demonstrates the continuing need for private litigation to supplement government enforcement actions.

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