



Cuomo Puts Lewis Atop List of CEOs Cited for Financial Meltdown

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By David Mildenberg and Karen Freifeld

Feb. 4 (Bloomberg) -- **Kenneth D. Lewis**, the former leader at Bank of America Corp. who presided over two bailouts, now stands as the highest-ranking official to be accused of wrongdoing in the financial industry's meltdown.

Lewis, **chief executive officer** until December, and then- Chief Financial Officer **Joe Price** were accused along with the bank of civil fraud today by New York Attorney General **Andrew Cuomo**. They allegedly defrauded investors and taxpayers by not disclosing losses at Merrill Lynch & Co. before shareholders voted on the firm's pending takeover, and using those losses to extract bailout funds from U.S. regulators, according to Cuomo.

Lewis, 62, who retired after criticism of the takeover, joined more than half a dozen peers who left or lost their jobs amid \$1.7 trillion of losses tied to the global financial crisis. Among them were Citigroup Inc.'s **Charles O. Prince**, Merrill Lynch & Co.'s **E. Stanley O'Neal**, Lehman Brothers Holdings Inc.'s **Richard S. Fuld** and Wachovia Corp.'s **G. Kennedy Thompson** -- none of whom was charged with wrongdoing.

Lawyers for Lewis, Price and Charlotte, North Carolina- based Bank of America said Cuomo erred in bringing the lawsuit. Cuomo's action is "badly misguided," said a statement from **Mary Jo White**, the former federal prosecutor who is defending Lewis. "There is not a shred of objective evidence to support the allegations."

Industry CEOs previously singled out by enforcement officials included **Angelo Mozilo**, the former CEO of subprime lender Countrywide Financial Corp. The U.S. Securities and Exchange Commission accused Mozilo of civil fraud in June, 2009, saying he publicly reassured investors about Countrywide's loans while expressing doubts internally about their quality, and selling about \$140 million of common shares.

Cuomo's Case

Mozilo has said he didn't do anything improper, and the case is pending. Bank of America, ranked first in the U.S. by assets and deposits, **bought** Countrywide in 2008, and Mozilo didn't stay with the combined firm.

Cuomo moved against Bank of America as the SEC announced a separate settlement today of claims that the Charlotte, North Carolina-based company misled **shareholders** about bonuses and losses at New York-based Merrill. The bank agreed to pay \$150 million and strengthen corporate governance; no executives were cited individually.

Cuomo's case concerns events leading up to the January 2009 purchase of Merrill Lynch, a deal that Lewis crafted in September 2008 as Lehman Brothers collapsed and regulators were trying to save the rest of the financial system.

According to Cuomo's **complaint**, the bank failed to tell its own investors that losses at Merrill Lynch continued to pile up before they voted to approve the deal, and didn't disclose plans for the brokerage to pay \$3.57 billion in bonuses "for the worst year in Merrill's history."

MAC Attack

The bank then used those **losses**, which ultimately surpassed \$15 billion for the fourth quarter of 2008, to persuade federal regulators to provide additional bailout funds, the complaint said. Lewis and Price did that by making "an empty threat to terminate the merger" to abort the deal by citing a clause concerning "material adverse changes," the complaint said.

Lewis, Price, 48, and **Brian Moynihan**, 50, who has since become CEO, "calculated that if they threatened to call a MAC to get out of the deal, the federal government would counter with more taxpayer funds out of a concern for the greater economy," the complaint said.

Moynihan, who succeeded Lewis on Jan. 1, isn't under **investigation** in Cuomo's case and has been "candid" with the attorney general's office, according to **David Markowitz**, Cuomo's special deputy for investor protection. Moynihan was the bank's general counsel in December 2008 when it negotiated with U.S. officials for \$20 billion of bailout funds. Price has since been named head of the consumer unit at Bank of America.

Martin Act

Cuomo's office "has no intention" of targeting Moynihan, Bank of America spokesman **Robert Stickler** said. "They believe he was not complicit in their scenario, which is based on snippets of facts taken out of context and at times embellished."

Bank of America fell 78 cents, or 5 percent, to \$14.75 at 4 p.m. in New York Stock Exchange composite **trading**. They've tripled in the past 12 months.

Cuomo based his civil case on New York's Martin Act, a securities law that permits civil and criminal penalties, and said the investigation was aided by **Neil Barofsky**, special inspector general for the Troubled Asset Relief Program.

"Ken Lewis doesn't live in New York, and if you are running for office like Mr. Cuomo, picking on a New Yorker such as **Dick Fuld** or someone else could be much more difficult," said **Ray Groth**, adjunct professor at Duke University's business school and a former First Boston Corp. investment banker. "Ken is very low on the schmooze factor and politicians love to be schmoozed, flattered and catered to."

Merger's Aftermath

Analysts **Richard Bove** of Rochdale Securities Inc. and **Betsy Graseck** of Morgan Stanley have praised the Merrill acquisition for diversifying Bank of America's income and insulating the company from losses on consumer loans. **Mark Calabria**, director of financial regulatory studies at the Cato Institute in Washington, said Cuomo's action contradicts statements from the Federal Reserve and Treasury Department.

"There is an argument for saying investors were misled, but all evidence indicates the Fed and Treasury strong-armed Mr. Lewis into not saying anything," Calabria said.

The separate SEC settlement still has to be approved by U.S. District Court Judge **Jed Rakoff**. Last year, Rakoff called the SEC's initial settlement, which focused on the bank's bonus disclosures, neither fair nor reasonable and questioned why the bank's executives and lawyers weren't sued. The agency said it lacked evidence to bring claims against specific individuals.

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