Testimony of

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Chairman Dodd, Ranking Member Shelby and members of the Committee, my name is Anne Finucane and I am here today to discuss the Emergency Economic Stabilization Act and Bank of America's participation in the Treasury Department's Capital Purchase Program. We appreciate your concerns over the use of the TARP investment, and we share your desire to ensure that the funds are deployed to strengthen the economy in these difficult times.

Let me begin by providing you some facts about Bank of America's financial condition and the cash investment we received from the Department of Treasury and the preferred stock we issued for that investment. I will then turn to the question of how this investment has affected our operations, in particular lending and compensation.

Performance

Let me start with performance. Our net income was $5.80 billion through the first three quarters of 2008, making us one of the most profitable financial services companies in the world. We earned $1.18 billion in the most recent quarter. While this year has offered significant challenges, Bank of America has served as a source of stability to the financial system.

Bank of America has used its strong financial condition to act constructively in the current financial crisis.

- In the third quarter, Bank of America completed the acquisition of Countrywide Financial Corporation, an acquisition encouraged by the federal government but consummated without any taxpayer support. We are also working hard to help customers who may be in trouble. We have developed important programs that are projected to modify over $100 billion in loans; enough, over three years, to help keep up to 630,000 borrowers in their homes.

- On September 15, 2008, Bank of America announced its acquisition of Merrill Lynch, an acquisition also encouraged by the federal government but executed without the promise or expectation of any taxpayer assistance.

The Treasury Investment

On October 13th, the Treasury Department convened a meeting with nine banks and presented them with the terms for investment by the Treasury Department in these institutions through its Capital Purchase Program. Bank of America did not need such an investment, and did not seek such an investment. In fact, Bank of America had raised $10 billion by issuing common stock to investors one week before being informed that the Treasury would be investing in the company. The Treasury insisted upon universal acceptance of its investments to prevent the market from viewing acceptance of the investment as a sign of weakness. Bank of America agreed to the investment to support a broader effort to resolve the financial crisis, and we are comfortable with that decision.

Pursuant to the agreement negotiated with Treasury, on October 28th Bank of America Corporation received $15 billion from the Treasury Department in exchange for 600,000 shares of Fixed Rate Cumulative Perpetual Preferred Stock, on which Bank of America will pay dividends of 5% per year for the first five years and 9% per year thereafter. Bank of America also issued a warrant to purchase 73,075,674 shares of common stock at $30.79 per share with a 10-year term. The government will have the option to buy common stock through this warrant up to 15% of the value of its investment after five years. We fully expect that this investment will be a profitable one for the Treasury, and ultimately for the taxpayers.

<u>Effect on Treasury Investment on Compensation and Lending Practices</u>

Let me now discuss our lending and compensation practices, and how they have been affected or unaffected by the Treasury's preferred stock investment.

Lending

Policymakers have expressed concern that consumer credit is drying up, and that reduced access to credit will dampen consumer spending and exacerbate the current recession. These are significant concerns, and we share them. Others have gone further, however, to suggest that banks that received an investment from the Treasury Department should be encouraged – or even required – to lend the full amount of that investment. Here, the reality is far more complicated.

Banks receiving an investment from Treasury are prohibited from returning those funds – and any other funds, including earnings -- to shareholders through increased dividends or share repurchases; as I will describe in a moment, Bank of America (and I assume other banks) will not be distributing that money to employees through excess compensation. Thus, banks are left with two basic choices.

First, they can hold the preferred stock as capital, making them more safe and sound and better insulated against loss. The financial regulators have urged all institutions that they oversee to improve their Tier 1 capital positions, either by raising capital or shrinking their balance sheets (that is, for a commercial bank, lending less). Through private sector capital raising, the Treasury investment, and diligence in reducing under-earning assets, we have over the past few months improved our Tier 1 capital ratio from 7.5% to more than 9% -- prudently above the regulatory minimum for being considered well capitalized.

Second, banks can deploy Treasury funds by lending or engaging in other capital-intensive forms of credit intermediation. As with any other bank, Bank of America has every incentive to do so, as lending is our core business and a crucial component of our business. Thus, our shareholders' interests are clearly and closely aligned with those of policymakers.

In other words, we are open for business.

Business lending remains strong and we have continued making loans to states and municipalities in a time of extraordinary uncertainty. We have lived up to our commitments to fund capital markets transactions. We have put our capital at risk both to earn returns for our shareholders and to help stabilize the financial system.

Most importantly, in our consumer business, we originated more than $50 billion in mortgage loans in the third quarter of 2008, as well as more than $7 billion in home equity loans. In just the three months since the merger with Countrywide was finalized, we have helped more than 250,000 Americans purchase a home or save money on the home they already own.

We also have been purchasing significant amounts of mortgage-backed securities in the market. This activity is providing liquidity to the market, and ultimately helping to assist the mortgage market.

That said, we are lending less than we were a year ago. Consumer demand for lending has decreased, as consumers are de-leveraging. And one clear lesson from the recent mortgage crisis is that neither consumers nor banks benefit when banks ignore or misjudge risk and make loans that consumers are unable to repay. Indeed, doing so is an unsafe and unsound banking practice, rightfully discouraged by banking regulators. In the current recession, we have seen delinquency and default rates on credit card and other types of unsecured consumer lending rise significantly. The same is true in small business lending. And mortgage lending obviously is very challenging. This economic reality requires that we continue to underwrite to ensure that we are lending only to those who can afford it, at rates that compensate us for higher risk of default.

Keeping People in their Homes

Finally, in addition to new lending, I should also note that Bank of America is taking major, industry-leading steps to work out troubled loans and keep people in their homes. As I noted at the outset, we have developed important programs for customers in trouble that are projected to modify over $100 billion in loans -- enough, over three years, to help keep up to 630,000 borrowers in their homes.

The latest program, announced on October 6th, was developed together with several State Attorneys General and is designed to achieve affordable and sustainable mortgage payments for borrowers who financed their homes with subprime loans or pay option adjustable rate mortgages serviced by Countrywide. Foreclosure sales will not be initiated or advanced for borrowers likely to qualify until Bank of America has made a decision on the borrower's eligibility.

The centerpiece of the program is a proactive loan modification process to provide relief to eligible borrowers who are seriously delinquent or are likely to become seriously delinquent as a result of loan features, such as rate resets or payment recasts. In some instances, innovative new approaches will be employed to include automatic streamlined loan modifications across certain classes of borrowers. The program utilizes an affordability equation to qualify borrowers for loan modifications at a targeted first year mortgage debt to income ratio of 34%.

We expect this new program to provide up to $8.4 billion in additional interest rate and principal reductions for up to 400,000 Countrywide Financial Corporation customers nationwide (if all eligible borrowers choose to participate).

While this new program promises significant benefits for homeowners, I should stress that Bank of America has already taken significant steps in this area. *Right now*, we have over 5,600 home retention staff working with borrowers. In the first ten months of 2008, the Home Retention Division completed over 214,000 retention workouts, a 214% increase over the first 10 months of 2007. We are working out two troubled loans for every one on which we foreclose.

Compensation

Let me say a few words about compensation at Bank of America. It is a story of which we are proud.

The Directors' Compensation and Benefits Committee is responsible for setting the compensation of the senior leadership of the Bank. The Compensation Committee has established a pay-for-performance mandate, resulting in a compensation program that (i) aligns our executive officers' interests with those of our stockholders, (ii) provides pay that varies depending on performance; and (iii) can be easily understood by our stockholders.

Some have asked whether money from the Treasury investment will be used to pay compensation to employees. It will not. First, Bank of America has sufficient earnings to pay its employees without government support. Second, the amount of that compensation will not rise (or fall) as a result of that investment.

Not only can Bank of America therefore afford to pay compensation without government assistance, the Treasury's investment will not affect the compensation paid. Our compensation process looks to the results of the company – that is, the income statement, not the balance sheet – in determining compensation.

Employee compensation for 2008 will be determined in the same way it would have been in the absence of the Treasury's investment: based on the performance of the individual employee, the employee's business unit, and the company as a whole.

Let me illustrate how this works at Bank of America. Net income in 2007 was significantly below plan at Bank of America. As a result, total compensation for performance year 2007 for our executive officers was down approximately 30% to 50% compared to performance year 2006.

Compensation for 2008, including bonuses for executive officers, has not been finalized yet, as fourth quarter results need to be considered. You can rest assured, however, that the presence or absence of a preferred stock investment will not affect the incentive compensation our executives and employees receive.

If our financial results for 2008 are below the results for 2007, it is reasonable to conclude that our incentive awards will be less for 2008 than for 2007, consistent with our pay-for-performance principles.

Conclusion

I appreciate the opportunity to appear before the Committee, and welcome any questions you might have.