BANK OF AMERICA OFFERS TO PAY $8.5 BILLION TO STAY IN BUSINESS

DDay and Masaccio and Yves Smith have already covered Bank of America's offer to pay 2 to 3 cents on the dollar to make good on its securitization misrepresentations. But I wanted to point out one issue of timing.

In her coverage of it, Yves notes the following:

> So with all these considerations arguing for fighting a few more rounds, and BofA in the past taking a very aggressive posture on disputing these cases, why would it settle?
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> The other side has no ability to judge what it might get since it has not gotten access to the loan files (the Clayton reports that everyone makes noise about which found pretty significant violations of representations, did not look at which were significant from a risk of loss perspective. So they may make for great headline, but they aren't very helpful in this context.
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> Put it simply: ***BofA can judge what its risks are VASTLY better than the investors. There are a lot of reasons why it would make sense for BofA not to settle now. Yet it was all over this like a cheap suit. That says it must regard this settlement as a real bargain.***

While DDay alluded to this in his post, I wanted to make an explicit reminder. BoA has agreed to this settlement just weeks after Abigail Field did the work the Attorneys General and other regulators should have been doing. And she found that for a sample of NY foreclosures, Countrywide had endorsed none of the notes of Countrywide-generated mortgages.

> Last November, a decision in a New Jersey bankruptcy case brought to light the testimony of Linda DeMartini, operational team leader for the litigation management department for Bank of America, which intended to prove the bank had the right to foreclose on a debtor’s mortgage. Instead, her testimony was key to the judge’s ruling that Bank of America (BAC) couldn’t foreclose, and along the way DeMartini made two statements that called into question the securitization of Countrywide loans. She testified that Countrywide didn’t deliver the notes to the securitization trustee, and that Countrywide notes weren’t endorsed except on a case-by-case basis generally long after securitization ostensibly occurred. Both steps are required, in one form or another, under all securitization contracts.
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> [snip]
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> To check DeMartini’s testimony, *Fortune* examined the foreclosures filed in two New York counties (Westchester and the Bronx) between 2006 and 2010. There were 130 cases where the Bank of New York (BK) was foreclosing on behalf of a Countrywide mortgage-backed security. In 104 of those cases, the loan was originally made by Countrywide; the other 26 were made by other banks and sold to Countrywide for securitization.
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> None of the 104 Countrywide loans were endorsed by Countrywide — they included only the original borrower’s signature. Two-thirds of the loans made by other banks also lacked bank endorsements. The other third were endorsed either

> directly on the note or on an allonge, or a rider, accompanying the note.
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> The lack of Countrywide endorsements, combined with the bank's representation to the court that these documents are accurate copies of the original notes, calls into question the securitization of these loans, as well as Bank of New York's right, as trustee, to foreclose on them.

Shortly after Field's report, NY Attorney General Eric Schneiderman started an investigation of the problem. And, as Field notes in her article,

> And if Countrywide's mortgage securitizations systematically failed as it appears they did, Bank of America's potential liability dwarfs its shareholder equity, as the Congressional Oversight Panel points out.

In other words, the proof–which we all knew existed–is finally surfacing that Bank of America could and probably should be wiped out by its liability for Countrywide. The dog and pony show calling this a huge settlement no doubt is designed to convince everyone BoA has found a way to put this problem behind it. And remain in business.

So, yeah, $8.5 billion to remain in business is a bargain.