

## Merrill Lynch Attorney Eyeing the BofA CEO Job

*By: Vanessa Vidal*

Despite a climate of uncertainty, there is one lawyer who is feeling pretty good about himself: Brian Moynihan, a Merrill Lynch attorney eyeing the BofA CEO job. Brian Moynihan, 49, is the lawyer put in charge of Merrill Lynch & Co. following the ouster of John Thain, the last chairman and chief executive officer of Merrill Lynch before its distressed merger with Bank of America. Life is good for Moynihan and possibly getting even better soon.

Moynihan is slated as a potential successor to Bank of America's Chief Executive Kenneth D. Lewis according to the Wall Street Journal. Lewis, who has led the bank since April 2001, has indicated that he could leave once the current financial crisis is over and definitely plans to depart within three years. Not bad for a lawyer who seems to be rubbing some of the Merrill Lynch executives the wrong way. What has Moynihan done to create tension with some of the highest-ranking executives who have remained at Merrill Lynch? Moynihan suggested paying bonuses or making financial guarantees to some top investment bankers if they agreed to stay for a certain length of time. Moynihan flew on a private jet to London for a meeting to discuss a range of issues, including compensation.

Compensation has been a hot issue at Merrill Lynch ever since the company paid \$3.6 billion in bonuses to employees at the end of December despite piling up a net loss of \$27.61 billion in 2008. So suggesting bonuses, regardless of its well-meaning intentions, probably tasted a lot like an AIG offering to the Merrill Lynch executives. We've all seen what's happened at AIG as a consequence of these bonuses, and no one really wants that in their own backyard. Taking a private jet to a meeting in London, even if the travel decision was in fact "efficient, effective and the best value" according to a BofA spokesperson, was probably not the image Merrill Lynch wanted to promote on the heels of the financial meltdown it helped create. If Moynihan has been receiving criticism from Merrill Lynch executives, he has been getting plenty of love and support from BofA. For instance, Moynihan was the one who accompanied Lewis to his recent meeting at The White House, and apparently did most of the talking, according to the WSJ.

Moynihan is so important to BofA's upper ranks that Lewis scrambled in December to keep him after telling the board that Moynihan turned down a new job and might leave the bank – supposedly because he did not want to relocate his family while he was building a new house outside Boston. What did BofA do to keep Moynihan onboard? The Company promoted him the next day to general counsel, a job Moynihan held for only 43 days before taking over Merrill.

Clearly, Moynihan has his supporters both inside and outside BofA. "He has proved in difficult environments he is very capable," said Anthony DiNovi, co-president of Boston private-equity firm Thomas H. Lee Partners LP, who has worked with him on past deals. "When Lewis has a tough job at hand he turns to Brian, and Brian has always been there for him."

So will Moynihan replace Lewis as BofA's CEO? More importantly, if he does, what impact will this have on Merrill Lynch? Stay tuned.