The tip of the iceberg of Wall Street criminality

Bank of America agrees to $8.5 billion settlement on fraud claims

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Bank of America, the biggest US bank by assets, announced Wednesday it had agreed to settle securities fraud claims brought by a group of 22 large investors for $8.5 billion.

The investors—including the giant money manager BlackRock, the bond fund Pacific Investment Management Co. (Pimco), the insurer MetLife, the investment bank Goldman Sachs and the Federal Reserve Bank of New York—hold more than $56 billion in mortgage-backed securities issued by Bank of America or the sub-prime lender Countrywide Financial, which Bank of America acquired in June of 2008.

They claim that Bank of America passed off securities created by bundling toxic mortgages during the 2004-2008 housing bubble as safe investments, and that Countrywide, which originated the loans, obtained little, if any, documentation on the income and assets of home buyers and then failed to service the loans properly.

The settlement represents only the tip of the iceberg of fraud and criminality that pervaded the financial system during the speculative housing boom whose collapse in 2007 and 2008 precipitated the worst economic crisis since the 1930s. The settlement amounts to a repayment of about 4 cents on the dollar on 530 deals that represented $424 billion in underlying mortgages. It will do nothing to curb the speculative and illegal practices that have continued unabated since the Wall Street crash of September 2008.

While some big financial players will receive a measure of compensation, millions of home buyers who were lured into predatory loans and have either lost their homes or face foreclosure will receive nothing. Bank of America and other major mortgage servicers, including JPMorgan Chase, Wells Fargo and Citigroup, have rejected demands by US state attorneys general that they pay a combined $20 billion in compensation for rampant fraud in their processing of foreclosures, which resulted in many homeowners being illegally thrown out of their homes.

State and federal officials are seeking to use the penalties from the banks to establish a fund to provide some financial help to families facing foreclosure. The $20 billion figure, however, is utterly inadequate and would provide, if reached, only token relief. The banks, for their part, have to date offered a derisory $5 billion.

Bank of America, in announcing the settlement with bondholders as well as other mortgage-related write-offs and set-asides that bring the total cost to $20.6 billion for the second quarter of this year, said it had allocated only an “insignificant” amount to cover any future agreement on improper foreclosure practices.

The $20 billion write-off is greater than the bank’s total profits since the 2008 crash, all of which were made possible by tens of billions of dollars in taxpayer money funneled to the bank under the $750 billion Troubled Asset Relief Program (TARP) set up in the aftermath of the financial meltdown. Nevertheless, Wall Street reacted positively to the deal, knowing that the loan repayments represent a small fraction of the trillions of dollars in bad assets that were passed off by the banks during the sub-prime mortgage bubble.

The *Washington Post* cited Bill Frey, president of Connecticut-based Greenwich Financial Services, which holds some of the bonds covered in the settlement, as saying that to fully compensate investors for their losses, Bank of America would have to pay $80 billion to $100 billion.

Analysts say that, based on the Bank of America settlement, JPMorgan Chase will likely have to pay some $9 billion to settle outstanding charges from holders of bad mortgage-backed securities. Wells Fargo is expected to pay out about $4 billion and Citigroup, $3 billion.

Insurance companies that backed many of the mortgage-backed securities are also pressing for reimbursement, charging that the original mortgages were underwritten with false information and did not conform to legal standards.

Between 2004 and 2008, US financial institutions issued nearly $2.5 trillion in residential mortgage-backed securities (RMBS) and over $1.4 trillion in collateralized debt obligations (CDOs). The RMBS were assembled by bundling together home mortgages, including high-risk sub-prime mortgages, to create bonds. These

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were sold to banks, hedge funds and other big investors all over the world. The CDOs were constructed by bundling RMBS and then marketed to big investors.

The entire speculative edifice rested on predatory home loans. The sellers, mortgage companies such as Countrywide and home loan banks such as Washington Mutual, and commercial and investment banks such as Bank of America and Goldman Sachs which packaged the loans and sold them off as RMBS and CDOs, knew the loans were unstable and likely to default. Like the perpetrators of any Ponzi scheme, they calculated that they could dilute the risk by spreading it throughout the financial system and that the profits would continue to pile up as long as home prices continued to rise.

Last April, the US Senate Permanent Subcommittee on Investigations issued a voluminous 639-page report detailing the results of its investigation into the financial collapse of 2008. The report presented a devastating indictment of the banks, the regulatory agencies and the credit rating agencies, showing how they collaborated in perpetrating a massive fraud that triggered the current economic disaster.

The report documented countless cases of conflicts of interest, deception and swindling involving the banks and credit rating firms, and the collusion of the government in facilitating the process. It also laid out specific securities laws that, it implied, were violated by institutions such as Goldman Sachs, Deutsche Bank and Washington Mutual.

In announcing the report in April, Senator Carl Levin, the Democratic chairman, said that the report "tells the inside story of an economic assault that cost millions of Americans their jobs and homes, while wiping out investors, good businesses and markets." He continued: "High-risk lending, regulatory failures, inflated credit ratings and Wall Street firms engaging in massive conflicts of interest contaminated the US financial system with toxic mortgages and undermined public trust in US markets."

The executive summary of the report declares:

"The four causative factors examined in the report are interconnected. Lenders introduced new levels of risk into the US financial system by selling and securitizing complex home loans with high risk features and poor underwriting. The credit rating agencies [Standard & Poor's and Moody's] labeled the resulting securities as safe investments, facilitating their purchase by institutional investors around the world. Federal banking regulators failed to ensure safe and sound lending practices and risk management, and stood on the sidelines as large financial institutions active in US financial markets purchased billions of dollars in mortgage related securities containing high risk, poor quality mortgages. Investment banks magnified the risk to the system by engineering and promoting risky mortgage related structured finance products, and enabling investors to use naked credit default swaps and synthetic instruments to bet on the failure rather than the success of US financial instruments. Some investment banks also ignored the conflicts of interest created by their products, placed their financial interests before those of their clients, and even bet against the very securities they were recommending and marketing to their clients."

Nearly half of the report is devoted to a detailed examination of the activities of Goldman Sachs in constructing and marketing CDOS that it knew were doomed to lose value. It did so in order to offload its failing mortgage-related assets to others, even betting that the CDOs it was palming off would collapse. These clear violations of securities laws and rules occurred, in part, while Henry Paulson was treasury secretary. Paulson had moved from his position as CEO of Goldman Sachs to join the Bush administration.

The Senate report was barely reported in the establishment media when it was released, and has since been ignored by the press and the politicians of both parties, including Levin and the other members of the committee that issued it.

Meanwhile, the government has refused to bring to trial a single major civil suit filed by federal regulators on financial fraud charges. The Securities and Exchange Commission settled out of court last July with Goldman Sachs for a nominal fine, and in October it made a similar settlement with Countrywide's former CEO, Angelo Mozilo. In both cases, the perpetrators were allowed to escape without admitting guilt.

Not a single top official of a major financial institution has been criminally charged with violating the law.

This demonstrates the unbridled power of the financial aristocracy over the entire political system, including both parties, the courts and Congress. It also reflects the recognition within the ruling elite that any public trial related to the financial collapse risks exposing the criminality that pervades the entire capitalist system.

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