

Cuomo Takes on Wall Street

by Edward Spannaus

Andrew Cuomo, the New York State Attorney General, has been the nation's most aggressive investigator in targeting the huge bonuses that major banks were giving out around to their own executives at the time they were hauling in Federal bailouts.

Indeed, Cuomo is doing what the Federal regulatory agencies should have been doing all along: going after the biggest Wall Street investment banks, and even trying to get the money back. While Cuomo's actions will not solve the financial crisis, they represent a courageous, and necessary, flanking action against the Wall Street traitors.

Executive bonuses are no small matter. As the *New York Times* pointed out on Feb. 22: "The top executives of seven major financial firms that have either collapsed, were sold at low prices or have received taxpayer-funded bailouts, were paid \$464 million in performance pay since 1995. But the same firms have lost over \$100 billion since 2007."

New York University Prof. Nassim Taleb, writing in the Feb. 24 *Financial Times*, exposed the dirty secret behind investment banking, describing how the bonus-incentive system encourages the hiding of risks and delaying collapses. "It is the reason banks have never made money in the history of banking, losing the equivalent of all their past profits periodically—while [individual] bankers strike it rich." Taleb says this gives us the worst possible system: Traders and executives get the profits, but not the losses, and, "this vicious asymmetry," he contends, "is the driving factor behind investment banking."

The Case of Merrill Lynch

Cuomo began investigating Wall Street bonuses in October 2008, after nine top banks received \$125 million in taxpayer bailout funds, making up for their losses—even as they were paying out lavish bonuses to their top employees! His targets were Citigroup, JP Morgan Chase, and seven others that got TARP (Troubled Asset Relief Program) funds. Cuomo's office is cooperating with the TARP Special Inspector General Neil Barofsky in the investigation.

Cuomo's most high-profile case at the moment is that of Merrill Lynch, which paid out \$3.6 billion in bonuses—including mega-bonuses to four top executives, who split \$121 million among them—on Dec. 29, just three days before the firm was taken over by Bank of America (BoA). Merrill then posted a \$15 billion after-tax loss for the fourth quarter, and \$28 billion for the year. (Normally, bonuses are not paid until after the firm has closed its books for the year.)

Cuomo is reportedly attempting to determine if investors were misled about the extent of Merrill's losses in late 2008, and whether details about the bonuses to Merrill executives and employees should have been disclosed to investors—both by Merrill and by BoA. According to the *Wall Street Journal*, Cuomo is looking at such remedies as trying to recover the

bonuses already paid, fines, or charging securities law violations.

Wall Street's Stone Wall

In a letter to Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee, Cuomo stated:

"On October 29, 2008, we asked Merrill Lynch to detail, among other things, their plans for executive bonuses for 2008, including the size of the bonus pool and the criteria they planned to use in determining what, if any, bonuses were appropriate for their top executives. . . . Merrill did not provide my Office with any details as to the bonus pool, claiming that such details had not been determined.



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“Rather, in a surprising fit of corporate irresponsibility, it appears that, instead of disclosing their bonus plans in a transparent way as requested by my Office, Merrill Lynch secretly moved up the planned date to allocate bonuses and then richly rewarded their failed executives. Merrill Lynch had never before awarded bonuses at such an early date and this timetable allowed Merrill to dole out huge bonuses ahead of their awful fourth quarter earnings announcement and before the planned takeover of Merrill by Bank of America.

“One disturbing question that must be answered, is whether Merrill Lynch and Bank of America timed the bonuses in such a way as to force taxpayers to pay for them through the deal funding.”

John Thain, the former CEO of Merrill Lynch, was interrogated for six hours on Feb. 19 by Cuomo’s office; the attorney general then went to court to force Thain to answer detailed questions about the year-end executive bonuses, which he had refused to answer, citing instructions from BoA. On Feb. 23, a New York State court ordered Thain to answer the questions, and the next day, Thain was back at Cuomo’s office, sneaking in through a subway entrance, for another three hours of questioning. A few days later, Cuomo had BoA chief executive Ken Lewis in for questioning; Lewis also refused to provide details on the bonus scheme.

Cuomo has since subpoenaed other top BoA officials, and on March 3, he summoned seven former Merrill executives to appear for interrogation. A New York State judge is expected to rule by March 20, whether Bank of America must disclose the names of those who received the bonuses; BoA is attempting to block Cuomo from obtaining the names, and also from making those names public.

Obstruction of Congress

Further, in a March 11 court filing, Cuomo documented how Merrill Lynch had misled Congress regarding the timing of the bonus decisions. In a Nov. 24 letter, a lawyer for Merrill Lynch & Co. had assured Rep. Henry Waxman (D-Calif.), the chairman of the House Committee on Oversight and Gov-



John Thain, former CEO of Merrill Lynch, was interrogated for six hours by Cuomo’s office about huge bonuses Merrill paid after receiving Federal bailout money.

ernment Reform, that “incentive compensation decisions for 2008 have not yet been made,” saying directors would do that at the end of the year. But, Cuomo shows, Merrill’s compensation committee had actually voted two weeks earlier to pay bonuses to Merrill employees in December.

On March 12, Rep. Edolphus Towns (D-N.Y.), who has since replaced Waxman as that committee’s chairman, announced that the Oversight Committee is investigating Cuomo’s charges, stating that the court filings “raise the disturbing possibility that Merrill Lynch executives may have obstructed this committee’s investigation into executive compensation practices and awarding of bonuses.”

Auction-Rate Securities

Cuomo has already had some successes in retrieving money from some of the biggest Wall Street banks.

Over the Summer of 2008, in a separate investigation of major Wall Street and foreign banks, Cuomo obtained settlements in which over \$50 billion was paid back to investors in auction-rate securities. Those who received payments were “retail investors”—consisting of individuals, charities and non-profit organizations, and small to medium-sized businesses. The first round of settlements involved UBS and Citigroup. In August, Cuomo announced investigations into JP Morgan Chase, Morgan Stanley, and Wachovia, for misrepresenting these securities as safe, sound investments, when in fact the banks knew that the securities faced increasing liquidity risks. Later in August, Cuomo announced settlements with Goldman Sachs, Deutsche Bank, and Merrill Lynch.

Additionally, in October, Cuomo obtained settlements with BoA and the Royal Bank of Canada. That same month, Cuomo announced a \$6.5 million settlement with David Aufhauser, former General Counsel of UBS, for insider trading; Aufhauser dumped his personal holdings of auction-rate securities in December 2007, after learning about the collapsing auction-rate securities market. This was while UBS was still marketing the securities to retail investors as safe investments.