

EXHIBIT D

15-Feb-11 18:33 PIMCO, BlackRock and BofA settlement could bind other CFC RMBS investors -- UPDATE Story

PIMCO, BlackRock and Bank of America could try to make their settlement of poor servicing allegations binding on other investors in **Countrywide** RMBS, whether the other investors agree to the terms or not, said David Grais, a partner at Grais & Ellsworth.

The parties are attempting to encompass all Countrywide RMBS into the deal - which could be finalized in as little as 30 days - two sources with knowledge of the situation said. Grais said it was too soon to speculate on the quality of the settlement, but that his firm is advising investors about how they can object to it, should the terms be meager.

Grais & Ellsworth, which represented Greenwich Financial Services in an earlier buyback case against Countrywide, is looking into the potential for recourse against the trustee for the affected deals, Bank of New York Mellon, in case it participates in the settlement, Grais said.

The settlement would coincide with BofA's plans to shift its legacy assets into a separate unit and is likely to pay out "pennies on the dollar," to RMBS investors, one of the sources with knowledge said. The agreement could include promises to change servicing practices and a one-time payment to settle representation and warrant breaches, the sources said.

Reaching a settlement will likely hinge on Bank of New York's involvement, the second source said. The trustee could agree to a pre-packaged settlement, for example, that would implicate a wide range of Countrywide trusts, on top of those the investors have standing in, said the source.

"I'm concerned this could be a sell-out," the second source with knowledge of the situation said.

A lawyer for the investors, Kathy Patrick, a partner at Houston, Texas-based firm Gibbs & Bruns, sent a notice of non-compliance to BofA's Countrywide servicing unit on 18 October. Patrick cited USD 47bn in affected RMBS (see the list below). On 2 February, the investor group agreed to extend BofA's time period to respond for a second time.

Patrick declined to comment on the timeline for the settlement, or its terms. "We don't have a deal yet," she said. Bank of America spokesperson Jerry Dubrowski said only that the bank was in ongoing discussions with the investor group.

A Bank of New York spokesperson declined to comment.

Broader implications

The settlement could be used as a roadmap for resolving similar buyback and servicing challenges pending against the nation's largest banks, the sources said. In January, GSEs Fannie Mae and Freddie Mac agreed to settle Countrywide RMBS buyback claims against BofA for under USD 3bn. The figure represents about 70%-75% of the bank's buyback exposure to the GSEs, Barclays analysts estimated at the time.

Georgetown University professor Adam Levitin suggested US banks come to a global settlement

on mortgage issues in November testimony to Congress. Such a deal would involve a restructuring of bank balance sheets, special servicing and a quieting of title on securitized properties.

Last week, BofA announced it would separate its legacy asset servicing from the rest of its operations. Similarly, JPMorgan Chase, embroiled in buyback suits involving its EMC and WaMu portfolios, today told employees that its Chief Administrative Officer Frank Bisignano would be overseeing its servicing unit, according to an internal memo.

“If they have a separate unit, they can put some money in it and hopefully get a court to say ‘this is all fair and good,’” the first source with knowledge said.

Double agents

Investors hoping for a greater reimbursement of securities-gone-bad said they are concerned that light settlements for servicing wrongs – including failure to disclose breaches of representations and warranties – could stall the return of a new issue non-agency RMBS market and allow poor servicing practices to continue.

More parties are getting involved in the dispute, said Greenwich Financial Services CEO Bill Frey. A growing number of foreign investors are joining the RMBS Investors Clearing House, a consortium of investors facilitated by Talcott Franklin PC, he said.

The letter sent by the Gibbs & Bruns group was signed by BlackRock, Freddie Mac, Kore Advisors, the Federal Reserve Bank of New York (on behalf of the Maiden Lane funds), Metropolitan Life Insurance Company, Neuberger Berman Europe, PIMCO and Western Asset Management Company. The relationships the entities maintain with BofA and the US Government led some – including BofA – to question the seriousness of the buyback pursuit.

BlackRock holds an estimated USD 3.4bn in BofA equity alone. Moreover, BlackRock, PIMCO and fellow signatory Western Asset Management Co. run PPIP funds, as previously reported.

Patrick denied allegations that the firms' pursuit lacked teeth. “I don't know how anybody could look at the list of institutions that has previously been published ... and conclude that they were pursuing discussions in anything other than a good faith effort,” Patrick said.

Part of the group represented by Gibbs & Bruns participated in an earlier effort to displace BofA as servicer of the Countrywide RMBS but shifted gears on disagreement over how aggressively to pursue the nation's largest bank. The group is rumored to have proof that places BofA in default of its servicing duties – specifically that it modified first lien mortgages while leaving the associated second lien intact, as previously reported.

The Gibbs & Bruns letter did not prove the impact of alleged servicing wrongs on specific loans. Patrick declined to comment on whether the group had such evidence.

In order to prove a servicer default, specific loan level evidence proving a breach of contractual

duties is typically needed at the onset because it is challenging to obtain even in the course of litigation, as previously reported. Once a servicer is labeled in default, the trustee is obligated to pursue a replacement servicer and/or potential representation and warranty breaches under the "prudent person" clause of the US Trustee Act.

by Allison Pyburn

Source Debtwire