UNITED STATES OF AMERICA Before the CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING File No. 2014-CFPB-0002

)	
In the Matter of:	
)	REQUEST FOR ISSUANCE OF
ý	SUBPOENA REQUIRING
PHH CORPORATION,	PRODUCTION OF DOCUMENTS
PHH MORTGAGE CORPORATION,	
PHH HOME LOANS LLC,	
ATRIUM INSURANCE CORPORATION,)	
and ATRIUM REINSURANCE)	
CORPORATION)	

Pursuant to 12 C.F.R. § 1081.208, Enforcement Counsel respectfully requests the issuance of the attached subpoena to the Respondents seeking a limited production of documents. Enforcement Counsel has attached hereto as Exhibit A the proposed subpoena; the document request is identified on Attachment A to Exhibit A. In support of this request and in accordance with 12 C.F.R. § 1081.208(b), below is a brief statement for the proposed subpoena showing the general relevance and reasonableness of the scope of the documents sought.

Enforcement Counsel seeks communications between Respondents and any mortgage insurance company (MI) regarding this administrative proceeding, the underlying investigation, and the Bureau's actions against the MIs filed in the Southern District of Florida (including but not limited to their underlying investigations, discussions with the CFPB, and any settlement terms). These materials are relevant to, among other things, Respondents' judicial estoppel defense, in which they allege that the Bureau's settlement agreements with MIs should preclude the claims

brought in this proceeding. For example, in their Renewed Motion to Dismiss or, in the Alternative, to Narrow the Notice of Charges, Respondents assert that Atrium and UGI together acted "in reliance" on the Consent Order entered in the action CFPB. v. United Guaranty Corp., No. 13-cv-21189 (S.D. Fla. Feb. 14, 2014), by continuing to give or accept ceded premiums. See Brief in Support of Renewed Motion to Dismiss or, in the Alternative, to Narrow the Notice of Charges, at 38. The Supreme Court has held that to establish reliance in support of an equitable claim, the moving party must show that it "relied on its adversary's conduct in such a manner as to change his position for the worse." Horan v. Reliance Standard Life Ins. Co., 467 U.S. 51, 59 (1984) (emphasis added). Communications between Respondents and UGI on the subjects identified above are necessary to test whether they changed their conduct as a result of the Consent Order, and if so, how. Communications that are potentially relevant to that issue include those dated both before and after the Consent Order was entered. Enforcement Counsel is entitled to know how they viewed the conduct that is the subject of this proceeding before the Consent Order was entered, and how they viewed that conduct after the Consent Order was entered. And because Respondents similarly invoke the Consent Orders entered by the Southern District of Florida in the Bureau's actions against various other MIs, communications between Respondents and those other MIs on the subjects identified above are equally relevant to Respondents' judicial estoppel defense. See Brief in Support of Renewed Motion to Dismiss or, in the Alternative, to Narrow the Notice of Charges, at 41.

The aforementioned communications are also relevant to Respondents' claim that the Bureau's "outspoken detestation of [captive] arrangements, and its aggressive prosecution of them" forecloses any possibility of Respondents and an MI entering into a captive arrangement in the future. *Id.* at 13 n.11. Communications between Respondents and the MIs relating to this proceeding and the underlying investigation are necessary to test the veracity of Respondents' assertion about

the purported impact of the Bureau's investigation and this proceeding on their relationship and their willingness, if any, to entertain the possibility of entering into a captive arrangement in the future. As just one illustrative example, if Respondents and MIs discussed whether it may be worthwhile to enter into a future captive arrangement if the financial benefits of such an arrangement (*i.e.*, massive profits to PHH and market share gains for the MI) are sufficiently substantial as to outweigh the deterrent effect of a damages award, Enforcement Counsel would be entitled to such communications.

DATED: May 1, 2014

Respectfully submitted,

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s/Donald R. Gordon

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Enforcement Counsel

Certificate of Service

I certify that on this 1st day of May 2014, I caused the **Request for Issuance of Subpoena Requiring Production of Documents** to be filed and to be served upon the following parties by electronic service:

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