

EXHIBIT D

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Wells Fargo Seeks to End Mortgage-Repurchase Duties as Trustee

By Jody Shenn - Feb 24, 2012

Wells Fargo & Co. (WFC)'s mortgage-bond trustee division is planning to hand its duties to investigate soured home loans and pursue lender repurchases to other companies, in a move meant to address the appearance of conflicts of interests, an executive said.

The country's largest home lender, which serves as trustee on about 700 mortgage-bond transactions, expects to take the step for at least 20 in the next few months, said Brian Bartlett, head of corporate trust services at the San Francisco-based bank. It asked a Minnesota court on Feb. 10 to validate the move for a securitization involved in separate litigation against JPMorgan Chase & Co. (JPM)

Wells Fargo is seeking to avoid suggestions its trustee work can be influenced by unrelated repurchase demands against its own home-lending unit, as investors seek compensation for debt that never matched its promised quality, Bartlett said. The bank will probably use the approach, which wasn't requested by bondholders, on other transactions, he said.

"We're exercising an abundance of caution," Bartlett said yesterday in a telephone interview. "We want to make sure, especially in this environment, we avoid even the appearance of any potential conflicts."

The strategy probably hasn't been used in the industry before, he said. Some bondholders have contacted Wells Fargo to say they liked the idea, Bartlett said.

Conflicts of Interest

Under mortgage-bond contracts, investors typically can't pursue loan repurchases without action by trustees. Bondholder advocates say those companies have often failed to do enough to facilitate buybacks after record homeowner defaults. Trustees' conflicts of interest can also include their reliance on banks for new business, said Isaac Gradman, an attorney and managing member of IMG Enterprises LLC.

“They want to serve their masters, but they also have a duty to investors,” said Gradman, whose consulting firm in Petaluma, California advises on legal and contractual matters.

Bank of New York Mellon Corp., another trustee, resisted an investor group’s push in 2010 to get Bank of America Corp. to repurchase mortgages in securities created by the lender’s Countrywide Financial Corp., before joining in talks that created a proposed \$8.5 billion settlement. Bank of New York has said it acts as required by bond contracts.

Representing Bondholders

Gibbs & Bruns LLP, the law firm representing bondholders who negotiated the Countrywide agreement, said in a statement last month they are now seeking information on \$19 billion of mortgage bonds issued by affiliates of Wells Fargo, adding to efforts involving home-loan securities issued by JPMorgan and Morgan Stanley.

In September, Wells Fargo, acting as trustee on behalf of mortgage-bond holders, filed suit in Delaware against JPMorgan’s EMC Mortgage unit seeking loan repurchases. In January 2011, Wells Fargo had sued seeking files to pursue an investigation after JPMorgan resisted a request, a case that was later settled.

In its petition in Minnesota, Wells Fargo said it wants to hire Law Debenture Trust Co. of New York to handle issues related to the so-called representations and warranties on loan quality in the deal involved in the suit, Bear Stearns Mortgage Trust Fund 2007-AR2.

“When we get to a point where investors are asking for files to be reviewed by a third-party expert or investors request a repurchase, we’re going to let someone else handle it going forward,” Bartlett said.

Market Practices

Wells Fargo was hired as trustee on the fifth-most U.S. asset- and mortgage-backed bond deals in 2006 as markets boomed, trailing U.S. Bancorp, Deutsche Bank AG, Bank of New York, and HSBC Holdings Plc, according to newsletter Asset-Backed Alert. It would be “extremely rare” for the bank to be trustee for debt in which it was the lender because of market practices and legal requirements for new transactions, Bartlett said.

Still, without splitting off the repurchase duties, the bank could find itself in court setting legal precedents that could be disadvantageous to it, according to Gradman, the consultant. For example, there is debate about whether misstatements about mortgages need to be responsible for defaults, to trigger the right to force buybacks, he said.

“At the same time when they’re defending against that kind of thing” as a lender, “they’re going to be arguing the other side” as a trustee, Gradman said in a telephone interview. “I’d imagine that’s part of why they would have done this.”

The Delaware case is Bear Stearns Mortgage Funding Trust 2007-AR2 by Wells Fargo Bank NA as Trustee v. EMC Mortgage LLC, CA6861, Delaware Chancery Court (Wilmington).

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