CtW Investment Group

February 6, 2008

Robert L. Tillman
Member, Asset Quality Committee
Bank of America Corporation
Attention: Corporate Secretary
101 South Tryon Street
NC1-002-29-01
Charlotte, North Carolina 28255

Dear Mr. Tillman:

Bank of America's failure to manage mortgage-related risk cost its shareholders $43 billion in 2007, a 19% decline that wiped out all of the shareholder value created since February 2006. Among U.S. financial institutions, only Citigroup shareholders have lost more value as a result of the mortgage crisis. Last week's strong share price gains pared some of those losses but, as a diversified financial services company, Bank of America's acute vulnerability to the mortgage meltdown has been an especially unwelcome surprise for investors.

With Bank of America's 2008 director election less than three months away, we call on you, as a member of the Asset Quality Committee of the Board of Directors (the "Committee") in 2005, 2006 and 2007 to describe the actions you took during that period to understand and assess Bank of America's underlying exposure to mortgage-related risk and satisfy yourself that management was taking appropriate steps to control such exposure. Absent a compelling explanation, we intend to recommend that shareholders vote against your re-election at Bank of America's 2008 annual meeting. The crux of our concern is as follows:

1. By mid-2005 it was apparent that mortgage lenders were loosening lending standards and that an overheated U.S housing market was at risk of collapse. Despite numerous red flags, it appears that management failed to control Bank of America's substantial mortgage-related risk, especially relating to its exposure to collateralized debt obligations (CDOs), until late 2007. By then it was too late to avoid huge losses. In fact, it appears Bank of America substantially increased its mortgage-related exposure in 2006 and 2007, including adding about $8 billion in CDO exposure even as the subprime market went into freefall.

2. Asset Quality Committee members should have recognized that the risks of a housing collapse had risen dramatically by late 2005 and thus taken particular care to satisfy yourselves that management was taking steps to monitor and control Bank of America's exposure. As Mark Adelson, Head of Structured Finance Research at Nomura Securities, warned in September 2005: "Even the possibility of a [housing] bubble burst should lead [investors] to a defensive position." (*Asset Securitization Report,* September 20, 2005)

3. The structure and composition of the six-member Asset Quality Committee may have contributed to its failure. The committee appears to have overlapping responsibilities with the Audit Committee, but no shared members. In addition, two members—

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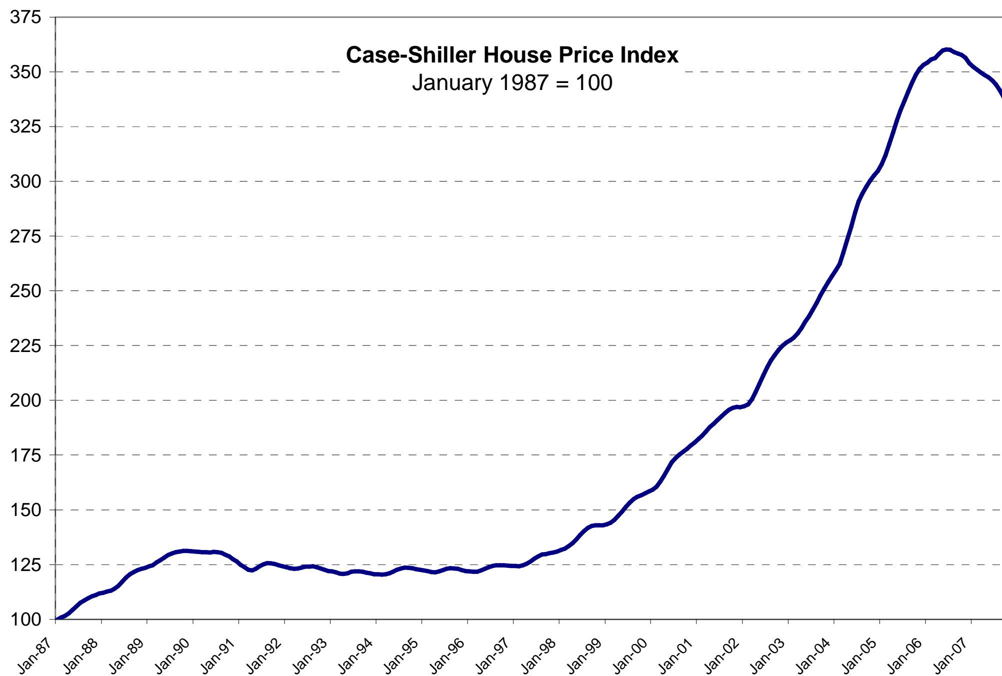
Frank P. Bramble, Sr. and you—are not independent, while Committee Chair, Jackie M. Ward, appears to be overextended given her roles as a director of six public companies, with significant committee responsibilities at each, in addition to other business commitments.

The CtW Investment Group works with pension funds sponsored by unions affiliated with Change to Win, a coalition of unions representing nearly 6 million members, to enhance long-term shareholder value through active ownership. These funds, together with public pension funds in which CtW union members participate, have about $1.4 trillion in assets and are substantial long-term Bank of America shareholders. We detail our concerns further below.

The Warning Signs Were There

By mid-2005, it was apparent that a housing bubble had developed and that the risks of a severe mortgage downturn had increased dramatically. Fueled by historically low interest rates, the creation of mortgage products targeting less credit-worthy borrowers and abundant liquidity from a booming secondary market for securitized mortgages, home prices had virtually doubled over the previous five years (see below graph).



Housing starts, which had increased every year since 2000, peaked in second quarter 2005. Mortgage interest rates began rising, with the average rate on a conventional 30-year fixed rate loan jumping from 5.6% to 6.7% between June 2005 and June 2006. And mortgage lenders were loosening their lending standards and increasingly using novel loan products, including interest-only mortgages, option adjustable-rate mortgages and no documentation loans.

Bank of America's then CFO, Al de Molina, acknowledged the changed risk environment in July 2006, when he said, "as I have been saying now for probably 18 months, the biggest question

mark in my mind with regard to the economy was the effect of the mortgage slow-down generally, both through the slow-down in mortgage equity withdrawal and also what happens to those that have ARM products that will reprice up."

But one need not have been the CFO or director of a bank to know that a national housing bubble had developed and could burst. One need only have read the news, where a growing number of economists, investment analysts and public policy experts were sounding the alarm:

- On May 27, 2005, economist Paul Krugman of the *New York Times* said he saw "signs that America's housing market, like the stock market at the end of the last decade, is approaching the final, feverish stages of a speculative bubble."
- On June 9, 2005, Federal Reserve Chairman Alan Greenspan, while downplaying risk of a national housing bubble, acknowledged in testimony to the Joint Economic Committee that he saw "signs of froth in some local markets where home prices seem to have risen to unsustainable levels."
- On July 26 2005, *The Wall Street Journal* reported that "Mortgage lenders are continuing to loosen their standards, despite growing fears that relaxed lending practices could increase risks for borrowers and lenders in overheated housing markets." The article cited increases in novel loan products, including interest-only mortgages, option adjustable-rate mortgages and no documentation loans.
- By December 2005, even some CDO traders warned the bubble could burst. Jason Schechter, then head of CDO trading at Lehman Brothers, echoed other participants at the Opal Financial Group CDO Summit when he said: "What concerns me though is: is this liquidity here to stay, or are we at risk for a sizable downturn?" (*Asset Securitization Report*, December 12, 2005)

While Bank of America and many of its peers failed to heed these warnings, a number of firms did take action to reduce their mortgage-related risk exposure. Goldman Sachs, for example, began aggressively reducing its mortgage-backed securities exposure in late 2006, both by reducing inventory and hedging. Morningstar recently named PIMCO's Bill Gross the best fixed-income fund manager in 2007, lauding him for avoiding exposure to subprime securities and for anticipating the effect that the decline in home prices would have on the broader economy and corporate bonds.

Despite these Red Flags, Bank of America Failed to Control Its Mortgage-Related Risk

As a leading underwriter of CDOs in the U.S., and one of the largest residential originators by loan volume for home mortgages and home equity loans, Bank of America has substantial exposure to mortgage-related risk. Despite this concentrated exposure, management failed to take adequate steps to manage this risk in response to the warning signs of late 2005 and 2006. In fact, Bank of America substantially increased its exposure to mortgage risk in 2006 and into 2007 through its loan portfolio, Countrywide Financial investment and CDO underwriting.

In our view, the bank's ill-timed decision to expand its residential loan exposure calls into question management's judgment and the effectiveness of the board's Asset Quality Committee.

But it is the dramatic increase in the bank's CDO exposure in 2007, as the market for such securities began its collapse, which has blindsided shareholders and exposed an especially egregious failure to manage mortgage-related risks on the part of the bank's management and the board.

Residential Loans

"We clearly have identified mortgage as a growth area, [and] …we think we have a much greater capacity to grow there and we will be dealing with that in the next year or two," then-CFO de Molina explained to investors in July 2006. As a result, in 2006 the bank's home mortgage portfolio jumped 32% to $241 billion and its home equity portfolio increased by 25% to nearly $88 billion, while the remainder of the loan portfolio grew by only 18%. In 2007, as the housing downturn accelerated, home mortgage portfolio growth slowed to 14%, but the home equity portfolio—the bank's highest risk home loan product—jumped by nearly 31%, again outpacing the 23% growth in non-residential loans.

The consequences of Bank of America's ill-timed expansion of its residential loan exposure are increasingly apparent. On January 22, 2008, the bank disclosed that its fourth quarter provision expense increased $1.7 billion, largely due to a $1.3 billion addition to the reserve for credit losses. In addition, non-performing assets surged to $5.9 billion, or 0.68% of total loans, leases and foreclosed properties, at year-end 2007 from $1.9 billion, or 0.26% of total loans, at year-end 2006.

The home equity portfolio performed especially poorly, accounting for 26% of the $4.1 billion increase in non-performing assets despite representing only 13% of total year-end loans. As a result, non-performing assets represented 1.17% of total home equity loans at year-end, up from 0.33% at year-end 2006 (see table below).

Non-Performing Assets

$millions	12/31/2006	12/31/2007
Residential Mortgage	660	1,999
% of Residential Mortgage Portfolio	0.27%	0.73%
Home Equity	291	1,340
% of Home Equity Portfolio	0.33%	1.17%
All Other	905	2,609
% of All Other Portfolio	0.23%	0.54%

In addition, Bank of America disclosed that home equity charge-offs more than tripled in the fourth quarter, from 20 basis points to 63 basis points, and that 21% of home equity loans had a combined loan to value ratio above 90%, versus 17% in the third quarter. This is the same home equity portfolio that Kenneth D. Lewis, Bank of America's Chairman, Chief Executive Officer and President, described as "pristine" as recently as October 18, 2007 in response to an analyst's concern about declining credit quality.

Finally, as you know, Bank of America also dramatically boosted its mortgage risk in August 2007 by investing $2 billion in Countrywide Financial, the nation's largest prime and subprime mortgage lender. While it may be too soon to judge the long-term merits of this investment—and of Bank of America's subsequent agreement announced last month to acquire Countrywide for $4 billion—it has already lost 70% of its value, or $1.4 billion, in less than six months.

CDO Underwriting and Liquidity Support

Bank of America has boasted that in 2006 it completed 38 funded CDOs globally totaling over $23 billion and was named "US CDO House of the Year" by Thomson Financial's International Financing Review. What the bank failed to disclose in detail until fall 2007, however, was its substantial exposure to mortgage risk, including subprime risk, due to its CDO underwriting activities. Even more troubling, this exposure increased dramatically during the first nine months of 2007, when the market for these securities was collapsing.

Bank of America first disclosed its total CDO-related risk exposure in its third quarter 2007 Form 10Q filed on November 9. According to that report, CDO-related risk exposure totaled $24.5 billion on a gross basis, or $19 billion net of hedges, at September 30, 2007. The report only discloses limited historical (12/31/06) data, but it appears that the bank's CDO exposure from super senior liquidity commitments more than doubled during the first nine months of 2007, from $7.7 billion to $15.5 billion.

It is difficult to comprehend how the bank could have added $7.8 billion to its CDO exposure when the market for subprime mortgages, a key component of most of the bank's CDO exposure, was already in trouble. We believe the explanation is that management aggressively offered liquidity support, in the form of "liquidity puts", in order to prop up the bank's CDO underwriting in the face of slowing demand. As disclosed in the bank's third quarter 2007 10Q, "The Corporation is obligated under the written put options to provide funding to the CDOs by purchasing the commercial paper at predetermined contractual yields in the event of a severe disruption in the short-term funding market."

In other words, the bank offered the buyers of the securities it issued to finance its CDOs the right to sell those securities back if there was no other market for them. These "liquidity puts" increased from $2.1 billion to $10 billion over the first nine months of 2007 and—together with similar liquidity support provided for the $5.5 billion in assets held by the conduit the bank administers at both December 31, 2006 and September 30, 2007—appear to account for a large part of the subsequent $5.3 billion writedown of its CDO exposure.

We question whether management or the board understood the risks the bank was taking in aggressively offering liquidity puts, and whether the decision was even reviewed by the Asset Quality Committee. This is especially troubling since Bank of America appears to have been among the most active providers of liquidity puts. Thus, while it was the sixth largest underwriter of CDOs in 2006 and 2007, only Citigroup issued a greater value of liquidity puts, according to a November 2007 research report issued by Bank of America itself.

As you know, the $5.3 billion CDO writedown and $1.7 billion loan loss provision led to a 95% collapse in fourth quarter earnings and have significantly weakened the bank's balance sheet. At December 31, 2007, the bank's Tier 1 ratio was only 6.87%, down from 8.6% at December 31, 2006 and well below the bank's 8.0% Tier 1 target. The proposed Countrywide buyout will further weaken the balance sheet, prompting Moody's to announce on January 11 that it will review Bank of America for a possible downgrade based on its ability to raise capital after completing that buyout. While the subsequent sale of $12 billion in depositary shares and convertible preferred stock provides the bank with a desperately needed cash infusion, it comes at a high cost to shareholders, as it is expected to dilute earnings by an estimated $0.11 per share.

Finally, it's important to note that, even after the fourth quarter writedowns, Bank of America continues to have approximately $17 billion of gross exposure to CDO-related risk. While $5 billion of this exposure is insured, this too may be at risk given reported credit concerns with the insurance companies—including MBIA, Ambac and ACA Capital—which may be the counterparties on these hedges (Bank of America has yet to disclose its counterparties).

Where was the Asset Quality Committee?

While it is the CEO's job to manage overall exposure to risk, the NYSE listing requirements mandate that it is the responsibility of the Audit Committee, or other designated board committee, to review the firm's major financial risk and assess the steps management has taken to control such exposure. Moreover, while directors cannot be expected to understand every technical aspect of an underlying business, they still must acquire and maintain sufficient knowledge and understanding of the company's business to properly discharge their duty of care.

At Bank of America, the board has designated the Asset Quality Committee to be responsible for overseeing credit concentrations, including credit risk inherent in selected products and businesses, while the Audit Committee maintains responsibility for overall policies with respect to risk assessment and risk. We believe that Bank of America's failed in these duties as they relate to the bank's exposure to mortgage-related risk in general and to complex, mortgage-backed derivatives in particular.

As *The New York Times* reported on December 21, 2007: "This year the leaders of some of the world's most respected financial institutions—leaders who are paid first and foremost to manage risk—have been caught either unaware or uninformed about giant risks their companies took. Their financial engineers concocted securities so complex that even the brainiacs cannot figure out what those investments are worth." As Kenneth Lewis acknowledged in December 2007, the "final write-downs of CDOs are unknowable."

The structure and composition of the six-member Asset Quality Committee may have contributed to its failure. First, unlike designated risk committees at the vast majority of public companies, Bank of America's Asset Quality Committee includes two directors—Frank P. Bramble, Sr. and you—who are not independent under the NYSE guidelines. We are concerned that the committee's lack of independence may have compromised its ability to rein in excessive risk taking by management, a particular concern at Bank of America given that Mr. Lewis has received substantial stock option grants as compensation over the past several years.

Many investors believe that stock options can encourage excessive risk taking by executives and prompt them to pursue strategies designed to promote short-term stock gains at the expense of sustainable value creation. The fact that Mr. Lewis grossed more than $170 million by cashing in stock options in 2006—a period when Bank of America's share price was near an all-time high and just prior to the mortgage meltdown—underscores this concern. In fact, excessive CEO compensation in general, and large stock option grants in particular, are the primary reasons that The Corporate Library has assigned a D rating to Bank of America's corporate governance.

Second, the Asset Quality Committee appears to have overlapping responsibilities with the Audit Committee, but no shared members. Splitting responsibility for risk oversight can create ambiguity with respect to specific areas of authority, while the lack of shared members exacerbates this concern by impeding communication and coordination between the committees. We can envision how this may have contributed to the Asset Quality Committee's failed oversight of the bank's CDO exposure since that exposure is within Banc of America Securities and not within the commercial bank that presumably is the main focus of the committee.

Finally, in addition to our concerns with director Bramble and you, we also have particular concerns with the committee's chair, Jackie M. Ward. Including Bank of America, Ms. Ward is a director of six public companies and sits on at least one key board committee at each, including being chair of four. In addition, Bank of America's "Annual Report of Bank Holding Companies—FR Y-6" submitted to the Federal Reserve for fiscal year 2006 lists her as a Director or Executive Officer of the following entities: ARLEDA, LLC; BMJ Real Estate LLC; ICS; INTEC Telecom Systems, PLC; Luna-C Leasing, LLC; Luna-C, LLC; Moon, Sun and Stars, Inc.; Moonsoon, Inc.; Orville LLC; SMS Holdings, Inc.; SMS Investment, LP; and SuMo Yachts, Ltd.

Given the significant time demands of public company boards, we question whether Ms. Ward would have the time to effectively monitor Bank of America's exposure to mortgage-related risk and fully understand its investment in complex derivatives, as well as carry out her many responsibilities as chair of the Asset Quality Committee. To the extent that her involvement with other, non-public entities requires significant time, these concerns are exacerbated. This may already have become an issue at Equifax, where she chairs the compensation committee and attended only 56% of the board meetings in 2006. For this very reason, many institutional investors have proxy voting policies that suggest directors should not be overextended.

In addition, we understand that The Corporate Library, a leading independent advisor on corporate governance, has assigned D ratings to the corporate governance of four of the companies on whose boards Ms. Ward sits—Bank of America, Equifax, Sanmina and Wellpoint—and C ratings to the other two—Flower Foods and Sysco. As chair of the corporate governance committees at Flower Foods, Sysco and Wellpoint, and as a member of that committee at Sanmina, she bears significant responsibility for the governance weaknesses at these firms.

Finally, we also understand that CalPERS is among a large, but as yet undisclosed, block of Sanmina shareholders that withheld their votes from Ms. Ward at the company's January 28, 2008 shareholder meeting. CalPERS based its vote on the company's continued severe stock

price underperformance and inclusion on the CalPERS 2007 Focus List. This is not the first time that shareholders withheld substantial support from her. At Equifax's 2006 shareholder meeting, shareholders withheld nearly a third of their votes from her, presumably due to the board's failure to submit the company's poison pill to a shareholder vote (that is the reason Institutional Shareholder Services cited in recommending that shareholders withhold votes from her).

Bank of America Shareholders Require a Detailed Explanation

In June 2007, Kenneth Lewis told Bloomberg, "The drag [on the U.S. housing market] stops in the next few months. It's just about over. We're seeing the worst of it." We appreciate Mr. Lewis's optimism, which in this instance proved misplaced, but expect the Bank of America board in general, and the Asset Quality Committee in particular, to independently assess his decisions and the information he provides in support of those decisions.

In preparation for Bank of America's 2008 director election, we believe shareholders are entitled to a detailed explanation as to what steps the Committee members took, individually and collectively, to: (1) understand Bank of America's exposure to mortgage-related risk through both its lending and CDO underwriting businesses; and (2) satisfy themselves that management was taking appropriate steps to control such exposure. Among the issues we would like Committee members to address:

- *Internal flow of information*. What information was routinely provided to you by management? How frequently was the information provided? Did you request additional information from management in response to mounting concerns with mortgage-related risk? What additional information did you request and when was it requested? Did the Committee meet regularly with the senior executives at the company with direct responsibility for measuring, analyzing and managing risk? How often did these meetings take place? Who was present at these meetings?

- *Coordination with the Audit Committee:* What mechanisms are in place to ensure clear lines of responsibility between the Asset Quality and Audit Committees given their potentially overlapping responsibilities for oversight of risk management? Which committee was responsible in 2006 and 2007 for reviewing risks associated with CDO underwriting and liquidity support?

- *Independent assessment of information*. What independent steps did you take to evaluate the information provided by management? Third-party advisors can serve as an important tool for directors to assess the quality of information they are receiving in the boardroom. Which, if any, outside firms were used by the Committee? When were they hired and what role did they play?

- *Committee deliberations and actions*. Did the Committee review management's decisions to provide liquidity support in connection with its CDO activities, and to significantly expand the provision of liquidity support in 2007? What additional actions, if any, did the Committee require management to take to control Bank of America's significant mortgage-related exposure? We are particularly interested in deliberations and actions

with respect to risk assessment, internal valuation models and hedging strategies. When did these actions occur?

We are not seeking an exhaustive set of documentation, but rather a cogent description of specific steps that you, as an incumbent director and member of the committee responsible for risk oversight, took to independently and pro-actively protect the interests of Bank of America shareholders from excessive exposure to mortgage-related risk. We have made similar requests of directors Ward and Bramble, the committee's chair and the other non-independent member of your committee.

We look forward to a timely response so that shareholders can properly assess the suitability of your candidacy.

Sincerely,

William Patterson
Executive Director

cc: Kenneth D. Lewis, Chairman of the Board, Chief Executive Officer, and President
Thomas M. Ryan, Chair of the Corporate Governance Committee