Price Paid for Merrill is Rising

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You could hardly blame Kenneth D. Lewis, the embattled leader of the Bank of America Corporation, for feeling a bit of buyer's remorse.

His audacious acquisition of Merrill Lynch, the giant brokerage, looks so disastrous that many on Wall Street wonder if he can keep his job.

Four months ago, as turmoil swept Wall Street, Mr. Lewis's bank bought the foundering brokerage for $50 billion in stock. Today, the two companies are worth $40 billion combined.

For Mr. Lewis, who built Bank of America into the nation's largest bank through a series of bold acquisitions, Merrill has created one headache after another. The brokerage ran up steep losses after Bank of America agreed to buy the brokerage. A number of key Merrill executives left, including John A. Thain, whom Mr. Lewis pushed out on Thursday. The problems at Merrill were so acute that Bank of America was forced last week to seek a second federal financial rescue.

Some of Mr. Lewis's shareholders are angry, and the lawsuits are flying.

Many initially questioned whether Mr. Lewis paid too much for Merrill. But now the conversation has turned to whether he adequately disclosed the risks of the acquisition to his shareholders. After Mr. Lewis clinched his deal, Merrill lost a staggering $15.3 billion during the fourth quarter. Bank of America went ahead with the purchase anyway.

Now, Mr. Lewis is struggling to fix Merrill while integrating his bank with yet another company, the Countrywide Financial Corporation, which his bank bought also last year.

> *"I don't think he survives when this is all said and done," said Paul Miller, an analyst at Friedman Billings Ramsey. "He has made some pretty big mistakes over the last couple of months and as conditions inside that bank worsen, he's going to come under more and more pressure."*

Still, the Bank of America board, whose ranks include the mayor of Spartanburg, S.C.; a retired general, Tommy R. Franks; and the former chairman and chief executive of Lowe's, has offered up no signals that it has lost confidence in its leader.

Moreover, analysts ask, who would the board find to succeed Mr. Lewis?

But some shareholders are growing increasingly frustrated with the decision to push through the acquisition of Merrill Lynch.

For Mr. Lewis, Merrill Lynch represented not only a coveted prize but the gamble of his career. When he reached a deal with Mr. Thain this summer, he crowed that not only had he picked up the crown jewel for a bargain price, but that it would very quickly start to yield results.

> *"This was almost a perfect fit, and we thought it was close enough to the bottom that we could make the deal work and be very good for our shareholders," Mr. Lewis said*

> *at the time. "I don't think it will come out of the doldrums in the next week or so, but as soon as the market gets its legs again, you will see a higher value."*

Instead, losses mounted and Mr. Lewis is now fighting to prop up his banking empire and keep his job.

In mid-January, just hours after receiving a second round of government funding to cover heavy losses in its Merrill subsidiary, Mr. Lewis drew fire from investors more than a little curious to know why the bank didn't alert them to the losses.

In the timeline provided by Mr. Lewis on the conference call with investors and Wall Street analysts in mid-January, he said he was surprised to learn of the magnitude of the losses himself in December and considered walking away from the deal.

He said he was persuaded not to, partly by regulators who feared more instability on Wall Street if the deal did not close.

The bank's shareholders voted on the merger on Dec. 5. Mr. Lewis claims he found out about the losses later, but before the merger closed on Jan. 1.

Others, however, say Mr. Thain gave his board estimates for the quarter on Dec. 8 and that those estimates were not nearly as bad as the final results, according to a person briefed on the discussions.

While that certainly strengthens Mr. Lewis's case that he did not know how bad Merrill's quarter was before the shareholder vote, others say he still had time to warn them.

> *"I had already voted against the merger, but I think a lot of other shareholders would have joined me if they had known about the losses," said Jerry E. Finger, whose company, Finger Interests Number One, is a plaintiff in a lawsuit filed by Susman Godfrey, one of many shareholder lawsuits that have been filed against the executives and board members of both Merrill Lynch and Bank of America. A spokesman for Bank of America declined to comment on the suits.*

> *"The merger was so dilutive to begin with and it became even more dilutive after they had to accept all of this funding from the U.S.," said Mr. Finger, whose company and family hold about 1.5 million shares of Bank of America dating back to when he sold a bank he started in Texas in 1963 to NationsBank in 1996. Bank of America and NationsBank merged in 1998. "They had to have knowledge well before the close of the deal of the Merrill Lynch loss and they didn't have to close," Mr. Finger said.*