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Judge Rejects Settlement Over Merrill Bonuses

By [LOUISE STORY](#)

A Federal District judge on Monday overturned a settlement between the [Bank of America](#) and the Securities and Exchange Commission over bonuses paid to [Merrill Lynch](#) executives just before the bank took over Merrill last year.

The \$33 million settlement “does not comport with the most elementary notions of justice and morality,” wrote Jed S. Rakoff, the judge assigned to the case in federal court in Lower Manhattan.

[The ruling](#) directed both the agency and the bank to prepare for a possible trial that would begin no later than Feb. 1. The case involved \$3.6 billion in bonuses that were paid by Merrill Lynch late last year, just as that firm was about to be merged with Bank of America. Neither company provided details of the bonuses to their shareholders, who voted on Dec. 5 to approve the merger.

The judge focused much of his criticism on the fact that the fine in the case would be paid by the bank’s shareholders, who were the ones that were supposed to have been injured by the lack of disclosure.

“It is quite something else for the very management that is accused of having lied to its shareholders to determine how much of those victims’ money should be used to make the case against the management go away,” the judge wrote.

In a statement, the S.E.C. said on Monday: “As we said in our court filings, we believe the proposed settlement properly balanced all of the relevant considerations. We will carefully review the court’s most recent order.”

Bank of America has argued in its filings with the judge that it did nothing wrong in its disclosures.

The judge also criticized the S.E.C., which has been trying to step up the profile of its investigations unit. The

judge quoted [Oscar Wilde](#)'s "Lady Windermere's Fan" in the end of his ruling to say that a cynic is someone "who knows the price of everything and the value of nothing."

The proposed settlement, the judge continued, "suggests a rather cynical relationship between the parties: the S.E.C. gets to claim that it is exposing wrongdoing on the part of the Bank of America in a high-profile merger; the bank's management gets to claim that they have been coerced into an onerous settlement by overzealous regulators. And all this is done at the expense, not only of the shareholders, but also of the truth."

The case before Judge Rakoff is just one of several investigations into the bank's deal with Merrill. [Andrew M. Cuomo](#), the attorney general of New York, is also investigating the bank's disclosures of bonuses and of Merrill's surprise losses late last year. The House Committee on Government Oversight and Reform is also looking into the merger.

It is not the first time Judge Rakoff has ruffled feathers in the business world. In 2003, for example, he refused to approve what he saw as a low settlement the S.E.C. had negotiated with WorldCom, the phone company that collapsed in an \$11 billion accounting fraud.

Rewarding — and punishing — the right parties was at the fore of the judge's thinking in that case.

Shareholders of WorldCom had already lost out. So when the judge forced the S.E.C. to increase the \$500 million fine it was levying against WorldCom to \$750 million, he also demanded that the money be paid out to the company's shareholders, rather than to the agency.

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