UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU
March 5, 2014

ADMINISTRATIVE PROCEEDING
File No. 2014-CFPB-0002

In the Matter of	:	
	:	
PHH CORPORATION,	:	
PHH MORTGAGE CORPORATION,	:	GENERAL PREHEARING ORDER
PHH HOME LOANS LLC,	:	
ATRIUM INSURANCE CORPORATION, and	:	
ATRIUM REINSURANCE CORPORATION	:	

On January 29, 2014, the Consumer Financial Protection Bureau (CFPB) filed a Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty in this proceeding.

The hearing in this matter is scheduled to commence on March 24, 2014, in Philadelphia, PA. In this order, I set forth some of the general rules and guidelines I intend to follow leading up to the hearing and during the hearing, assuming the hearing goes forward as currently planned. Any objection to these general rules and guidelines may be made by written motion or, if appropriate, orally during any prehearing conference or oral argument.

1. Venue. The first week of the hearing will be held in the courtroom of the U.S. Tax Court at the U.S. Custom House, Room 300, 200 Chestnut Street, Philadelphia, PA, 19106. The venue for further proceedings will be addressed the first week of the hearing.

2. Subpoenas. As I mentioned at the scheduling conference on February 14, 2014, when I receive a request for a subpoena, I review it to determine if the subpoena is unreasonable, oppressive, excessive in scope, or unduly burdensome. 12 C.F.R. § 1081.208(d). If I find it colorably objectionable, I generally issue an order in which I solicit the parties' views on the matter. If I do not find it objectionable, I wait two or three business days, and if no party notifies me that it objects to it, I sign the subpoena and return it to the requesting party. If a party does object, it should notify this Office immediately, and I will set a briefing schedule for any motion to quash. Because I view the briefing schedule set forth in the Rule of Practice for Adjudication Proceedings (Rule) 208(h)(1) as too slow, any briefing schedule on a party's motion to quash will normally require the filing of such a motion within five business days of the order setting the briefing schedule, and the filing of any opposition within three business days thereafter. No reply brief is permitted. 12 C.F.R. § 1081.208(h)(1).

3. Exhibit lists. Exhibit lists shall be exchanged and filed by all parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or that are presumptively inadmissible, such as prior sworn statements. Comprehensive exhibit lists prevent other parties from being surprised in the middle of the hearing, and also make it easier for me to track the various documents that the parties use during the hearing.

4. Start of the hearing. I generally do two things at the very beginning of the hearing. First, I rule on any pending motions, particularly motions in limine. Second, I rule on as many evidentiary objections as possible, and admit or exclude as many exhibits as I can, which greatly streamlines the hearing. The parties should therefore be prepared at the start of the hearing to orally address pending motions and evidentiary objections. In general, any prehearing objection that I do not resolve at the outset will be handled in the "traditional" way, that is, its proponent should lay a foundation and then, if an exhibit, offer it in evidence. The objecting party may then renew its objection.

5. Hearing schedule. Although the precise hearing schedule depends on the circumstances, I generally start the day at 9:00 or 9:30 a.m., and continue until at least 5:00 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in afternoon, also lasting about fifteen minutes. I generally break for lunch between noon and 12:30 p.m., for about one hour and fifteen minutes. I am flexible if the parties desire a different schedule.

6. Form of objections. I discourage speaking objections, because they have a tendency to suggest answers to witnesses. On the other hand, it is helpful if an objection includes at least some articulated basis. Thus, my preferred form of objection is "objection," followed by no more than five or six words explaining the basis. For example, "objection – vague," "objection – asked and answered," or "objection – assumes facts not in evidence," are all acceptable ways of objecting.

7. Examination.

    a. The Rules do not provide for motions for judgment as a matter of law. As a result, I do not strictly enforce the rule that a respondent does not present any evidence until Enforcement rests. Instead, if Enforcement calls a witness that a respondent also wishes to call as a witness, the respondent should cross-examine the witness as if he were calling the witness in his own case. This means that cross-examination may exceed the scope of direct examination. Indeed, I generally do not enforce the scope rule at all, and I allow multiple redirects and recrosses, until the testimony of the witness is completely exhausted by all parties. This way, a witness need only testify once, and need not be recalled just for a respondent's case.

    b. Respondents as witnesses are the exception to 7(b), supra. I am flexible regarding the manner of presenting respondent testimony, so long as the parties agree on it. For example, if Enforcement calls a respondent as its last witness, the parties may agree that respondent's counsel conducts the direct examination,

followed by Enforcement's cross-examination, which may exceed the scope of direct. In the absence of any agreement, respondent testimony proceeds in the "traditional" way, that is, the respondent is called as a witness and examined potentially multiple times.

c. In general, cross-examination may be conducted by leading questions, even as to Enforcement witnesses that a respondent wishes to call in its own case. However, counsel may not lead their client. Thus, if a respondent is called as a witness in Enforcement's case, that respondent's counsel may not ask leading questions on cross-examination. Similarly, if a CFPB employee is called as a witness for a respondent, Enforcement (or whoever represents the employee, such as the Office of General Counsel) may not ask leading questions on cross-examination.

8. Practice tips. Depositions in civil cases, and sworn testimony during investigations, are far more common than administrative hearings, and I have found that certain deposition practices have unfortunately crept into hearings. I offer these practice tips as helpful suggestions to move a case along efficiently.

a. Avoid leading questions on direct. Properly formulated non-leading questions do not always come naturally, and it is easy to fall into the habit, as in a deposition, of asking leading questions all the time. However, leading questions during direct of non-hostile witnesses are objectionable, and I sustain objections to them. Repeated leading questions, followed by meritorious objections, followed by rephrased questions, slow down the hearing needlessly, and are easily prevented.

b. Hit the high points on cross. The purpose of discovery is to explore the case; the purpose of a hearing is to present the case. It is a waste of hearing resources to bring out on cross every jot and tittle of minutiae that is colorably helpful to your case. Your cross will be much more memorable and powerful if you emphasize the strong points, and marginalize the tangential points.

c. Do not comment on the evidence. You may be able to get away with sarcasm during a deposition, but sarcasm during a hearing, particularly during cross-examination, just makes you look petty and unprofessional. The post-hearing briefs provide ample opportunity to explain your skepticism in detail.

9. Be civil. Civility between counsel streamlines every proceeding, and makes my job much easier. A willingness to communicate respectfully with opposing counsel is a sign of strength, not a sign of weakness. Although there is not always a meet-and-confer requirement in the Rules, I encourage the parties to attempt to reach agreement on anything they reasonably can. If you cannot reach agreement, I will resolve the matter, but if you do disagree, try not to be disagreeable about it.

SO ORDERED.

Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission