Opening statement of
Dennis J. Kucinich
Chairman, Domestic Policy Subcommittee
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This investigation started with questions: how could a merger of the largest bank and second largest investment bank in the country require a government bailout, only weeks after shareholders had voted to approve it as a private deal? Was it true that the financial situation shifted so dramatically in that short amount of time? Or did top management know, or should they have known, about the changing situation much earlier? Did they fail to make necessary disclosures to the shareholders?

When we asked Ken Lewis, Bank of America's CEO, about this at our first hearing, he told us that he relied on the advice of counsel and he relied on forecasts from Merrill Lynch. Recently, in response to our requests, Bank of America produced to us the documents on which they based their decision not to make additional shareholder disclosure as well as the notes from some of the discussions that led to that decision. This included the actual forecast that was created by Merrill Lynch and used by Bank of America's lawyers as a basis to determine if there was something shareholders should know before they approved the merger.

Our examination of this forecast and how it was used should sound alarms about how Wall Street really operates. The forecast, when it was created by Merrill Lynch on November 12, revealed that in October the company had absorbed in just one month more losses than in the entire previous quarter, and half the amount of losses in the fourth quarter of the previous year. Yet, incredibly the forecast omitted to make any projections of how the most troublesome investments – collateralized debt obligations, subprime mortgage backed securities, credit default swaps – would perform in the next two months, November and December. The forecast assumed that those investments would have zero effect on Merrill Lynch's bottom line for two-thirds of the remaining fourth quarter.

Bank of America saw the deficiency in the document, but they have not shown us that they did any actual analysis to make up for the Merrill omissions. On the contrary, the evidence we have suggests that Bank of America pulled a number out of thin air. Far from being consistent with the actual experience of October, or what they knew about the third quarter, the guess wishfully assumed that the markets for CDOs and CDS would be significantly better in November and December. It assumed that

Merrill Lynch would almost break even for November, thereby spreading October's bad results over two months.

Then the attorneys at Bank of America and Wachtell Lipton went to work. They did not question the financial information they were given. They began with the assumption that additional shareholder disclosure was necessary, and they discussed what kind of disclosure they would make. But after studying the question for a week, they decided that the news was not sufficiently out of line from past performance and previous disclosures to warrant further shareholder disclosure. Thus, on the advice of counsel, Bank of America did not make further disclosures to its shareholders in advance of the merger vote.

Within only weeks, however, reality crowded out the wishful thinking. Far from having a small effect, those CDOs and other exotic investments continued to lose large amounts of money. Bank of America's guess, which had played a significant role in the decision not to make additional disclosures to shareholders, proved to be billions off the mark. That's when Bank of America went to the U.S. Government for a rescue.

This investigation has opened a rare window onto the management suite of the largest bank in the country. Here is a story of how Bank of America's top executives allowed guesswork to masquerade as expert knowledge, and how numbers pulled out of the air -- without any actual analysis -- served as the basis for corporate decisions made about other people's money—shareholders' money. Unfortunately for all of us, I doubt Bank of America is unique. Look around us to see what the geniuses of Wall Street have wrought. The house of cards they built has buried our constituents under debts they can't pay, record rates of foreclosure, and joblessness. If you think these bankers and financiers deserve the millions of dollars they are paid, and the bonuses they award themselves, if anyone thinks they can be trusted with running companies that are too big to fail, think again! Look at how they make decisions! This is how Wall Street really works.