

UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU

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ADMINISTRATIVE PROCEEDING  
File No. 2014-CFPB- 0002

In the matter of:

PHH CORPORATION, PHH MORTGAGE  
CORPORATION, PHH HOME LOANS,  
LLC, ATRIUM INSURANCE  
CORPORATION, AND ATRIUM  
REINSURANCE CORPORATION

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) **ANSWER AND AFFIRMATIVE DEFENSES**  
) **TO NOTICE OF CHARGES SEEKING**  
) **DISGORGEMENT, OTHER EQUITABLE**  
) **RELIEF, AND CIVIL MONEY PENALTY**  
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Respondents PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation, by and through their undersigned counsel, for their answer and affirmative defenses to the Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty (the “Notice”) filed by the Consumer Financial Protection Bureau (“CFPB”), state as follows:

**JURISDICTION AND LEGAL AUTHORITY**

1. Paragraph 1 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 1 of the Notice.

2. The first sentence of Paragraph 2 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in the first sentence of Paragraph 2 of the Notice. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 2 of the Notice and, on that basis, deny the same.

**STATEMENT OF FACTS**

3. Respondents admit the allegations contained in Paragraph 3 of the Notice.

4. With respect to the allegations contained in Paragraph 4 of the Notice, Respondents admit only that PHH Mortgage Corporation is a wholly-owned subsidiary of PHH Corporation. Respondents deny the remaining allegations contained in Paragraph 4 of the Notice.

5. With respect to the allegations contained in Paragraph 5 of the Notice, Respondents admit only that PHH Home Loans, LLC, is owned in part by subsidiaries of PHH Corporation and in part by affiliates of Realogy Holdings Corporation. Respondents deny the remaining allegations contained in Paragraph 5 of the Notice.

6. With respect to the allegations contained in Paragraph 6 of the Notice, Respondents admit only that PHH Mortgage Corporation and PHH Home Loans, LLC, originate mortgage loans. Respondents deny the remaining allegations contained in Paragraph 6 of the Notice.

7. With respect to the allegations contained in Paragraph 7 of the Notice, Respondents admit only that Atrium Reinsurance Corporation is a wholly-owned subsidiary of PHH Corporation. Respondents deny the remaining allegations contained in Paragraph 7 of the Notice.

8. With respect to the allegations contained in Paragraph 8 of the Notice, Respondents admit only that Atrium Insurance Corporation is a wholly-owned subsidiary of PHH Corporation that provided reinsurance to private mortgage insurers pursuant to agreements. Further answering, Respondents state that in 2010 Atrium Insurance Corporation's then existing

reinsurance agreements were assumed by Atrium Reinsurance Corporation. Respondents deny the remaining allegations contained in Paragraph 8 of the Notice.

9. Paragraph 9 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 9 of the Notice.

10. Paragraph 10 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 10 of the Notice.

11. Paragraph 11 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 11 of the Notice.

**The Private Mortgage Insurance Industry**

12. Paragraph 12 of the Notice contains generic and conclusory allegations to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 12 of the Notice.

13. Paragraph 13 of the Notice contains generic and conclusory allegations to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 13 of the Notice.

14. Paragraph 14 of the Notice contains generic and conclusory allegations to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 14 of the Notice.

15. Paragraph 15 of the Notice contains generic and conclusory allegations to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 15 of the Notice.

**The Creation of Captive Reinsurance**

16. With respect to the allegations contained in Paragraph 16 of the Notice, Respondents admit only that Atrium Insurance Corporation was incorporated in 1994 as a wholly-owned subsidiary of PHH Corporation to provide reinsurance to private mortgage insurers. Respondents deny the remaining allegations contained in Paragraph 16 of the Notice.

17. With respect to the allegations contained in Paragraph 17 of the Notice, Respondents admit only that Atrium Insurance Corporation entered into a reinsurance agreement with United Guaranty Corporation (“UGI”) in 1995 and that the agreement speaks for itself and is the best evidence of its content.

18. With respect to the allegations contained in Paragraph 18 of the Notice, Respondents admit only that Atrium Insurance Corporation entered into a reinsurance agreement with General Electric Mortgage Insurance Corporation, later known as Genworth Mortgage Insurance Corporation (“Genworth”), in 2000 and that the agreement speaks for itself and is the best evidence of its content.

19. Respondents deny the allegations contained in Paragraph 19 of the Notice.

20. Respondents deny the allegations contained in Paragraph 20 of the Notice.

21. Respondents deny the allegations contained in Paragraph 21 of the Notice.

22. Respondents deny the allegations contained in Paragraph 22 of the Notice.

23. With respect to the allegations contained in Paragraph 23 of the Notice, Respondents admit only that, during the course of its reinsurance agreements with UGI and

Genworth, at times Atrium Insurance Corporation received 40% of the mortgage insurance premiums collected from borrowers in exchange for Atrium's assumption of a layer of risk.

Respondents deny the remaining allegations contained in Paragraph 23 of the Notice.

24. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Notice and, on that basis, deny the same.

25. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Notice and, on that basis, deny the same.

26. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Notice and, on that basis, deny the same.

27. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Notice and, on that basis, deny the same.

#### **The Referrals**

28. Respondents deny the allegations contained in Paragraph 28 of the Notice.

29. Respondents deny the allegations contained in Paragraph 29 of the Notice.

30. Respondents deny the allegations contained in Paragraph 30 of the Notice.

31. Respondents deny the allegations contained in Paragraph 31 of the Notice.

32. Respondents deny the allegations contained in Paragraph 32 of the Notice.

33. Respondents deny the allegations contained in Paragraph 33 of the Notice.

34. Respondents deny the allegations contained in Paragraph 34 of the Notice.

35. Respondents deny the allegations contained in Paragraph 35 of the Notice.

36. Respondents deny the allegations contained in Paragraph 36 of the Notice.

37. With respect to the allegations contained in Paragraph 37 of the Notice,

Respondents admit only that Atrium Insurance Corporation entered into a reinsurance agreement

with Radian Guaranty, Inc. (“Radian”) in 2004 and that the agreement speaks for itself and is the best evidence of its content. Respondents deny the remaining allegations contained in Paragraph 37 of the Notice.

38. Respondents deny the allegations contained in Paragraph 38 of the Notice.

39. Respondents deny the allegations contained in Paragraph 39 of the Notice.

**The 2006 Request for Proposal**

40. With respect to the allegations contained in Paragraph 40 of the Notice, Respondents admit only that PHH Mortgage Corporation issued requests for information to certain mortgage insurance companies in 2006 to evaluate potential business opportunities. Respondents deny the remaining allegations contained in Paragraph 40 of the Notice.

41. Respondents deny the allegations contained in Paragraph 41 of the Notice.

42. With respect to the allegations contained in Paragraph 42 of the Notice, Respondents admit only that PHH Mortgage Corporation issued requests for information to certain mortgage insurance companies in 2006 to evaluate potential business opportunities. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 42 of the Notice and, on that basis, deny the same.

43. With respect to the allegations contained in Paragraph 43 of the Notice, Respondents admit only that PHH Mortgage Corporation discussed possible reinsurance structures with the mortgage insurer, PMI, and that Atrium Insurance Corporation did not have a reinsurance agreement with PMI. Respondents deny the remaining allegations contained in Paragraph 43 of the Notice.

44. Respondents deny the allegations contained in Paragraph 44 of the Notice.

45. Respondents deny the allegations contained in Paragraph 45 of the Notice.

46. Paragraph 46 contains generic and conclusory allegations to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 46 of the Notice.

47. Respondents deny the allegations contained in Paragraph 47 of the Notice.

48. Respondents deny the allegations contained in Paragraph 48 of the Notice.

49. With respect to the allegations contained in Paragraph 49 of the Notice, Respondents admit only that mortgage insurer, MGIC, was used as a private mortgage insurer for loans originated by PHH Mortgage and that Atrium Insurance Corporation did not have a reinsurance agreement with MGIC. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 49 of the Notice and, on that basis, deny the same.

50. Respondents deny the allegations contained in Paragraph 50 of the Notice.

51. Respondents deny the allegations contained in Paragraph 51 of the Notice.

52. With respect to the allegations contained in Paragraph 52 of the Notice, Respondents admit only that Atrium Insurance Corporation did not have a reinsurance agreement with PMI or Triad. Respondents deny the remaining allegations contained in Paragraph 52 of the Notice.

53. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Notice and, on that basis, deny the same.

54. Respondents deny the allegations contained in Paragraph 54 of the Notice.

55. Respondents deny the allegations contained in Paragraph 55 of the Notice.

**Atrium's Purported Reinsurance Services**

56. Paragraph 56 of the Notice contains generic and conclusory allegations to which no response is required. To the extent that a response is required, Respondents deny the allegations contained in Paragraph 56 of the Notice.

57. With respect to the allegations contained in Paragraph 57 of the Notice, Respondents admit only that Atrium Insurance Corporation entered into reinsurance agreements with private mortgage insurers that were structured as “excess-of-loss” arrangements and that the specific agreements speak for themselves and are the best evidence of their contents. Respondents deny the allegations contained in Paragraph 57 to the extent they misstate or mischaracterize the terms of the reinsurance agreements.

58. Respondents deny the allegations contained in Paragraph 58 of the Notice.

59. Respondents deny the allegations contained in Paragraph 59 of the Notice.

60. Respondents deny the allegations contained in Paragraph 60 of the Notice.

61. Respondents deny the allegations contained in Paragraph 61 of the Notice.

62. Respondents deny the allegations contained in Paragraph 62 of the Notice.

63. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Notice and, on that basis, deny the same.

64. Respondents deny the allegations contained in Paragraph 64 of the Notice.

65. Respondents deny the allegations contained in Paragraph 65 of the Notice.

66. Respondents deny the allegations contained in Paragraph 66 of the Notice.

67. Respondents deny the allegations contained in Paragraph 67 of the Notice.

68. Respondents deny the allegations contained in Paragraph 68 of the Notice.



69. Respondents deny the allegations contained in Paragraph 69 of the Notice.

70. Respondents deny the allegations contained in Paragraph 70 of the Notice.

**Kickback Payments Made for Referrals**

71. Respondents deny the allegations contained in Paragraph 71 of the Notice.

72. Respondents deny the allegations contained in Paragraph 72 of the Notice.

73. Respondents deny the allegations contained in Paragraph 73 of the Notice.

**Payments Received by PHH**

74. Respondents deny the allegations contained in Paragraph 74 of the Notice.

75. With respect to the allegations contained in Paragraph 75 of the Notice, Respondents admit only that the CFPB was provided with detailed financial information regarding the exact amounts held in trust accounts at various times and that the financial records speak for themselves and are the best evidence of their contents. Respondents deny the remaining allegations contained in Paragraph 75 of the Notice.

76. Respondents deny the allegations contained in Paragraph 76 of the Notice.

77. Respondents deny the allegations contained in Paragraph 77 of the Notice.

78. With respect to the allegations contained in Paragraph 78 of the Notice, Respondents admit only that any withdrawal from the trust was done by mutual agreement of the parties pursuant to the reinsurance and trust agreements between the parties which agreements speak for themselves and are the best evidence of their contents. Respondents deny the remaining allegations contained in Paragraph 78 of the Notice.

79. Respondents deny the allegations contained in Paragraph 79 of the Notice.

80. Respondents deny the allegations contained in Paragraph 80 of the Notice.

81. With respect to the allegations contained in Paragraph 81 of the Notice, Respondents admit only that, effective April 1, 2012, Atrium and Genworth terminated their reinsurance agreement pursuant to the “Termination Agreement,” the terms of which included: Atrium paying Genworth \$37,149,869, Genworth’s agreeing to assume all future risks in connection with loans for which it provided mortgage insurance, and the release of restricted funds in the amount of \$24,100,000 to Atrium from the trust account. Respondents deny the remaining allegations contained in Paragraph 81 of the Notice.

82. With respect to the allegations contained in Paragraph 82 of the Notice, Respondents admit only that, effective May 31, 2013, Atrium and UGI terminated the reinsurance agreement pursuant to the “Commutation Agreement and Mutual Release,” the terms of which included: Atrium paying UGI \$48,592,201, UGI’s agreeing to assume all future risks in connection with loans for which it provided mortgage insurance, and the release of restricted funds in the amount of \$69,169,499 to Atrium from the trust account. Respondents deny the remaining allegations contained in Paragraph 82 of the Notice.

83. Respondents deny the allegations contained in Paragraph 83 of the Notice.

**Additional Harm Caused by PHH’s Captive Arrangements**

84. Respondents deny the allegations contained in Paragraph 84 of the Notice.

85. Respondents deny the allegations contained in Paragraph 85 of the Notice.

86. With respect to the allegations contained in Paragraph 86 of the Notice, Respondents admit only that, since 2010, no new loans were put into reinsurance books due to the fact that all of the reinsurance agreements were in run-off. Respondents deny the remaining allegations contained in Paragraph 86 of the Notice.

87. Respondents deny the allegations contained in Paragraph 87 of the Notice.

88. Respondents deny the allegations contained in Paragraph 88 of the Notice.

89. Respondents deny the allegations contained in Paragraph 89 of the Notice.

**VIOLATIONS OF RESPA**

90. Paragraph 90 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents state that the statute cited speaks for itself and is the best evidence of its content. Respondents deny the allegations contained in Paragraph 90 to the extent that they are inconsistent with the statute and specifically deny that their conduct violated RESPA.

91. Paragraph 91 of the Notice states conclusions of law to which no response is required. To the extent that a response is required, Respondents state that the statute cited speaks for itself and is the best evidence of its content. Respondents deny the allegations contained in Paragraph 91 to the extent that they are inconsistent with the statute and specifically deny that their conduct violated RESPA.

92. Respondents deny the allegations contained in Paragraph 92 of the Notice.

93. Respondents deny the allegations contained in Paragraph 93 of the Notice.

94. Respondents deny the allegations contained in Paragraph 94 of the Notice.

95. Respondents deny the allegations contained in Paragraph 95 of the Notice.

96. Respondents deny the allegations contained in Paragraph 96 of the Notice.

97. Respondents deny the allegations contained in Paragraph 97 of the Notice.

98. Respondents deny the allegations contained in Paragraph 98 of the Notice.

99. Respondents deny the allegations contained in Paragraph 99 of the Notice.

100. Respondents deny the allegations contained in Paragraph 100 of the Notice.

101. Respondents deny the allegations contained in Paragraph 101 of the Notice.

102. Respondents deny the allegations contained in Paragraph 102 of the Notice.

103. Respondents deny the allegations contained in Paragraph 103 of the Notice.

**PRAYER FOR RELIEF**

104. Respondents deny that the CFPB is entitled to any of the relief it seeks in the “Prayer for Relief” in Paragraph 104 of the Notice, including subparagraphs A through F. Respondents deny each and every allegation of the Notice not heretofore specifically admitted.

**AFFIRMATIVE DEFENSES**

1. The Notice fails to state a claim upon which relief may be granted, and Respondents are entitled to dismissal as a matter of law.
2. The Office of Administrative Adjudication lacks jurisdiction to hear purported violations of the Real Estate Settlement Procedures Act (“RESPA”) that occurred before July 21, 2011, because that statute under which the CFPB is proceeding was not yet effective and is not retroactive.
3. The CFPB’s claims are barred by judicial estoppel.
4. The Notice seeks to recover for alleged conduct which is not incident to or part of a real estate settlement service, and, which is not subject to RESPA Section 8, 12 U.S.C. § 2607.
5. The claims alleged in the Notice are barred by the three-year statute of limitations under RESPA, 12 U.S.C. § 2614, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5564.
6. The claims alleged in the Notice are barred by the Filed Rate Doctrine.
7. The claims alleged in the Notice are barred by the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

8. The CFPB and/or the Department of Housing and Urban Development (“HUD”) consented to all of Respondents’ acts or omissions which gave rise to the occurrences alleged in the Notice, and subsequently ratified that conduct.

9. The claims alleged in the Notice are barred to the extent they seek to impose liability on Respondents for acts or omissions of third parties.

10. The claims alleged in the Notice are barred by the doctrine of laches.

11. The claims alleged in the Notice, are barred, in whole or in part by 12 U.S.C. § 2617(b) because Respondents’ statements, conduct and actions were in good faith and in conformity with the applicable statutes, governmental regulations, applicable rules, interpretations of RESPA, and industry standards existing at the time of such statements, conduct and actions. Moreover, the practice of which the Notice complains has been approved by HUD.

12. The claims alleged in the Notice are barred or limited by the terms of RESPA, including 12 U.S.C. § 2607(c).

13. The claims alleged in the Notice are barred, in whole or in part, by the doctrine of accord and satisfaction.

14. The claims alleged in the Notice are barred for failure to join as necessary parties: United Guaranty Corporation, Radian Guaranty, Inc., and Genworth Mortgage Insurance Corporation.

15. The CFPB is estopped from seeking relief which is duplicative of the relief it has sought from the private mortgage insurance companies, United Guaranty Corporation, Radian Guaranty, Inc., and Genworth Mortgage Insurance Corporation, through consent orders to resolve those companies’ alleged violations of RESPA in connection with their reinsurance agreements.

16. The claims alleged in the Notice are barred because the reinsurance contracts challenged were approved by a regulatory agency.

17. The claims alleged in the Notice are barred because RESPA, as applied, is void for vagueness in violation of the Fifth Amendment to the United States Constitution.

18. The relief sought in the Notice violates Respondents' rights to protection from excessive fines as provided by the United States Constitution, and violates Respondents' rights to substantive due process as provided in the United States Constitution.

19. The claims alleged in the Notice are barred by any other matter constituting an avoidance or affirmative defense on legal or equitable grounds.

20. Respondents hereby give notice that it will rely upon such other and further defenses as may become apparent during the course of this action.

**PRAYER FOR RELIEF**

WHEREFORE, Respondents respectfully request that this proceeding be dismissed, that the relief requested by the CFPB be denied, and that Respondents recover their costs incurred in connection with this proceeding and any and all other legal or equitable relief to which they are entitled.

Dated: January 31, 2014

Respectfully submitted,

WEINER BRODSKY KIDER PC

By: /s/ David M. Souders

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Attorneys for Respondents  
PHH Corporation, PHH Mortgage Corporation,  
PHH Home Loans, LLC, Atrium Insurance Corporation,  
and Atrium Reinsurance Corporation

**CERTIFICATION OF SERVICE**

I hereby certify that on the 31st day of January, 2014, I caused a copy of the foregoing Answer and Affirmative Defenses to the Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty, to be filed with the Office of Administrative Adjudication and served by electronic mail on the following parties who have consented to electronic service:

Sarah Auchterlonie  
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/s/ Hazel Berkoh \_\_\_\_\_  
Hazel Berkoh