



## Merrill Lynch: corporate apologia and business fraud<sup>☆</sup>

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### Abstract

In April 2001, New York Attorney General Eliot Spitzer accused Merrill Lynch of fraud, creating a public relations crisis for the investment firm. The crisis was caused by the disclosure of damaging emails in which analysts referred to stocks that they were selling as “a piece of junk” or “trash.” Consequently, this monograph examines the apologetic crisis management discourse proffered by Merrill Lynch to restore its reputation. It argues that since companies are unwilling to admit responsibility due to liability concerns, in contemporary discourse compensation should be read as an argot that functions as an admission of culpability.

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According to CBS News, Americans are \$7 trillion poorer now than they were at the height of the internet bubble when the collective stock markets bid technology or so-called “dot.com companies” like Pets.com to staggering heights of valuation even though they had no income, earnings, or positive cash flow (*The sheriff of Wall Street*, 2002). With the tremendous sense of financial loss, and the fact that the bursting of the bubble led the economy into a recession in early 2002, it follows that the need for scapegoats would abound, among them Arthur Andersen, Enron, Tyco, and even America’s principal domestic doyenne, Martha Stewart. Each revelation of accounting gimmicks and insider trading has brought about the realization by many investors that the markets were “rigged” and designed to enrich

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insiders, while individual investors and holders of 401Ks were perennially on the outside—and easy targets for abuse.

Eventually, the revelations of wrongdoing reached to the heart of Wall Street. In April 2001, Eliot Spitzer, Attorney General of New York, using his authority under the Martin Act, announced he had opened an investigation of fraud at Merrill Lynch, one of Wall Street's oldest and most venerable firms. In it, he accused the firm of recommending the purchase of poorly performing stocks to individual investors which enabled Merrill Lynch to win or retain lucrative investment banking fees for those same companies—thus dramatically increasing the impact on the firm's bottom line (White, 2002).

The investigation plunged the organization into a public relations crisis. As it continued and the ongoing revelations continued to dog the firm, Merrill Lynch chose to settle rather than fight the allegations any longer. In May 2002, Attorney General Spitzer announced a settlement: Merrill Lynch would apologize for the wrongdoing, pay a \$100 million fine, as well as change the way that analysts are compensated (White, 2002).

It is our position that this case is paradigmatic of the problems inherent in modern apologetic speech in that, when presented with clear evidence of wrongdoing, the Wall Street giant initially responded with a denial and counter-attack; and once it became clear that the allegations would not go away, it then completed a settlement with its accusers in which it offered a weak statement of regret followed by the paying of a large fine. Specifically, we argue that Merrill Lynch's communicative choices reflect efforts to appear apologetic to public constituencies while at the same time avoiding legal liability. To support this claim, we first review the research on corporate apologia; second, we survey the narrative that constituted the crisis; third, we offer analysis that considers the multiple strategies utilized by the firm to account for its wrongdoing; and finally, we draw a number of conclusions as to the role of apologia as used by financial firms.

## **1. Apologia: an institutional perspective**

The study of apologia has a long and varied tradition. Originally conceived as a defensive form of speech, the study of apologia now focuses on how corporations in the midst of public relations crises respond to criticism in the defense of their carefully crafted images in order to deal with the problem of guilt (Benoit, 1995; Hearit, 1995, 2001).

Prototypically, past research on apologia has shown that corporate apologists deal with the problem of guilt by assuming one of three dissociational stances (Hearit, 1995, 1999; Perelman & Olbrechts-Tyteca, 1969). The first way is through a denial stance. Here guilt is rejected, or at minimum an apologist denies that it is the responsible party. This denial is accompanied by an opinion/knowledge dissociation in which a company argues that there is a false perception that it is guilty of the transgression and that, upon closer examination, the "true facts" of the case reveal that the organization is indeed a law-abiding corporate citizen.

A second way to address the problem of guilt is to achieve absolution by transferring it to another. In terms of apologetic speech, organizations guilty of wrongdoing often find scapegoating a compelling vehicle by which to deal with the problem of their guilt. These apologists shift the blame through the application of an individual/group dissociation. The dissociation occurs when the company is able to locate guilt, not in the company qua company, but in the actions of a few individuals.

The final prototypical stance in which apologists handle their guilt is through acceptance of guilt by engaging in a process of self-mortification, often accompanied by a strategy of corrective action. Here

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