The New York Times

Business Day

Bank of America's Mortgage Deal Questioned

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Published: July 12, 2011

Eric Schneiderman, the New York attorney general, has asked for information about the $8.5 billion settlement agreed to late last month by Bank of America and representatives of 22 large investment firms holding soured mortgage securities, indicating that he may intervene to challenge the deal.

Associated Press

Eric Schneiderman, New York attorney general.

Letters sent by Mr. Schneiderman's office to the firms that agreed to the settlement point to concerns by the attorney general that the deal may have been struck without full participation by all investors who would be affected by its terms. The letters, obtained by The New York Times, were sent to BlackRock Financial Management, Metropolitan Life Insurance, Pimco, Goldman Sachs Asset Management and 18 other parties, asking for information "regarding participation by both your firm and clients" in the settlement.

A spokesman for Mr. Schneiderman declined to comment. But this request for information is part of a broad investigation that he has begun into all aspects of the mortgage bundling process that has led to billions of losses for investors.

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The proposed Bank of America settlement covers 530 mortgage pools issued by Countrywide Financial, the lender purchased by the bank in a distress sale in 2008. But the investment firms that agreed to the deal held interests in only about one-quarter of those pools, leading some investors to question its fairness. Furthermore, the proposed settlement does not allow investors who do not like its terms to opt out and bring their own suits against Bank of America. Any outstanding claims against the bank by investors who hold any of these securities would be extinguished under the deal.

The agreement could also speed up the foreclosure process, pushing more delinquent borrowers out of homes more quickly.

The terms of the proposed settlement appear to be favorable to Bank of America. Given that the unpaid principal amount of the mortgages covered by the settlement is $174 billion, the $8.5 billion to be paid by Bank of America represents just under 5 cents on the dollar. On June 29, when the deal was announced, Bank of America's shares closed almost 3 percent higher.

A final court hearing to approve the settlement is scheduled for Nov. 17. One investor, Walnut Place L.L.C., has already objected to the terms of the settlement in filings made last week with the court. Earlier this year, Walnut Place sued Bank of America, contending that many of the loans in the pools it invested in breached the underwriting characteristics and other representations made by Countrywide when it sold the pools. Under the terms of the Bank of America deal, this lawsuit will not be viable.

In objecting to the deal, lawyers for Walnut Place argued that the Bank of America settlement was negotiated in secret by Bank of New York Mellon, trustee for the Countrywide mortgage pools. As negotiator, Bank of New York Mellon was also conflicted, Walnut Place contends, because Bank of America has agreed to cover all the trustee's costs and liabilities related to the settlement.

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"It is very unusual, to say the least, for a trustee that says it is representing the interests of the beneficiaries of a trust, to demand and obtain an indemnity from the very party that is adverse to that trust and its beneficiaries," lawyers for Walnut Place wrote in its filing.

David J. Grais, a lawyer at Grais & Ellsworth who represents Walnut Place, declined to comment. A spokesman for Bank of New York Mellon declined to comment. But in its legal filings the bank maintained that Bank of America was required to reimburse legal costs under the terms of the original mortgage pools.

Additional questions about the terms of the settlement were raised by Representative Brad Miller, a North Carolina Democrat. In a July 8 letter to the Federal Housing Finance Agency, which oversees Fannie Mae and Freddie Mac, the mortgage finance giants, Mr. Miller asked whether the regulator would join other investors objecting to the deal. He said the concerns of some investors that Bank of New York Mellon and Bank of America had refused to provide "information necessary to determine adequacy of the settlement." For example, investors have been unable to review loan files to assess how many of the mortgages in the pools satisfied the characteristics and representations promised to investors who bought into them, Mr. Miller noted. "Independent investigations show that perhaps two-thirds of the mortgages did not comply with the representations and warranties," he wrote.

A version of this article appeared in print on July 13, 2011, on page B1 of the New York edition with the headline: Bank of America's Mortgage