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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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March 17, 2009

Mr. Kenneth D. Lewis  
Chairman, President, and CEO  
Bank of America  
100 N. Tryon Street  
Charlotte, NC 28255

Dear Mr. Lewis:

The House Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives. Under Rules X and XI of the House Rules, the Committee is investigating allegations that billions of dollars of taxpayer funds invested by the Treasury Department in nine major banks may have been used to pay executive bonuses and other compensation. By letter of October 28, 2008, we requested information on this issue from all nine banks, including Merrill Lynch and Bank of America. In response to our inquiry, in a letter to the Chairman of this committee dated November 24, 2008, Mr. Raymond S. Calamaro of Hogan and Hartson stated that in the case of Merrill Lynch,

*“The Management Development and Compensation Committee of the Board of Directors makes incentive compensation decisions at year-end. Consistent with this calendar year-end process, incentive compensation decisions for 2008 have not yet been made.”*

Since then we have learned that this statement may not be accurate. Most recently, on March 11, 2009, New York Attorney General Andrew Cuomo filed in the Supreme Court of the State of New York, County of New York, evidence indicating that Merrill Lynch’s Management Development and Compensation Committee made its decisions on executive bonuses on November 11, 2008. In other words, the bonus decision was made nearly two weeks before Mr. Calamaro’s letter to this Committee asserting that no such decision had yet been made for 2008.


These court filings raise the disturbing possibility that Merrill Lynch executives may have obstructed this Committee’s investigation into executive compensation practices and the awarding of bonuses at the company. To aid in our investigation of this matter, please provide the following information and records:

1. Please identify by full name all persons then employed by Merrill Lynch and Bank of America who contributed in any way to the preparation of the November 24, 2008 letter referenced above.
2. Please identify by full name all partners, associates, and other personnel employed by Hogan and Hartson with whom you or anyone else at Merrill Lynch and Bank of America discussed the preparation of the November 24, 2008 letter.
3. Please identify by full name all persons employed by Merrill Lynch and Bank of America who reviewed and approved the November 24, 2008 letter prior to its being sent.
4. Please provide copies of all records you or other persons employed by Merrill Lynch and Bank of America reviewed in preparation for making or approving the statement quoted above in the November 24, 2008 letter.
5. Please provide copies of all records upon which Merrill Lynch and Bank of America based the statement in the November 24, 2008, letter (quoted above), including copies of all communications between and among officers and employees of Merrill Lynch; Bank of America; partners, associates, and other personnel employed by Hogan and Hartson; and any other entities and individuals.

Please deliver the requested information and records to the Committee on Oversight and Government Reform, room 2157 Rayburn House Office Building, no later than 4:00 p.m. on Friday, March 20, 2009. In responding to this request, please be advised that the terms "records" and "relating to" are defined in the attachment to this letter.

Should you have any questions regarding this request, please contact me or John Arlington of the Committee staff at 202-225-5051.

Sincerely,



Edolphus Towns  
Chairman

## ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.