Opening Statement

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Joint Full Committee-Subcommittee Hearing on the Government's rescue of the Bank of America-Merrill Lynch merger

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With Mr. Paulson's testimony today, it is an undisputed fact that then-Secretary Paulson told Bank of America's Ken Lewis that the Government might remove him and his Board of Directors if Bank of America abandoned its deal to acquire Merrill Lynch. It requires a judgment call to decide if Mr. Paulson was being justifiably tough in response to Bank of America's consideration of invoking the material adverse change clause in its merger contract, an arguably unwise but lawful action, which he viewed as a potential threat to the financial system at a moment of crisis.

But nothing in Mr. Paulson's testimony today justifies the Government's decision to ignore evidence that Bank of America withheld information from its shareholders about mounting losses at Merrill Lynch before the crucial shareholder vote on December 5 -- a potentially illegal act. I have seen no justification for the Government to override recommendations of professional staff at the Fed and the President of a regional Federal Reserve Bank for greater accountability of Bank of America's top executives.

Yet that is precisely what Mr. Paulson and Mr. Bernanke did.

This Committee's investigation and two previous hearings have revealed that the Government had concluded that Mr. Lewis's management of Bank of America was seriously deficient and possibly in legal jeopardy. Top staff at the Fed and Treasury had determined that Mr. Lewis knew about accelerating losses at Merrill Lynch before the shareholder vote to ratify the merger, but he did not provide that information to shareholders. The top lawyer at the Fed had determined that Mr. Lewis and his management team were possibly in violation of securities laws for withholding material information from shareholders. Top professional staff at the Fed had determined that Mr. Lewis and his management team had failed to do due diligence in acquiring Merrill Lynch and were not up to the task of identifying and solving the problems in which they found themselves in late 2008. Top staff at the Fed and even the President of a regional Federal Reserve Bank were pressing for a number of new requirements on Bank of America as conditions of any federal bailout in order to remedy the deficient management they perceived. Nevertheless, Mr. Paulson and Chairman Bernanke bailed out the merger of Bank of America and Merrill Lynch without requiring replacement of Bank of America's top management or Board of Directors or imposing any meaningful new requirements on Bank of America's management.

Not every national government, faced with troubled systemically significant banks, behaved the same way. The UK dismissed top corporate management at Royal Bank of Scotland upon rescuing the company, without impairing the bank's ability to operate. Even in the U.S., General Motors's top executive was pushed aside as a condition of federal support. But, in the United States, the management of systemically significant banks such as Bank of America not only kept their jobs, they received billions in taxpayer dollars to help plug the holes in their balance sheets.

Mr. Paulson regards the Government's interventions in financial markets as successful. Certainly, TARP and the Fed's many new lending facilities aid systemically significant banks and have bought time for those banks. But the lasting contribution of this Committee's investigation will be exposing Treasury's and the Fed's failure to require meaningful accountability from systemically significant banks in exchange for federal bailout. Not a single CEO of a systemically significant bank was removed from his job by government action for a misdeed or mistake. Nor has a single CEO of a systematically significant bank fully explained his role in creating the circumstances of financial crisis. The biggest, most powerful bankers have essentially received a free ride at taxpayers' expense.

In choosing to bailout Bank of America without also removing its top management for their failure to do due diligence and for withholding potentially material information from shareholders prior to the merger ratification vote, the government sent a signal to the management of all systemically significant banks that their mistakes and misdeeds will be treated differently and more gently by regulators than those committed by managers of mid-sized and small banks. Over the coming months and years it will prove to be a dangerously destabilizing signal that we will deeply regret.