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December 8, 2008

Board of Directors of Merrill Lynch
c/o Corporate Secretary
Merrill Lynch & Co., Inc.
222 Broadway, 17th Floor
New York, New York 10038

Re: Bonus Pools

Dear Members of the Board:

As you know, this Office is conducting an ongoing inquiry into various aspects of executive compensation at Wall Street firms, including Merrill Lynch & Co., Inc. On October 29, 2008, we asked you to detail, among other things, your plans for executive bonuses this year, including the criteria you plan to use in determining what, if any, bonuses are appropriate for your top executives.

On November 5, 2008, the Board responded and stated that any bonuses would be based upon a combination of performance and retention needs. In light of these factors, current reports that the Board is considering giving Merrill's Chief Executive Officer a $10 million bonus are nothing less than shocking.

Utilizing Merrill's own criteria, a bonus of this size appears unjustified. In terms of performance, Merrill has reported losses for every quarter this year and has lost more than $11 billion for the year as a whole. Indeed, Merrill's decision to be taken over by Bank of America seems to have been the only thing that saved Merrill from collapse. Clearly, the performance of Merrill's top executives throughout Merrill's abysmal year in no way justifies significant bonuses for its top executives, including the CEO.

With respect to retention, it is our understanding that Bank of America has already determined that Merrill's CEO will run the merged company's global banking, securities, and wealth management businesses. Thus, the need for retention does not appear to justify a substantial bonus for him.

As we stated in our letter in October, in this new environment, it is vital that Boards of Directors demonstrate independence and complete devotion to corporate responsibility. It is

imperative that Merrill's Board prevent wasteful expenditures of corporate funds on outsized executive bonuses and other unjustified compensation.

My concern is in no way meant to be a comment on any individual's personal capacity or conduct, but rather is based on an institutional and policy concern. In this context, I represent the taxpayers who demand accountability, transparency, and responsibility. Taxpayers are being crushed by the losses on Wall Street and now are paying billions in bailout funds. Bank of America, for example, which is taking over Merrill Lynch, has received approximately $25 billion in TARP funds. Paying executives at Merrill millions each in "performance" bonuses in this context would be oxymoronic to say the least and certainly a thumb in the eye to taxpayers. Enough is enough.

If the Board does intend to pay its CEO and other top executives significant bonuses, we would like the chance to first meet with you to discuss the justifications behind such expenditures. Please let my Office know as soon as possible what the Board's intentions are.

Very truly yours,

Andrew M. Cuomo
Attorney General of the
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