For immediate release: Thursday, September 10, 2009
Contact: Jenny Rosenberg, 202-225-5051

Chairman Towns Calls on Bank of America to Stop Stonewalling and Repay the Taxpayers

Bank yet to acknowledge it owes taxpayers for key bailout provision

Washington, D.C. — Chairman Edolphus "Ed" Towns (D-NY) today released a letter from Bank of America (BOA) CEO Kenneth Lewis in which BOA refuses to acknowledge its agreement with the United States Government over "insurance" or "ringfencing" the bank requested as part of its January 2009 bailout.

"Bank of America has conveniently erased from its memory the terms of the ringfencing agreement. It seems that the bank wants to have it both ways – all the benefits of government insurance without having to pay a dime for all of its benefits," said Chairman Towns. "I urge Bank of America to put an end to this stonewalling by acknowledging the ringfencing agreement, and to quickly and effectively resolve this dispute with the Federal government."

Chairman Towns initially wrote Mr. Lewis on July 14, 2009, expressing concern over BOA's failure to honor the agreement, and to pay back the government for the agreed upon insurance. Currently, BOA is disputing the Department of Treasury's claim that the bank owes the Federal government for financial benefits it received as a result of the ringfencing agreement.

The Chairman's July letter stated, "If you or anyone at Bank of America made a commitment, verbal or otherwise, to enter into this deal with the United States Government, I urge you to honor that commitment to the government and the American people."

Despite BOA's current denial of a ringfencing agreement, the bank publicly announced the arrangement in a January 16, 2009 press release. The same release announced the $20 billion taxpayer bailout BOA received after having difficulty completing its purchase of Merrill Lynch.

Referring to the ringfencing protection in the press release, BOA stated, "…the government has agreed to provide protection against further losses on $118 billion in selected capital markets exposure, primarily from the former Merrill Lynch portfolio."

Mr. Lewis and Bank of America Chief Financial Officer Joseph Price also discussed the ringfencing benefit in a conference call on January 16, 2009, when the bailout was announced. During that call, Mr. Price referred to the ringfencing agreement as "…essentially insurance, against significant downside risk on a pool of $118 billion in capital markets related exposures." In contrast, Mr. Lewis' most recent letter to Chairman Towns refers to the ringfencing arrangement as a "proposed agreement."

Chairman Towns stated, “I am disappointed to learn that Bank of America has not resolved this matter. Nearly eight months after receiving a taxpayer bailout, Mr. Lewis’ letter offers no acknowledgement of the agreement despite the fact that Bank of America clearly stated they negotiated a ringfencing agreement with the Federal government.”

Earlier this year, Chairman Towns opened an investigation into the events surrounding the BOA-Merrill Lynch merger and the role the federal government played in the transaction. To date, the Committee has held three hearings on the Bank of America-Merrill Lynch merger, receiving testimony from BOA CEO Kenneth Lewis, Federal Reserve Board Chairman Ben Bernanke and then-Treasury Secretary Henry Paulson. Chairman Towns also subpoenaed internal email communications and other documents from the Federal Reserve.

A copy of Mr. Lewis’ September 9, 2009 response to Chairman Towns is attached.

A copy of Chairman Towns’ July 14, 2009 letter to Mr. Lewis is attached.

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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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July 14, 2009

Mr. Kenneth D. Lewis
Chief Executive Officer and President
Bank of America Corporation
Bank of America Corporate Center
100 N. Tryon Street
Charlotte, NC 28202

Dear Mr. Lewis:

I am troubled by a Bloomberg News report issued today which states that Bank of America is refusing to compensate the Federal government for the $118 billion in financial protection the U.S. provided to Bank of America in January 2009. By all accounts, this announcement of this so-called "ring-fencing" of Bank of America's toxic assets provided financial stability to Bank of America at a very crucial time for the company.

This agreement was obviously beneficial to Bank of America. You reported it to the public in your earnings press release issued on January 16, 2009, and it was discussed by you personally on a Bank of America earnings conference call with investors on the same date. In addition, documents that this Committee uncovered through its investigation of the Bank of America-Merrill Lynch acquisition suggest that Bank of America requested this backstop.

Apparently, Bank of America believes it has the right to back out of this deal with the government because the agreement was never signed. If this is true, I must note the irony of such an argument. As you have stated under oath, Federal Reserve Chairman Ben Bernanke and then-Treasury Secretary Hank Paulson made verbal commitments to you in December of 2008 to provide Bank of America with billions of taxpayer dollars to help your bank absorb the losses at Merrill Lynch. What would have happened to Bank of America if the government had not honored the verbal commitments you say were made to you? What would you have thought of Chairman Bernanke and Hank Paulson if they had backed out of their verbal commitment to you?

If you or anyone at Bank of America made a commitment, verbal or otherwise, to enter into this deal with the United States Government, I urge you to honor that commitment to the government and to the American people. It is the right thing to do.

Please provide me with an update no later than July 16, 2009, as to the current status of this dispute with the government.

Should you have any questions regarding this request, please contact John Arlington or Christopher Staszak of the Committee staff at 202-225-5051.

Sincerely,

Edolphus Towns
Chairman

cc: Darrell Issa, Ranking Minority Member
Committee on Oversight and Government Reform

September 21, 2009

Hon. Edolphus Towns, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Towns:

I write in further response to your letter of July 14, 2009, requesting an update on the status of negotiations to terminate a proposed agreement between Bank of America Corporation and the United States Government to provide a guarantee in the event of unusually large losses on an asset pool of up to $118 billion in financial instruments.

As I explained in my letter of September 9, we have been in discussions with the Government since April regarding an appropriate financial resolution of the above-referenced matter. I am pleased to inform you that today, we reached an agreement with the Treasury Department, Federal Reserve and Federal Deposit Insurance Corporation. A copy of the agreement is attached to this letter.

We appreciate your interest and leadership, and the interest of the Committee, in oversight of this issue and other matters of importance to the American taxpayers. Please let us know if we can be of any further assistance.

Sincerely,

Kenneth D. Lewis
Chief Executive Officer and President

cc: Hon. Darrell E. Issa, Ranking Member

Enclosures

THE WALL STREET JOURNAL.
WSJ.com

NOVEMBER 17, 2009

Bank of America Threatened to Walk Away From Merrill Deal

By MICHAEL R. CRITTENDEN

WASHINGTON -- Bank of America Corp.'s lawyers told its executives that it would be difficult for the bank to pull out of its deal to buy Merrill Lynch & Co., but the executives still threatened to walk away, prompting the government to provide another $20 billion in aid to get the merger done.

U.S. House lawmakers Tuesday are expected to grill BofA's Brian Moynihan and other officials over handwritten notes and memos from the bank and its outside counsel, which were written when Bank of America was considering pulling out of the Merrill deal.

Rep. Edolphus Towns (D, N.Y.), chair of the House Oversight and Government Reform Committee, has suggested the high-stakes negotiations between government officials and Bank of America may have been a "shakedown" to get more aid from the government. Bank of America disputes such a characterization.

In a series of high-profile hearings, the panel has heard from former Treasury Secretary Henry Paulson and has splashed the emails of Federal Reserve Chairman Ben Bernanke. It also contributed to the recent decision by BofA Chief Executive Kenneth Lewis to step down.

The spotlight comes at an inopportune time for Mr. Moynihan, president of Bank of America's consumer and small business banking segment. He and Chief Risk Officer Gregory Curl are internal front-runners to take over from Mr. Lewis.

The panel is expected to press him about his role in Bank of America reaching a conclusion it could abandon the Merrill deal, according to people familiar with matter. Mr. Moynihan was named general counsel at the height of the bank's deliberations on the matter.

Tuesday's hearing could be the final chapter in a months-long effort by the panel to shed light on a key event of the financial crisis: the negotiations over whether BofA would complete the Merrill acquisition.

Key to the hearing will be new documents obtained by investigators that show uncertainty on the part of the bank's outside lawyers about its ability to successfully abandon the Merrill deal. Lawyers at Wachtell, Lipton, Rosen & Katz raised a number of doubts about the bank invoking a "material adverse change" clause—the required legal basis for walking away-saying in a Dec. 15 memo "we would need more data to analyze this."

Two days later, Mr. Lewis called Mr. Paulson and warned that the bank might abandon Merrill because of mounting losses, citing its willingness to invoke the clause.

Bank of America spokesman Larry Di Rita said the documents don't tell the complete story of the bank's deliberations. "There was alignment or consensus among outside counsel, internal counsel, and the senior leaders of the company that there was a good-faith basis for a MAC," Mr. Di Rita said.

Other documents obtained by the panel suggest Wachtell lawyers came around on the idea of invoking the clause. One attorney said in handwritten notes Dec. 20 he was "warming to the case" for the clause, according to people familiar with the documents.

Write to Michael R. Crittenden at Michael R. Crittenden@wsj.com

Bank of America Completes Repayment of TARP

CHARLOTTE, N.C., Dec. 9 /PRNewswire/ -- Bank of America today sent the U.S. Treasury $45 billion to repay the U.S. taxpayers' entire investment in the company as part of the Troubled Asset Relief Program (TARP). Repayment followed the successful completion of a securities offering.

(Logo: http://www.newscom.com/cgi-bin/prnh/20050720/CLW086LOGO-b)

As previously announced, the company sold 1.286 billion common equivalent securities, generating gross proceeds of approximately $19.29 billion. The offering was priced at $15.00 per common equivalent security and its proceeds, along with existing corporate funds, were used to repurchase all the preferred stock issued to the U.S. Department of the Treasury. The company also paid the government $190 million in accrued dividends on the repurchased preferred securities.

In repaying TARP, Bank of America today repurchased all 600,000 shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series N; all 400,000 shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series Q; and all 800,000 shares its Fixed Rate Cumulative Perpetual Preferred Stock, Series R. The U.S. Treasury continues to hold warrants to buy Bank of America common stock issued as part of the TARP investments.

"We owe taxpayers our thanks for making these funds available to the nation's financial system and to our company during a very difficult time," said Chief Executive Officer and President Kenneth D. Lewis. "Now that we have cleared this significant hurdle, which demonstrates the strength of our company, we look forward to continuing to play a key role in the economic recovery and helping to meet the changing needs of our customers and clients."

Following the completed securities offering, Bank of America also would increase equity by approximately $3 billion through asset sales to be approved by the Board of Governors of the Federal Reserve and contracted for by June 30, 2010.

As previously announced, Bank of America also agreed to raise up to approximately $1.7 billion through the issuance of restricted stock in lieu of a portion of incentive cash compensation to certain Bank of America associates as part of their normal year-end incentive payments. Year-end incentive payments are dependent on the performance of the company, business units and individuals and have not yet been determined. This initiative also aligns associate interests with the company's performance.

With the repayment of TARP funds and these other initiatives, the company's Tier 1 Capital ratio would be 11.0 percent, pro forma based on the September 30, 2009 ratio of 12.5 percent. The Tier 1 Common capital ratio would be 8.4 percent, pro forma based on the September 30, 2009 ratio of 7.3 percent.

BofA Merrill Lynch served as the sole bookrunner for the common equivalent securities offering and UBS Investment Bank served as co-manager and qualified independent underwriter.

Bank of America

Bank of America is one of the world's largest financial institutions, serving individual consumers, small- and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. The company provides unmatched convenience in the United States, serving approximately 53 million consumer and small business relationships with 6,000 retail banking offices, more than 18,000 ATMs and award-winning online banking with more than 29 million active users. Bank of America is among the world's leading wealth management companies and is a global leader in corporate and investment banking and trading across a broad range of asset classes serving corporations, governments, institutions and individuals around the world. Bank of America offers industry-leading support to more than 4 million small business owners through a suite of innovative, easy-to-use online products and services. The company serves clients in more than 150 countries. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

www.bankofamerica.com

Photo: http://www.newscom.com/cgi-bin/prnh/20050720/CLW086LOGO-b

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