Bank of America vs. Taxpayers by Prince Damin

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Earlier this year, Bank of America (NYSE: BAC) received an additional slug of capital from taxpayers to digest its Merrill Lynch acquisition. In addition to $20 billion of TARP funds, the bank received what's called a ring-fenced asset guarantee on 90% of a $118 billion pool of assets.

In layman's terms, B of A took $118 billion of dodgy assets, stuck them in a separate pile, and asked taxpayers to cover 90% of the losses after the first $10 billion. In exchange, it was to issue Uncle Sam $4 billion in preferred stock yielding 8%, plus warrants worth 10% of that amount. A month earlier, Citigroup (NYSE: C) did a similar thing on a $306 billion pool of assets.

Now here's where things get weird: The asset guarantee was never used. Consequently, B of A doesn't want to pay the $4 billion-plus it agreed to compensate taxpayers with. Complicating matters, it claims it doesn't have to pay simply because it never signed the papers back in January. How convenient.

There's no question, however, that the deal was struck. B of A's Jan. 16 press release clearly states that the government was providing "insurance for $118 billion in exposure," and would "pay a premium of 3.4 percent of those assets for this program."

Regulators, feeling used and abused, are fighting for at least a portion of $4 billion as a premium for what's essentially an insurance policy. This makes sense: There's no doubt that B of A benefited handsomely from the guarantee, lowering its cost of capital and allaying fears that it was about to explode.

Even if taxpayers never paid out a penny, there's an argument to make that they accepted a substantial risk, and should be compensated for it. That's how the business of insurance works.

I'm torn about what to think here. On one hand, it's great that B of A can swallow losses on its own and release taxpayers from the liability. No one's complaining about that. If the government can soothe markets and create "bailouts" without paying a penny, all the better.

On the other hand, taxpayers deserve to be compensated for what was, by all accounts, saving the behinds of those who made some atrocious mistakes and were on the verge of death.

Other banks, including Goldman Sachs (NYSE: GS), JPMorgan Chase (NYSE: JPM) and Morgan Stanely (NYSE: MS), repaid their TARP capital in full, but left taxpayers with substantial warrants and a chance for profit. As they should. Even if they were merely dragged into a black hole caused by other banks, they owe taxpayers a big, fat, thank you. And so does B of A.

Surprised? Don't be. This is exactly why a group of Motley Fool executives demanded equity from the get-go.

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