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February 16, 2010

VIA ELECTRONIC MAIL

George S. Canellos, Esq.
U. S. Securities and Exchange Commission
New York Regional Office
Three World Financial Center, Suite 400
New York, New York 10281-1022

Re: SEC v. Bank of America Corp., Nos. 09-cv-6829 & 10-cv-0215 (JSR)

Dear George,

I write in response to your office's request, made on Friday, for copies of transcripts of sworn testimony of five individuals taken by the New York Attorney General's office in connection with its investigation of the Bank of America/Merrill Lynch merger. Specifically, you requested copies of sworn testimony provided by: (1) Timothy Mayopolous, (2) Jeffrey Brown, (3) Ven Kocaj, (4) Thomas Graham, and (5) David Moser. As a preliminary matter, I can confirm that the Attorney General's Office is in fact in possession of sworn testimony, in some instances more than one day's worth of testimony, from each of the five individuals.

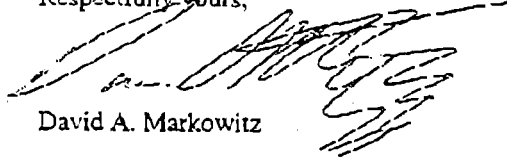
Our review of the transcript of the hearing held before Judge Rakoff last Monday leads us to believe the Court was asking for all evidence contained in the record before the parties before the Court, not all evidence that may exist in related investigations. "I'd like to see, in effect, both sides or whatever -- there may be more than two sides -- whatever were the relevant portions of the record before the parties here." (Tr. at 22) (emphasis added). As you know, these transcripts were not previously considered by your office in constructing its investigation, litigation, or proposed settlement. In fact, as you are aware, this Office conducted a separate investigation from the SEC. We note that the Commission may have inadvertently confused this issue when it stated "I don't think we have any doubt that we've accessed the same proof, the same witnesses, the same documents as the New York Attorney General." (Tr. at 7.)

We note that the testimony from the five witnesses requested only represents a sub-set of the evidence relevant to the questions posed by Judge Rakoff. Moreover, we note that in addition to the extensive record marshaled by our Office to date, we are entitled to and intend to take extensive pre-trial discovery. At this time, we are concerned about the impact partial disclosure could have on our litigation at a time when the parties in our contested proceeding have yet to respond to the complaint or negotiate a confidentiality order. We are also concerned

about the possible impact disclosure of these materials could have on our ongoing investigations of other individuals. Accordingly, we cannot in a manner consistent with our prosecutorial obligations turn over piecemeal evidence at this time.

I can be reached at (212) 416-8198 if you have any additional questions.

Respectfully yours,

A handwritten signature in black ink, appearing to read "David A. Markowitz", written over a horizontal line.

David A. Markowitz

cc: The Honorable Jed S. Rakoff