HOUSE COMMITTEE ON
OVERSIGHT & GOVERNMENT REFORM

OPENING STATEMENT OF
CHAIRMAN EDOLPHUS TOWNS

Hearing: "Bank of America and Merrill Lynch: How Did a Private Deal Turn Into a Federal Bailout?" (Part 2)

June 25, 2009

Today we are continuing our investigation of Bank of America's acquisition of Merrill Lynch.

This was a most unusual transaction. On September 15, 2008, Bank of America announced that it was purchasing Merrill Lynch, creating one of the nation's largest financial institutions. At the time, it was a merger negotiated between two private parties, designed for the exclusive benefit of private shareholders, and paid for exclusively with private money.

Four months later, on January 16, 2009, the world discovered that Merrill Lynch had experienced a $15 billion fourth quarter loss. Most importantly, we discovered that the merger had taken place only after the Federal government had committed to give Bank of America $20 billion in taxpayer money.

In short, Bank of America's acquisition of Merrill Lynch began in September 2008 as a private business deal, and was completed in January 2009 with a $20 billion taxpayer bailout.

What happened in the interim has been shrouded in secrecy, but the broad outline is this:

When Bank of America urged its shareholders to approve the acquisition of Merrill Lynch on December 5, 2008, there was no public disclosure of any problems with the transaction.

However, Bank of America CEO Ken Lewis has testified that just nine days after the shareholder vote, he discovered a $12 billion loss at Merrill Lynch. Mr. Lewis said he told then-Treasury Secretary Hank Paulson that he was "strongly considering" backing out of the deal. According to Lewis, Paulson ultimately told him that if he didn't go through with the acquisition, he and the Board would be fired.

Internal emails we have obtained from the Fed indicate officials there were very skeptical about Mr. Lewis' motives in threatening to back out of the Merrill deal. Fed Chairman Ben Bernanke thought Lewis was using the Merrill losses as a "bargaining chip" to obtain Federal funds. FDIC Chairman Sheila Bair was opposed to providing assistance, saying, "My board does not want to do this."

In essence, Ken Lewis claimed that "the government made me do it." But was Bank of America forced to go through with the deal, or was this just an old fashioned shakedown?

These questions are particularly important given the Administration's new proposal to give broad, new powers to the Federal Reserve. I believe that before Congress acts on the President's financial services reform proposal, we need to have a thorough understanding of what caused the current financial crisis and how the Federal government responded.

Unfortunately, much of what the Fed, the Treasury, and other agencies did in these transactions remains shrouded in secrecy. It's time to yank the shroud off the Fed and shine some light on these events.

The Bank of America-Merrill Lynch deal is a case in point. New emails we have obtained from the Fed indicate that Fed officials may have attempted to keep other agencies in the dark about what was going on. A Fed email discusses not telling the Office of the Comptroller of the Currency what is happening. Others discuss how to minimize the amount of information given to the SEC. In a remarkable exchange, Fed officials note that an SEC official can be counted on to be "discrete" [sic].

I am not going to prejudge these issues. At this point we are not even close to finishing this investigation.

Bank of America's CEO Ken Lewis gave us his story, now it's Fed Chairman Bernanke's turn. Next it will be former Treasury Secretary Hank Paulson.

We need to get all the facts out on the table before we are in a position to say what happened and when. But I promise you this: we will follow this investigation wherever it leads and we will do our best to make sure the facts get out on the table where everyone can see them, by subpoena if necessary.

I want to thank Chairman Bernanke for being here and I look forward to his testimony.