

UNITED STATES OF AMERICA  
 Before the  
 CONSUMER FINANCIAL PROTECTION BUREAU  
 July 11, 2014

ADMINISTRATIVE PROCEEDING  
 File No. 2014-CFPB-0002

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<p>In the Matter of</p> <p>PHH CORPORATION,          PHH MORTGAGE CORPORATION,          PHH HOME LOANS LLC,          ATRIUM INSURANCE CORPORATION, and          ATRIUM REINSURANCE CORPORATION</p>	<p>: : : : : : :</p>	<p>ORDER REMOVING MOTION FROM          ABEYANCE AND PERMITTING          FILING OF SURREPLY</p>
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On January 29, 2014, the Consumer Financial Protection Bureau (Bureau) filed a Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty in this proceeding. The hearing took place over nine days in Philadelphia, PA, between March 24 and June 4, 2014. On June 6, 2014, the Office of Enforcement (Enforcement) filed a Motion to Amend the Protective Order and to Unseal "Confidential" Material (Motion). Respondents filed an opposition to the Motion, as did the MI Companies,<sup>1</sup> and Enforcement filed a reply (Reply). The Motion was held in abeyance on July 2, 2014, based on the parties and MI Companies' representation that they were attempting to resolve the issues raised in the Motion among themselves. Yet, last night, Enforcement represented that they have been unable to resolve these issues and asked that I rule on the Motion. Therefore, the Motion is REMOVED FROM ABEYANCE.

In their opposition, the MI Companies argue that confidential material must remain under seal to comply with federal and Minnesota law. MI Opp. at 8-10 (filed June 23, 2014). They assert that much of the material deemed confidential in this proceeding was produced to the Minnesota Department of Commerce (DOC), pursuant to Minnesota Statutes § 60A.031. *Id.* at 9. The MI Companies argue that this provision, which falls under the insurance chapter of the Minnesota Statutes, dictates that the materials produced to DOC must remain confidential and not be made public, and that the Bureau must have agreed, or was at least obligated to have agreed, to hold the materials shared with it by DOC confidential. *Id.* at 9-10.

In its Reply, Enforcement responds that the Bureau received materials from DOC under Minnesota Statutes § 45.027 and not under § 60A.031, as the MI Companies maintain. Reply at 5

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<sup>1</sup> I previously granted the MI Companies—Radian Guaranty Inc., United Guaranty Residential Insurance Company, Mortgage Guaranty Insurance Corporation, Genworth Mortgage Insurance Corporation, and Republic Mortgage Insurance Company—third-party status. *See* Order Granting Motion to Intervene and Denying Without Prejudice Motions for Protective Order (Feb. 20, 2014).

(filed June 27, 2014). Section 45.027 falls under the *commerce* chapter of the Minnesota statutes, but Enforcement maintains it applies here and interacts with the insurance law provision at § 60A.031. Reply at 5-6; see Minn. Stat. § 45.027. Enforcement seems to suggest that Bureau regulations on disclosure of confidential information, 12 C.F.R. §§ 1070.40-47, trump either Minnesota statute, and there is no reason under Minnesota law to obstruct Enforcement's effort to unseal materials in this proceeding. Reply at 6. An exhibit to the Reply, described as the Agreement to Confidentiality between the Bureau and DOC, refers to § 60A.031 and another provision under the insurance chapter of the Minnesota statutes, as well as the Bureau regulations on disclosure of confidential information, but does not mention Minnesota Statutes § 45.027. Id. at 6, Ex. D.

In an email addressed to me today, the MI Companies clarify their position after the recent attempt to resolve the issues surrounding the Protective Order without my involvement. Their email is arguably responsive to Enforcement's earlier reply brief,<sup>2</sup> but I would still benefit from a formal surreply, given that Enforcement raised a new Minnesota statute in its Reply, while attaching a number of exhibits, some of which deserve the MI companies' response. See 12 C.F.R §§ 1081.104(b)(5), (14) (regarding hearing officer's authority to regulate course of proceeding and to take necessary actions to discharge his duties); see also ESSROC Cement Corp., Resource Conservation and Recovery Act Appeal No. 13-03, 2013 WL 5443067 (EPA Sept. 25, 2013) (filing of surreply permitted where it could be helpful to decision-making, despite rules not providing for surreplies).<sup>3</sup> Any such surreply must be filed by July 16, 2014.

SO ORDERED.



Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission

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<sup>2</sup> I appreciate the effort to address these issues expeditiously, because of the time constraints presented. See 12 C.F.R. § 1081.205(g). Nonetheless, addressing substantive issues relating to a pending motion in an email to me is not appropriate. The MI Companies are not alone guilty of this – I received similar, yet somewhat less detailed, emails from Enforcement and Respondents yesterday and today. I expect the parties and the MI Companies to seek relief and clarify their positions only through formal filings going forward.

<sup>3</sup> The plain purpose of 12 C.F.R. § 1081.205(g) is to ensure timely resolution of pending motions. Although 12 C.F.R. § 1081.205(g) is arguably violated by further briefing in lieu of an order resolving the Motion, Enforcement's Reply raises enough new issues that it is tantamount to an entirely new motion. Under the circumstances, I interpret 12 C.F.R §§ 1081.104(b)(5) and (14) to permit additional briefing notwithstanding 12 C.F.R. § 1081.205(g).