

SUPREME COURT FOR THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON,  
(as Trustee under various Pooling and Servicing  
Agreements and Indenture Trustee under various  
Indentures),

Petitioner,

for an order, pursuant to CPLR § 7701, seeking judicial  
instructions and approval of a proposed settlement.

Index No. 651786/11

**OBJECTION TO SETTLEMENT  
ON BEHALF OF CLAYHILL  
INVESTORS LLC**

Assigned to:  
Kapnick, J.

**Preliminary Statement**

Clayhill Investors LLC (“Clayhill”) submits this objection (“Objection”) to the proposed settlement (the “Settlement”) between The Bank of New York Mellon (“Trustee”), Countrywide Home Loans, Inc. (“CHL”), Countrywide Financial Corporation (together with CHL, “Countrywide”), Bank of America Corporation (“BOA”) and BAC Home Loans Servicing, LP, formerly known as Countrywide Homes Loans Servicing, LP (“BAC HLS”, together with BOA, “BAC”). The Settlement concerns CHL’s alleged breaches of representations and warranties in the Pooling and Servicing Agreements, Indentures and related Sales and Servicing Agreements governing 530 trusts (“Covered Trusts”) set forth in Exhibit A to the Notice of Special Proceeding and Proposed Settlement (the “Notice”). If approved in its current form, the Settlement will release claims of all Investors<sup>1</sup> and any person who can make a claim through the Trustee, among others.

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<sup>1</sup> The settlement agreement, executed on June 28, 2011 (the “Settlement Agreement”), defines Investors as all certificateholders and noteholders in the Covered Trusts, their successors in interest, assigns, and transferees. The Release, at ¶9 of the Settlement Agreement, purports to release claims on behalf of Investors, among others, and “any Persons claiming by, through, or on behalf of the Trustee, the Investors or the Covered Trusts.” Settlement Agreement at ¶9.

In 2007, Clayhill purchased five Trusts, four of which are set forth in the list of Covered Trusts in Exhibit A. These Trusts, denominated as CWALT2007-OH2-CP, CWALT2007-OA7-CP, CWALT2007-OA4-CP, CWALN2007-AH1N-PS<sup>2</sup>, and CWALT2007-OA4-M9, were purchased for a total price of approximately \$113,000,000. In 2009, Clayhill sold its investments in CWALN2007-AH1N-PS, CWALT2007-OA7-CP, CWALT2007-OA4-CP and CWALT2007-OA4-M9, for a total loss of approximately \$40,000,000, but continues retain its interest in CWALT2007-OH2-CP. Its investments in CWALN2007-AH1N-PS, CWALT2007-OH2-CP, CWALT2007-OA7-CP, and CWALT2007-OA4-CP were in the form of REMIC residual interests.

It has reviewed the Settlement documents to the extent that they are publicly available and believes that the Settlement is deficient at least two material respects: (1) ¶¶ 3(d)(i) and 3(d)(ii) are ambiguous and seem to preclude holders of REMIC residual interests from any recovery under the Settlement Agreement, and (2) the Settlement seemingly does not provide for any recovery for former investors in the Covered Trusts. Until those issues are sufficiently addressed, Clayhill urges that the Court deny approval of the Settlement.

### **Relevant Facts**

This Settlement was the result of confidential negotiations between the Trustee, Countrywide, BAC, and a self-selected group of 22 institutional shareholders (the “Institutional Shareholders”), to which neither Clayhill nor many other investors were privy.<sup>3</sup> The Settlement purports to settle hundreds of billions of dollars of claims against Countrywide for its

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<sup>2</sup> Without explanation, this investment is not included in the list of Covered Trusts. *See* Notice, Ex. A.

<sup>3</sup> The Trustee instituted this Article 77 proceeding by the filing of a Verified Petition, seeking to have the Court issue instructions for and approval of the Settlement. Notice was disseminated on or about June 29, 2011, indicating that any certificateholder or other persons potentially interested in the Covered Trusts could file an objection to the Settlement on or before August 30, 2011. Clayhill thus has standing to submit this Objection.

misrepresentations and warranties in the governing agreements for the Covered Trusts based upon the Trustees' and Institutional Shareholders' representations that the Settlement is fair to the Covered Trusts. Although Clayhill was not a party to the settlement negotiations, the Settlement purports to release its claims as well as those of all certificateholders and persons claiming by or through the Trustee against BAC or Countrywide, for the representations and warranties which Countrywide made regarding the mortgages held by the Covered Trusts.

The record filed thus far in support of the Settlement is extremely sparse. Given the absence of any record demonstrating the fairness of the Settlement, Clayhil reserves its right to amend this objection as further information or discovery becomes available.<sup>4</sup> However, based upon even this thin record, it believes that the Settlement Agreement itself raises at least two issues of major concern, as discussed below.

### **REMIC Residual Interests**

The Settlement Agreement does not clearly provide for distribution of Settlement proceeds to those holding REMIC residual interests. Paragraph 3(d) of the Settlement Agreement sets forth the plan of distribution of the Settlement proceeds under a section entitled, "Distribution of the Allocable Shares; Increases in Balances". Paragraph 3(d)(i) discusses the method in which the "Allocable Share" of the Settlement proceeds will be distributed to investors for each Trust. It then states with respect to REMIC residual interests:

To the extent that as a result of the distribution of the Allocable Share in a particular Covered Trust a principal payment would become payable to a class of REMIC residual interests, whether on the distribution of the Allocable Share or on any subsequent distribution date that is not the final distribution date under the

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<sup>4</sup> At least nine petitions to intervene have been filed, including petitions by the Attorneys General of the States of Delaware and New York, seeking to take discovery for the purpose of determining whether to advance objections to the Settlement.

Governing Agreement for such Covered Trust, such payment shall be maintained in the distribution account and the Trustee shall distribute it on the next distribution date according to the provisions of this Subparagraph.

This section contemplates a distribution would be made to REMIC residual interest holders and that such payment would be held in the distribution account until the final distribution date.

Nonetheless, the following ¶3(d)(ii), states in relevant part that:

the Trustee will allocate the amount of the Allocable Share for that Covered Trust in the reverse order of previously allocated Realized Losses, to increase the Class Certificate Balance, Component Balance, Component Principal Balance, or Note Principal Balance, as applicable, of each class of Certificates or Notes (or Components thereof)(other than any class of REMIC residual interests) to which Realized Losses have been previously allocated . . .

Reading ¶¶3(d)(i) and (ii) together, it is unclear whether REMIC residual interests will receive their allocable share of the proceeds based upon their realized losses, despite the representations in ¶3(d)(i). Paragraph 3(d)(ii), in fact, specifically excludes REMIC residual interests from the distribution. At a minimum, this paragraph should be amended to provide that REMIC residual interests will be allocated their portion of the Allocable Share of the distribution.

#### **No Provision for Former Investors**

Second, the Settlement Agreement does not provide any relief for investors who have sold their interests, although it purports to release their claims. Paragraph 9 of the Settlement Agreement contains the Release. That paragraph indicates that the Settlement, if approved, will release claims which could be brought by any person by or through the Trustee, presumably including former investors. However, the terms of the Settlement provide only for a distribution to the Trusts, which will then make distributions in accordance with the provisions described in

¶3(d)(ii), cited above, and for changes to BAC's current mortgage servicing procedures. Nowhere is any compensation provided for those who sold their investments at a significant loss, such as Clayhill. For this additional reason, the Settlement should not be approved until compensation is provided for all released claims, including those of former investors.

### **CONCLUSION**

Based upon the foregoing, Clayhill objects to the Settlement on the grounds stated above, and respectfully requests that the Court deny approval of the Settlement until these issues are addressed.

Dated: New York, NY  
August 30, 2011

Respectfully Submitted,

**THEGRANTLAWFIRM, PLLC**  
*Attorneys for Clayhill Investors LLC*

/s/ Lynda J. Grant

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## CERTIFICATE OF SERVICE

This is to certify that on the 30<sup>th</sup> day of August 2011, a true and correct copy of the above and foregoing instrument was properly forwarded to the following counsel of record as indicated below.

**Regular First Class Mail**

Mayer Brown LLP  
Attn: Matthew D. Ingber  
1675 Broadway  
New York, New York 10019  
*Counsel for Petitioner*

/s/ Lynda J. Grant

Lynda J. Grant (1848282)