UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

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.	)	**FILED UNDER SEAL**

RESPONDENTS' RESPONSE TO ENFORCEMENT COUNSEL'S STATEMENT OF PURPORTED UNDISPUTED FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY

Pursuant to 12 C.F.R. § 1081.212(d)(2), Respondents PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively, "Respondents") hereby respond to Enforcement Counsel's Statement of Undisputed Facts in Support of Their Motion for Summary Disposition as to Liability.

INITIAL OBJECTIONS

First, as an initial matter, Respondents object to Enforcement Counsel's attempt to move for summary disposition at this stage of the proceedings. As Respondents pointed out when Judge Elliot raised the issue of "dispositive motions," it would be fundamentally unfair to Respondents to allow Enforcement Counsel to move for summary disposition after they had the benefit of presenting their best evidence during the first week of their case-in-chief. Nor is summary disposition at this stage contemplated by the Bureau's own rules. Enforcement Counsel could have moved for summary disposition at the outset of the case, but they elected not to do so. Rather, Enforcement Counsel now seek to gain an unfair advantage by relying on their

case-in-chief evidence without allowing Respondents to put on their case. Further, as Judge Elliot stated on the first day of the hearing:

> And I'll tell you right now, I don't see Enforcement making a successful motion for summary disposition. For one reason, I don't need to look outside anything except the expert reports. Okay? The experts are, for the most part, diametrically opposed, and that by itself, is sufficient to raise a genuine issue of material fact. So this case is not going to get resolved completely in Enforcement's favor, at least by way of summary disposition.

March 24, 2014 Hearing Transcript ("March 24 Tr."), at 34-35.

Accordingly, Enforcement Counsel's decision to file a motion for summary disposition at this time, and demand responses to 55 purported "material facts," not only contravenes the Tribunal's directive, but is categorically unfair and a denial of due process to Respondents.

Second, Enforcement Counsel's effort to obtain summary disposition on the issue of liability demonstrates the flawed nature of the administrative process. Indeed, there is simply no reason for this Tribunal to conduct the hearing if Enforcement Counsel have already determined liability based on printed documents and their limited investigation.

Third, while the Bureau's rule for summary disposition requires a statement of undisputed material facts, many of the so-called "facts" submitted by Enforcement Counsel are not "material." In addition, virtually all of the numbered paragraphs contain more than one alleged undisputed fact, making it impossible to respond to each statement contained in the individual paragraphs.

Fourth, as explained below, Enforcement Counsel rely on out-of-context quotes and partial disclosures in a strained attempt to establish undisputed material facts. Such an effort is unavailing, however, since the witnesses have not been provided a full and fair opportunity to testify in this matter.

Finally, Enforcement Counsel inappropriately use the term "referral" throughout their

Statement of Undisputed Facts, suggesting that they have already established this element of a RESPA Section 8 claim. *See, e.g.*, ¶¶ 7, 22, 24, 28, 30, 43-45. Whether or not any alleged referrals took place is still a highly disputed fact, and one that Enforcement Counsel must prove.

Subject to the foregoing objections, Respondents' respond to Enforcement Counsel's Statement of Undisputed Facts as follows:

1. Respondents dispute Undisputed Fact No. 1 to the extent it states that "PHH Corporation . . . offer[s] and provide[s] residential mortgages." PHH Corporation is the parent of Respondents PHH Mortgage Corporation ("PHH Mortgage") and PHH Home Loans, LLC ("PHH Home Loans"), both of which are mortgage lenders.

2. Respondents do not dispute Undisputed Fact No. 2.

3. Respondents dispute Undisputed Fact No. 3. As an initial matter, contrary to Enforcement Counsel's representation, this self-styled "undisputed fact" does not appear in the Tribunal's Order dated March 13, 2014 ("Mar. 13 Order"). Instead, Enforcement Counsel took the statement in the Order that identified the undisputed fact that both Atrium Insurance Corporation ("Atrium") and Atrium Reinsurance Corporation (Atrium Re") are wholly-owned subsidiaries of PHH Corporation and embellished it by adding the phrase "provided purported reinsurance." No such language appears on page 17 of the Mar. 13 Order, however. Moreover, Enforcement Counsel's attempt to insinuate a finding that the reinsurance provided by Atrium and then Atrium Re was "purported reinsurance" is wholly contradicted by the undisputed evidence that Atrium and Atrium Re collectively paid more than $156 million in reinsurance claims.

4. Respondents dispute Undisputed Fact No. 4. While Respondents noted in their NORA Submission that private mortgage insurance ("pmi") is "typically required" for borrowers

who put down less than 20%, in fact, before the collapse of the real estate market a number of lenders offered loans that exceeded "eighty percent of the value of the home" and for which the lenders did not require pmi.

5. Respondents do not dispute Undisputed Fact No. 5.

6. Respondents dispute Undisputed Fact No. 6. As Respondents have repeatedly explained, it was Respondents' policy and practice to provide a disclosure to borrowers with whom they had direct contact that afforded the borrower the opportunity to select his or her own pmi provider. Further, Respondents allowed brokers and loan correspondents to select the private mortgage insurer ("MI"). Absent the borrower selecting another pmi, PHH Mortgage and PHH Home Loans would select an MI with whom they had a relationship based on a number of factors. The primary question regarding the selection of the MI was, and remains, whether the MI offered to insure the loan program sought by the borrower. After that, PHH certainly took into account a number of factors including counterparty risk, the MI's willingness to pay claims, and business relationship factors. *See* Transcript of Aug. 13, 2013 Investigational Hearing of Samuel L. Rosenthal ("Rosenthal Tr."), ECX 731 at 26-27; *see also* Declaration of Mark Danahy ¶ 19 (Ex. F attached to ECX 653) ("PHH Mortgage will utilize those pmi companies that have provided consistently good service to PHH Mortgage's customers and have implemented the appropriate systems to allow PHH Mortgage to interface with the pmi provider."); Deposition Transcript of Mark Danahy ("Danahy Dep."), ECX 153, at 197.

Enforcement Counsel's reliance on the out-of-context statement in the June 4, 2008 email identified as ECX 773 is inappropriate. As an initial matter, that discussion concerns the provision of pmi for credit union loans. As Mr. Rosenthal explained over the course of his three-day cross-examination, credit union borrowers are eligible for pmi at reduced rates from CMG

because of their credit union membership – CMG Mortgage Insurance Company ("CMG") was, at that time, a subsidiary of CUNA Mutual Group. Given the discount afforded such borrowers, any attempt to "assign" such borrowers to a different MI provider would, in all likelihood, cost the borrower more money. Thus, assignment of a credit union borrower to CMG was in the borrower's interest, and Enforcement Counsel's attempt to utilize the selection of CMG pmi is disingenuous.

Further, this email was in the context of a discussion with a representative of Republic Mortgage Insurance Company ("RMIC") an entity with which PHH Mortgage and PHH Home Loans did business with starting in July 2009; yet, Atrium never had a captive arrangement with RMIC. *See* Mar. 13 Order at 18, ¶ 13 ("Neither Atrium, nor Atrium Reinsurance Corporation, ever entered into reinsurance agreements with MGIC, RMIC, the PMI Group, or Triad Guaranty Insurance Corporation.").

Enforcement Counsel fail to include citations to either Curt Culver's oral testimony that Mortgage Guaranty Insurance Corporation ("MGIC") ensured that all of its captive reinsurance agreements complied with RESPA.

Enforcement Counsel also fail to cite to its own "Interview Memorandum" of its interview of Lawrence Pierzchalski, dated January 31, 2014 (CFPB-PHH-01372649-01372654), wherein Mr. Pierzchalski purportedly explained to Enforcement Counsel how MGIC used Milliman to evaluate the reinsurance arrangement including "the risk kept by MGIC, the risk borne by the lender, the premium cede, the premium, and the loss borne under various scenarios." *Id.* at 01372651. Mr. Pierzchalski then purportedly stated that "Milliman would evaluate the product to assess whether the structure met the requirements indicated by the 1997 HUD letter." *Id.; see also id.* at 01372653 (Additionally, "Milliman would review the premium

and compare it to the risk, and concluded it was a reasonable fair deal given the analysis."); *id.* at 01372653 (Pricewaterhouse Coopers ("PWC") "signed off on MGIC's financial statements. PWC agreed to the accounting and requirements concerning the company's reinsurance.").

Finally, Enforcement Counsel's general reliance on the testimony of Mr. Culver to prove their case against Respondents is inappropriate for several reasons. First, the fact that Enforcement Counsel find it relevant that MGIC "does not market to borrowers" is curious and reflects a fundamental misunderstanding of the mortgage origination process. Whether pmi is required for a loan is not ascertained until a borrower makes an application with a lender; thus, it would be nonsensical for an MI to market directly to borrowers. Further, Mr. Culver's company never entered into a reinsurance agreement with Atrium. *See* March 25, 2014 Hearing Transcript ("Mar. 25 Tr.") at 387:12-388:15; Mar. 13 Order at 18, ¶ 13. Nonetheless, PHH Mortgage and PHH Home Loans originated 3,869 loans between the years of 2006 through 2011 where MGIC was selected to provide the pmi. Enforcement Counsel have not – because they cannot – grapple with this inconvenient fact.

7. Respondents dispute the relevance of the selective quotes proffered by Enforcement Counsel in Undisputed Fact No. 7 to support the unfounded assertions that before 2008, MIs sought "referrals" and the implication that "lenders" used the "referrals" to "participate in the MIs' high profits." First, the out-of-context statements attributable to MGIC are of no moment since Atrium never had a captive arrangement with MGIC; yet, PHH Mortgage and PHH Home Loans originated loans where MGIC provided the pmi. Second, Enforcement Counsel's fascination with "the MIs' high profits" is curious since the rates charged by the MIs are filed rates; accordingly, Enforcement Counsel's statement is really a reflection of its discontent with state insurance regulators who approved the rates charged by the MIs. Of

course, Enforcement Counsel have no jurisdiction to regulate insurance rates. *See* Consumer Financial Protection Act, 12 U.S.C. § 5517(f)(1).

Third, the use of a purportedly "undated Milliman web page" to support their case is also telling. As an initial matter, Enforcement Counsel fail to note that the article is referring to "bank captives;" in fact, none of the Respondents here is a bank. Further, Enforcement Counsel do not bother to include the reference in the article that "in October, 1996, the Office of the Comptroller of the Currency ("OCC") cleared the way for banks to assume risk, via captive reinsurance subsidiaries, on mortgage loans originated or purchased by the bank." ECX 682. Once again, Enforcement Counsel simply ignore the fact that the regulators with authority over this issue reviewed and approved of the captive reinsurance structures. This includes the OCC, as well as the Office of Thrift Supervision ("OTS") and the Department of Housing and Urban Development ("HUD"). *See, e.g.*, ECX 586 ("Mortgage guaranty reinsurance captives have been authorized by a number of financial Regulators beginning in 1996.").

8. Respondents disagree with Enforcement Counsel's statement in Undisputed Fact No. 8 that Atrium provided "purported reinsurance to the MIs." Atrium provided real reinsurance, and it was accounted for on the books and records of both the MIs and Atrium (and subsequently Atrium Re) as reinsurance. Further, Enforcement Counsel have acknowledged that the reinsurance provided by Atrium was, in fact, real insurance because when they entered into Consent Orders with UGI, Genworth and Radian, Enforcement Counsel 1) did not require any of these MIs to terminate their existing reinsurance arrangements with lender captives, including UGI's existing agreement with Atrium Re; and 2) did not require any of the MIs to revise their financial statements to reflect the fact that the reinsurance provided by entities, including Atrium Re, was not real reinsurance. *See* Consent Orders filed in the Southern District of Florida.

9. Respondents do not dispute Undisputed Fact No. 9.

10. Respondents dispute Undisputed Fact No. 10. As an initial matter, Respondents do not agree that the exhibits proffered by Enforcement Counsel support its assertion that "PHH's captive reinsurance arrangement with United Guaranty was the first one in the mortgage industry." *See, e.g.*, ECX 733 at CFPB-PHH-1368947 ("Atrium, being one of the first captives, . . ."); ECX 586 at 4 (noting that the first captive formed exclusively to insure mortgage and guaranty risk on loans originated by an affiliate was domiciled as a fully regulated insurer in New York, but not identifying the captive by name nor specifying whether it was the first with UGI or the industry in general). Second, the document primarily relied upon, ECX 733, was a submission by UGI in response to a request by PHH in 2006 for proposals that included, among other things, potentially new captive arrangements. However, as Mr. Rosenthal made clear, no new captive reinsurance arrangement was entered into as a result of the 2006 request for proposals. March 26, 2014 Hearing Transcript ("March 26 Tr."), at 575:17-20.

Further, Enforcement Counsel ignore language in their exhibits that are not helpful to their case. [redacted] As Respondents have explained repeatedly, the relationship between a

lender and an MI provider is based on a variety of factors and Enforcement Counsel's attempt to characterize the relationship as based solely on the existence of a captive reinsurance arrangement is incorrect and unsupported by the record. Other parts of Enforcement Counsel's exhibits undercut their general assertion that regulators do not monitor reinsurance captives. *See, e.g.*, ECX 586 at CFPB-PHH-00352306 ("Ongoing regulation of captives falls primarily on the jurisdictions in which the captive is domiciled. . . . Vermont has taken captive regulation very seriously, and it requires annual CPA and actuarial certification and conducts triennial examinations."); *id.* at CFPB-PHH-00352314-00352317 (detailing Vermont's regulation and supervision of captives). Likewise, Enforcement Counsel's assertion that the captives are undercapitalized is contradicted by their exhibits. *Id.* at CFPB-PHH-00352306 ("United Guaranty's captive reinsurance arrangements require minimum capitalization that is considerably more conservative than that for primary mortgage insurers. We also require appropriate loss and unearned premium reserves. Both capital and reserves (loss and unearned premium) must be maintained in trust accounts with United Guaranty as the beneficiary."); *id.* at 00352318-00352319 (detailing the capital requirements for UGI captive arrangements).

11. Respondents do not dispute Undisputed Fact No. 11.

12. Respondents dispute Undisputed Fact No. 12. As explained in response to Undisputed Fact No. 8, Enforcement Counsel's settlements with the MIs specifically allowed the MIs to continue ceding premiums to captive reinsurers such as Atrium Re, and Enforcement Counsel's decision to permit the MIs with whom they entered into Consent Orders to continue to state on the MIs' financial statements that reinsurance was provided by captives such as Atrium Re, bar Enforcement Counsel from asserting here that the same reinsurance was not "real" or that the payments were not in exchange for the provision of reinsurance.

13. Respondents do not dispute Undisputed Fact No. 13.

14. Respondents dispute Undisputed Fact No. 14. In addition, Respondents do not believe this self-styled "undisputed fact" is material or relevant. As Respondents have explained, the use of shared services and employees is clearly an issue for state insurance regulators, and Enforcement Counsel's attempt to impose an obligation on captive reinsurers to have their own employees, a "large" office space, and persons "occupying" that office space, is simply an attempt to usurp the authority of state insurance regulators. *See, e.g.*, N.Y. Ins. Law §§ 309 through 312 (providing for examination of insurance companies); N.Y. Ins. Law § 1114 (governing reinsurance); N.Y. Ins. Law § 1507 (permitting an insurer to share common management and personnel "with one or more other persons").

15. Respondents dispute Undisputed Fact No. 15. As explained above, work is performed for Atrium and Atrium Re under shared services agreements. In addition, work for Atrium Re is also performed by Chartis Insurance Management. Respondents are not sure what Enforcement Counsel means by "captive work" as used in this Undisputed Fact as that term is not defined anywhere.

16. Respondents dispute Undisputed Fact No. 16. As explained repeatedly, the evidence demonstrates that the structure of the reinsurance arrangements was such that, in fact, Atrium could rely upon the underwriting conducted by others – specifically, PHH Mortgage and PHH Home Loans – both of which utilized the underwriting guidelines of the MIs with which Atrium had captive reinsurance arrangements. Such reliance is not, as suggested by Enforcement Counsel, novel or extraordinary. Indeed, such arrangements were specifically approved by the OCC as far back as 1996 when it issued Interpretative Letter #743. *See* Resp. Ex. 821. In that guidance, the OCC noted that because the reinsurer would only be reinsuring

mortgage loans underwritten to the bank's underwriting standards, "the bank's own credit standards and credit underwriting experience will provide a valuable safeguard against excessive risk[.]" Interpretative Letter #743, at 3; *see also id.* at 7-8 (same); OCC Corporate Decision #99-26, at 7 (September 1999) (Resp. Ex. 808) ("The Bank's own credit standards and credit underwriting experience will also be used to manage reinsurance risk since the Subsidiary will only accept home mortgage loan credit risks consistent with the Bank's underwriting standards.").

Further, the issue of appropriate underwriting of risk is within the purview of the state insurance regulators who have responsibility for supervising the operations of insurance companies operating within their respective jurisdictions.

The testimony also demonstrates that Atrium utilized the services of Milliman, a third-party actuarial firm, to perform the risk analysis to ensure that there was sufficient risk transfer and that the risk was commensurate with the premium that was being received. Specifically, Milliman assessed the historical risk profile of the various books of loans underwritten for MI providers to evaluate whether there had been a transfer of risk. Consistent with that analysis, Milliman also provided guidance to Atrium with respect to the establishment of the appropriate corridor of losses to be reinsured, as well as the entry and exit points of that corridor. Milliman also provided assistance to Atrium in establishing adequate loss reserves based on the performance of the books of loans.

Thus, Enforcement Counsel's statement that Atrium "did no underwriting to price any reinsurance risks it purportedly assumed[]" is false.

17. Respondents dispute Undisputed Fact No. 17. First, this purported undisputed fact is actually a combination of a number of purported factual statements excerpted from a

variety of different documents. Second, none of the three exhibits identified by Enforcement Counsel mention Respondents by name; accordingly, Enforcement Counsel's attempt to include Respondents within the statements contained in any of the three exhibits is pure supposition and without any factual foundation. *See, e.g.*, ECX 814 (MGIC Board Minutes dated October 22, 1998 (no mention of Respondents); ECX 793 (Bear Stearns Equity Research article dated March 2003 (focusing on the financial results for MGIC, Radian and PMI, three entities with which Atrium did not have a reinsurance agreement with as of 2003). Third, as explained above, while Enforcement Counsel alight on certain snippets which they deem helpful to their case, Enforcement counsel totally ignore other statements in the same document that doom their case. Enforcement Counsel's use of ECX 586 is a perfect example. Enforcement Counsel cite to the January 4, 2005 internal memo from Dan Walker at UGI to support certain propositions; yet, Enforcement Counsel ignore the other statements wherein UGI makes clear that UGI took the steps necessary to ensure that there was sufficient risk transfer and that its agreements complied with all applicable statutory and regulatory requirements. Fourth, the dated materials proffered by Enforcement Counsel do not reflect the collapse of the real estate market that occurred in 2008. Thus, for example, while the Bear Stearns analysis Enforcement Counsel rely upon, ECX 793 ("The Trouble with Captive Reinsurance"), makes clear its position that captives serve no purpose other than to lower the earnings of the MIs, that analysis was done in the context of a "benign credit environment for residential real estate," *id.* at 7, where the risk of a payment by a captive was low. *Id.* at 8-9 ("Because the credit environment has been excellent over the past several years, most captive attachment points have not been breached. Therefore, under excess of loss agreements, lenders have been able to share in the premiums of the mortgage insurance industry but not incur any meaningful levels of loss."). In fact, as Respondents have explained,

in the years after this article was written, Atrium and Atrium Re incurred a number of full-limit losses on book-years, paying out claims on books far in excess of the amount of premiums that ever would be collected. In addition, the attempted use of such materials for the truth of the matter asserted deprives Respondents of their right to due process because they have not been entitled to cross-examine the authors as such individuals have not been identified by Enforcement Counsel as witnesses to this proceeding.[1]

18. Respondents do not dispute Undisputed Fact No. 18, to the extent it states that, as of the 1st Quarter of 2013, Atrium had not paid any claims pursuant to the UGI reinsurance agreement for loans in book years 1994 through 2002. Respondents do not believe that Undisputed Fact No. 18 is material, however. Through December 2003, UGI was subject to an injunction in the Southern District of Georgia regarding its reinsurance arrangements with lender-captives, including Atrium. *See Pedraza v. United Guaranty Corp., et al.*, No. CV199-239 (S.D. Ga.). Pursuant to the terms of the injunction, as long as UGI (as well as the other MIs that were part of this litigation and subject to identical injunctions), acted in conformity with the terms of the injunction, the acts of UGI were "deemed to be in compliance with RESPA." There is no evidence that HUD, or any other person or entity, has alleged that UGI did not adhere to the terms of the Injunction. Accordingly, Enforcement Counsel are precluded from arguing that UGI, and thus, Atrium, failed to comply with RESPA at any time prior to December 31, 2003.

[1] Enforcement Counsel's reliance on the financial analysis of Bear Stearns is nothing short of ironic given the collapse of that firm in 2008. Further, as the article makes clear, the interest of the authors was in the returns to the MIs and the potential effect of captive reinsurance agreements on those earnings. Without the ability to cross-examine the authors, however, it is impossible to ascertain how much they actually understood about the reinsurance structures or whether their opinions regarding issues such as the potential penetration of the captive's risk layer and the necessity of the MIs to rely on their captives for funds changed following the collapse of the real estate market. *See, e.g.*, Culver Testimony, Mar. 25 Tr. at 397 (discussing MGIC's receipt of nearly $900 million in reinsurance claim payments).

19. Respondents deny Undisputed Fact No. 19. First, the cited statement is taken out of context and does not even identify the "MIs" being referred to. As Respondents have noted, the document from which this quote is taken, ECX 35, was initially heavily redacted. After Respondents objected to the use of the document, Enforcement Counsel, through MGIC, produced the entire document. The presentation made to Arizona Department of Insurance in 1998 does not support Enforcement Counsel's RESPA claim against Atrium. For example, the presentation suggests a limit of 25% on ceded premiums. ECX 35 at CFPB-PHH-00609408-00609409. Apparently, it is Enforcement Counsel's position that any structure that limits the ceded premium to 25% is allowable under RESPA. That would include the Genworth Book B, and the [redacted]. Second, it is significant that the Arizona Department of Insurance ***never adopted*** the purported recommendation relied upon by Enforcement Counsel. This undisputed fact demonstrates that the reinsurance arrangements about which Enforcement Counsel are now complaining have been fully disclosed to regulators for almost 16 years before Enforcement Counsel filed this action and at no time did Arizona, or any other state insurance regulator, take any action to prohibit Atrium's or Atrium Re's reinsurance arrangements.

20. Respondents dispute Undisputed Fact No. 20. First, this purported undisputed fact is actually a combination of at least two different purported factual statements excerpted from two different sources. As noted in response to Undisputed Fact No. 19, Enforcement Counsel's reliance on the 1998 presentation to the Arizona Department of Insurance is inappropriate. The presentation does not even list who prepared it, who presented it, and other than the minutes from the MGIC Board, which have not been attested to, there is not even any credible evidence that this presentation was ever actually made. Mr. Culver, who testified on March 25, 2014, was asked about ECX 35, but Enforcement Counsel never asked about the

attachment they now seek to rely upon in support of their case. *See* Mar. 25 Tr. at 352-53. When counsel for Respondents asked about the presentation, Mr. Culver testified that he was not part of any meeting with the Arizona Department of Insurance, and that it was not a MGIC document. *Id.* at 406-07. As the records stands today, Enforcement Counsel are relying on a completely unauthenticated document, drafted by some unknown author or authors, with no indication that it was ever used in any manner other than as an attachment to MGIC's Board Minutes dated January 22, 1998. The language cited by Enforcement Counsel is also inapposite because it refers to a situation where there was "no transferred risk." As Respondents have explained, Atrium obtained opinions from Milliman that stated that there was sufficient transfer of risk and even Enforcement Counsel's expert witness has stated that Atrium was entitled to rely on Milliman's opinions. In addition, given the losses paid on a number of book years after 2004, there is no question that Atrium provided real reinsurance services in exchange for the premiums it received.

Second, as explained in response to Undisputed Fact No. 17, Enforcement Counsel's reliance on the Equity Research article by Bear Stearns, ECX 793, is inappropriate and misplaced. As explained above, Enforcement Counsel's use of excerpts from this document deprives Respondents of the right to cross-examine any person on the statements. Further, on its face, the report refers to three MI providers none of whom had a reinsurance agreement with Atrium in 2003.

21. Respondents dispute Undisputed Fact No. 21. As an initial matter, this purported undisputed fact is actually a combination of a number of purported factual statements excerpted from a variety of different documents. Second, Enforcement Counsel's citation to a portion of the Genworth reinsurance agreement is out of context and Respondents refer the Tribunal to the

entire agreement for the complete set of terms and conditions. Respondents object to Enforcement Counsel's selective quoting of Mark Danahy's deposition on several grounds. As an initial matter, the deposition of Mr. Danahy was taken in connection with a civil action, not in connection with this action; accordingly, the interests of Respondents were different in those two actions because, among other things, the private plaintiffs were only seeking information back to 2006. Second, Enforcement Counsel make liberal use of ellipses to highlight only the portions of testimony they like, while omitting the rest of Mr. Danahy's answer, which distorts the meaning of the selectively quoted passage. Further, Mr. Danahy is identified as a witness for Enforcement Counsel. Enforcement Counsel's attempt to circumvent the hearing process through purported "undisputed issues of fact" is inappropriate.

Similarly, Enforcement Counsel's reliance on ECX 622, a document purportedly prepared by Genworth for a presentation to Countrywide is both inappropriate and telling. It is inappropriate because the document makes no mention of Respondents anywhere nor has there been any testimony by anyone that, in fact, the selective quotations, *e.g.*, Protective Order

[redacted]

The attempted use of the Countrywide document is telling because as Respondents have suspected, Enforcement Counsel are simply lumping all excess-of-loss arrangements together, thus rendering it meaningless what any particular party has to say about why it entered into such arrangements. To be sure, it is Enforcement Counsel's position that any excess-of-loss captive reinsurance arrangement is a *per se* violation of RESPA. Respondents disagree and adamantly dispute Enforcement Counsel's use of ECX 622.

The selective quote from Mr. Culver's hearing testimony is inappropriate for the reasons stated previously – Enforcement Counsel is not entitled to put on its case-in-chief and claim

victory without providing Respondents with the opportunity to present their case.

Finally, Enforcement Counsel's use of ECX 733, a document created in response to the 2006 request for proposals is inappropriate. As an initial matter, Enforcement Counsel take a snippet of a quote from the entire presentation out of context. Specifically, Enforcement Counsel end the quote after "our current share position" and leaves off the rest of the sentence which states, in part: ". . . our current share position through continued reliable produces, services, and support, as well as through expanded solutions involving program development, pricing alternatives, and structured products." EXC 733 at CFPB-PHH-1368934. In fact, the presentation taken as a whole demonstrates what Respondents have repeatedly stated – that the relationship between the lender and the MI is multi-faceted and encompasses far more that the selection of the MI on a single loan, or group of loans. Rather, other factors weigh heavily in the decision to deal with a particular MI. Those factors include, for example, the types of products offered, the ability of the MI to pay claims, as well as the ease of ordering the MI. *See, e.g.*, ECX 153, Danahy Dep. at CFPB-PHH-00145177 (discussing factors considered). The testimony has been undisputed that Respondents never entered into any new reinsurance arrangements as a result of the 2006 request for proposals. Thus, Enforcement Counsel's argument has to be that a violation of RESPA can be demonstrated by "thinking" about entering into an arrangement, regardless of the reasons for actually entering into such an arrangement. It bears repeating that Mr. Rosenthal, the individual involved in the 2006 request for proposals, was not involved in any of the negotiations for the four reinsurance agreements that Respondents actually entered into. As a result, Enforcement Counsel's attempt to use Mr. Rosenthal's testimony to demonstrate the reasons why Respondents entered into those four agreements is inappropriate.

22. Respondents dispute Undisputed Fact No. 22 on the grounds that PHH did not

refer borrowers "almost exclusively" to UGI. Respondents' policy and practice was to provide borrowers with an affiliated business disclosure and to provide borrowers the opportunity to select their own MI. If the borrower elected to allow PHH Mortgage or PHH Home Loans to select the MI, Respondents admit that it was likely that UGI would be selected as the provider during the 1995 to 2001 timeframe.

23. Respondents do not dispute Undisputed Fact No. 23.

24. Respondents dispute Undisputed Fact No. 24. First, this purported undisputed fact is actually a combination of at least two different purported factual statements excerpted from three different sources. Second, as explained above, PHH Mortgage and PHH Home Loans provided borrowers with the opportunity to select their own MI. If the borrower did not avail himself or herself of the opportunity to select an MI, then PHH Mortgage or PHH Home Loans would select the pmi provider. PHH Mortgage and PHH Home Loans admit that they utilized an automated dialer for the purpose of selecting an MI when the borrower elected not to select a provider. The dialer was an automated system that permitted the lenders to program in the numerous and varied loan programs for each MI that would provide coverage, and it also allowed for the random disbursement of loans including, for example, geographically, which ensured that the risk was spread adequately among the MIs with which PHH Mortgage and PHH Home Loans had a relationship.

25. Respondents dispute Undisputed Fact No. 25 to the extent Enforcement Counsel are implying that the decision to add Genworth to the dialer was based on the execution of a captive reinsurance agreement between Genworth and Atrium. There has not been any testimony supporting the proposition that either PHH Mortgage or PHH Home Loans required Genworth to enter into a captive reinsurance agreement with Atrium prior to utilizing Genworth

to provide pmi on loans originated by either lender. Indeed, there has not been any testimony by any individual at either PHH Mortgage or PHH Home Loans regarding the use of Genworth to provide pmi to borrowers in 2001. Accordingly, Enforcement Counsel's insinuation that Genworth was added to the dialer only as a result of a captive reinsurance arrangement with Atrium is sheer speculation on the part of Enforcement Counsel.

26. Respondents do not dispute the first sentence in Undisputed Fact No. 26. Respondents dispute the second sentence of Undisputed Fact No. 26. The "preferred provider" reference in ECX 495 is taken out of context and is in a document in a section titled "General Relationship Overview." There has not been any testimony regarding the meaning of that term. Further, as that document demonstrates, Genworth assisted the lender when another MI stopped insuring certain loans in the pipeline, which left the lender exposed and threatened to disrupt the lender's business. Enforcement Counsel's use of ECX 495 is typical; they extract a snippet of a phrase and ignore the remainder of the document because the other information undercuts their position. Further, Enforcement Counsel's citation to ECX 132 is insufficient to support their factual assertion. ECX 132 is a copy of the preferred provider policy for "4/03/2006," and there has not been any testimony that this covered the period "[f]rom 2001 to November 2008" as Enforcement Counsel now represent. Also, the preferred provider policy deals with pricing on the secondary market; it has nothing to do with Enforcement Counsel's purported RESPA claim.

27. Respondents dispute Undisputed Fact No. 27. As an initial matter, the fact that certain MIs were not put into the "dialer" does not mean that either PHH Mortgage or PHH Home Loans would not select them if, for example, none of the MIs they were currently utilizing offered the loan product the borrower wanted. Second, Respondents object to Enforcement Counsel's insinuation that the selection of a particular MI provider was based solely on the

existence of a reinsurance arrangement between that MI provider and Atrium. There has been no testimony from any witness that either PHH Mortgage or PHH Home Loans ever made it a requirement that a particular MI enter into a reinsurance agreement with Atrium as a precondition for doing business with either lender. Enforcement Counsel's use of Mr. Culver's hearing testimony is inappropriate as Respondents have not yet had the opportunity to put on their case-in-chief. In addition, the fact that Mr. Culver started his response with "[n]ot sure" does not deter Enforcement Counsel from relying on Mr. Culver's "guess" of the amount of business that MGIC purportedly did with "PHH." Respondents believe that more credible evidence is necessary before Enforcement Counsel declare a statement (or many statements) to be an "undisputed fact."

28. Respondents dispute Undisputed Fact No. 28 on the basis that Enforcement Counsel's use of the term "referral" is inappropriate. Respondents admit that for the period from 2006 to 2011, neither PHH Mortgage nor PHH Home Loans selected Triad or PMI to provide pmi on more than a few loans. There could be many reasons for that decision including, for example, a decision by the lenders that one or both of these entities did not provide adequate counter-party risk. *See, e.g.* Rosenthal Tr., ECX 731 at 89 ("I did not choose to do business with Triad or PMI. I did not add them to the dialer and those were the two companies that ended up defaulting and not paying their claims first in this industry. So from a counter-party perspective, we did a pretty good job of evaluating which ones weren't good counter-parties."). In addition, there has not been any testimony as to whether the products offered by either Triad or PMI were consistent with the types of loans that PHH Mortgage or PHH Home Loans were interested in originating.

29. Respondents dispute Undisputed Fact No. 29. First, Enforcement Counsel's

attempt to "merge" facts simply by lumping them together is inappropriate. As stated above, there has been no testimony from any witness that either PHH Mortgage or PHH Home Loans ever made it a requirement that a particular MI enter into a reinsurance agreement with Atrium as a precondition for doing business with either lender. Further, as Mr. Culver testified at the hearing, he had no recollection of any discussions with PHH; accordingly, Enforcement Counsel's attempt to imply that MGIC's decisions regarding "deep-cede captive reinsurance arrangements" had anything to do with Respondents is pure conjecture on the part of Enforcement Counsel. Indeed, as Mr. Culver testified, MGIC decided to seek out partners to enter into such arrangements following a prior decision not to enter into such arrangements. Mar. 25 Tr. at 370. Yet, at some point MGIC ended up being selected by both PHH Mortgage and PHH Home Loans despite the fact that MGIC never entered into a captive reinsurance arrangement with Atrium. Enforcement Counsel have not explained -- because they cannot explain -- either why Atrium did not enter into a reinsurance agreement with MGIC despite the fact that MGIC did offer such arrangements to other lender-captives or why PHH Mortgage or PHH Home Loans ultimately decided to utilize MGIC for pmi without such an arrangement. These "facts" are sufficient to dispute Undisputed Fact No. 29.

30. Respondents dispute Undisputed Fact No. 30. First, this purported "undisputed fact" is actually a number of separate factual assertions based on snippets of documents cobbled together by Enforcement Counsel to state a conclusion that is not supported by the underlying documents and on that basis, Respondents object. Further, Enforcement Counsel's reliance on emails from Chris Kennedy, who has not yet testified in this matter, is inappropriate. As Enforcement Counsel are aware, RMIC and PHH established a business relationship pursuant to which RMIC provided pmi on loans originated by PHH Mortgage and PHH Home Loans,

although Atrium never had a captive reinsurance agreement with RMIC. Finally, the citation to Sam Rosenthal's Investigational Hearing transcript, which constitutes hearsay, is improper. Enforcement Counsel put Mr. Rosenthal on the stand for three consecutive days during the first week of the Hearing in support of its case-in-chief. If Enforcement Counsel wanted to elicit certain testimony from him, Enforcement Counsel could have done so at that time.

31. Respondents dispute Undisputed Fact No. 31. Enforcement Counsel's proposition that Radian received "a small portion of PHH's business **in exchange for** ceding forty percent of its premiums[]" is not supported by the documents cited. (emphasis added). Instead, the exhibits referenced contain certain statements, none of which affirm, or otherwise demonstrate, an exchange of one product for another. For example, ECX 200, Exhibit A to the Radian reinsurance agreement, merely lists the attachment point of 4%, the detachment point of 14%, and the "Reinsurance Premium" of 40%. It makes no mention of this structure being contingent on Radian receiving any amount of pmi business from PHH. Indeed, such a material fact is clearly disputed, and Enforcement Counsel have not borne their burden of proving that such a transaction occurred.

32. Respondents dispute Undisputed Fact No. 32. The first document cited shows that Atrium and CMG entered into a reinsurance agreement, dated December 1, 2006 (ECX 202); however, the second exhibit cited, ECX 747 refers to a "License Agreement" between PHH and CMG in November 2007, or nearly one year later. Thus, the documents do not show that one agreement "coincided" with the other. Nor is it a material fact even if CMG had a reinsurance agreement with Atrium and a license agreement with PHH at the same time.

33. Respondents do not dispute Undisputed Fact No. 33.

34. Respondents dispute Undisputed Fact No. 34. This fact is immaterial because it

pertains to a secondary market fee. *See* Mar. 26 Tr. at 523:3-11; 527:16-25; 565:1-565:7. RESPA is only concerned with settlement services on "federally related mortgage loans," which by definition do not cover secondary market transactions.

35. Respondents dispute Undisputed Fact No. 35. As Enforcement Counsel are aware, PHH added to the dialer MIs with which PHH had no captive reinsurance agreement. *See* Ex. M to PHH's NORA Submission (ECX 654) (showing that in 2008, MGIC was added to the dialer; showing that in June 2009, RMIC was added to the dialer; and showing that Radian was added to the dialer only *after* its reinsurance agreement with Atrium was commuted).

36. Respondents dispute Undisputed Fact No. 36. As an initial matter, Enforcement Counsel's use of the word "referred" is improper because it assumes that Enforcement Counsel have carried their burden of proving this ultimate material fact, although they have not. As Mr. Rosenthal testified during the Hearing, PHH was looking for information on a variety of topics as part of the RFP, including data regarding "building relationships with mortgage insurance companies who could . . . enable [PHH] to create a good product offering that was compliant and made good, accurate loans and developed efficiencies between the entities[.]" Mar. 26 Tr. at 574:2-575:8. Furthermore, "with respect to the RFPs that were sent out in 2006," PHH did not enter into any captives as a result of those proposals. *Id.* at 575:17-20.

37. Respondents dispute Undisputed Fact No. 37. As an initial matter, this so-called "fact" spans three full pages, and contains several alleged "undisputed facts." While most, if not all, of the MIs that received an RFP in 2006 from PHH did respond, the responses they submitted were often very detailed, and they spanned several topic areas. *See, e.g.*, ECX 30. More to the point, as Mr. Rosenthal testified at the Hearing, "with respect to the RFPs that were sent out in 2006," PHH did not enter into any captives as a result of those proposals. Mar. 26 Tr. at 575:17-

20.

38. Respondents dispute Undisputed Fact No. 38. Respondents and the MIs were sophisticated business entities engaged in arms length negotiations with each other, trying to get the best deal they could within the confines of the law as permitted by our capitalist society. *See, e.g.*, Mar. 26 Tr. at 576:25-577:14 (PHH "wanted to adhere to all the laws and regulations and always, you know, be compliant." That is why, PHH, obtained "an actuarial analysis . . . to make sure that whatever transaction [PHH] w[as] doing within Atrium was compliant to all of the regulations of the insurance agencies, RESPA letters.").

39. Respondents dispute Undisputed Fact No. 39. As Mr. Rosenthal testified at the Hearing, with respect to the 2006 RFP responses, the "purposes of hiring Milliman were to have Milliman evaluate the captive reinsurance risk opportunity offerings that the MIs were coming to us and sharing with us and [to] evaluate them to determine if, one, they passed risk transference and complied to all the regulations to make sure they pass risk transference, and also to evaluate the economics of the transaction between the various captive reinsurance structures we saw to say which ones pass risk transference and provided [a different] kind of expected return[] to PHH. So comparing the economics and making sure they pass risk transference, and both were very important to PHH and Atrium." Mar. 26 Tr. at 568:12-569:1 (discussing ECX 14, which Enforcement Counsel point to in this Undisputed Fact).

40. Respondents dispute Undisputed Fact No. 40. Enforcement Counsel's use of the word "referral" in this Undisputed Fact is inappropriate, and in fact, presumes that Enforcement Counsel have carried their burden in proving this ultimate material fact, although they have not. Similarly, Enforcement Counsel's use of the phrase "steer" is inappropriate. Steering appears to be used as a synonym for "referring" and, again, Enforcement Counsel have not proven that any

prohibited referrals took place. Additionally, a review of some of the documents cited demonstrates that Enforcement Counsel have again selectively quoted from documents. For example, Enforcement Counsel cite to the investigational hearing transcript of one its designated witnesses, Chris Kennedy. As an initial matter, the investigational hearing consists of hearsay testimony, and during the course of that hearing, only Enforcement Counsel were able to ask the witness questions. Respondents will not be afforded the opportunity to question Mr. Kennedy until he testifies on behalf of Enforcement Counsel. In any event, in certain portions of Mr. Kennedy's hearing, Enforcement Counsel elicit the following testimony which contradicts the quote cited to in this Undisputed Fact: "Q: Did you ultimately find out why PHH hadn't been doing business with RMIC? A: Yes, because they said they had two mortgage insurers already in place." Kennedy Investigational Hearing Tr., ECX 760 at 38:23-23. Mr. Kennedy also stated in response to the question "Did they [PHH] have any requirements for doing business with them?" – "A: There were no like mandated requirements to break into the account[.]" *Id.* at 41:25-42:3. In addition, Mr. Danahy's quoted deposition testimony – from an entirely unrelated case – also fails to support this Undisputed Fact. Instead, Mr. Danahy's deposition testimony shows that PHH had relationships with selective MI companies which were "good solid partners" with good ratings, and that having only a few such relationships was important to ensure efficiency and stimulate investment in the necessary (and costly) technology to place pmi. Danahy Dep., ECX 153 at 197-199.

41. Respondents do not dispute Undisputed Fact No. 41.

42. With respect to Undisputed Fact No. 42, Respondents do not dispute that in February 2008 Freddie Mac announced that it was "temporarily changing its Private Mortgage Insurer Eligibility Requirements[.]" ECX 31, CFPB-PHH-00141569. Specifically, Freddie

Mac stated that "[e]ffective on or after June 1, 2008, Freddie Mac-approved private mortgage insurers may not cede new risk if the gross risk or gross premium ceded to captive reinsurers is greater than 25 percent." *Id.* Respondents note that the decision by Freddie Mac to limit the MIs to arrangements with no more than a 25% ceding commission was not based on concerns regarding risk transfer but rather on the GSE's stated desire to increase the "claims-paying and capital retention capacities of its mortgage insurance counterparties during the current market correction." ECX 31 at CFPB-PHH-00141569. Respondents also note that Fannie Mae never imposed such a restriction on MIs that it chose to approve and conduct business with.

43. Respondents dispute Undisputed Fact No. 43. Enforcement Counsel's use of the word "referral" in this Undisputed Fact is wholly inappropriate and, in fact, presumes that Enforcement Counsel have carried their burden of proving this ultimate material fact, although they have not. The documents cited also do not support this Undisputed Fact. For example, Enforcement Counsel strategically use ellipses to make it seem as though ECX 407 says something it does not. In ECX 407, Liz Rudolph discusses several independent issues with Sam Rosenthal and Richard Bradfield, the first of which is "[1] We will be ready this Friday with UGI eligible as a MI provider." The second topic is "[2] Are you okay with us turning on and giving a % of volume?" Sam responds to each in separate paragraphs. In response to (1) he states "I just received Captive XoL contracts from UGI. We will likely be able to capture this business into Atrium if we desire – even the loans that close this year." In response to (2) he states "I am fine with turning up the dialer." Similarly, ECX 269 does not state that UGI was explicitly going to receive business due to its captive agreement with Atrium. For a period of time in 2008 and early 2009, PHH Mortgage and PHH Home Loans were not selecting UGI to provide pmi on loans they were originating because of a business dispute wholly unrelated to any reinsurance

arrangement between UGI and Atrium. Once again, Enforcement Counsel are stringing together snippets of documents from witnesses who have not even testified in this proceeding and reaching conclusions that are not supported by the cited materials.

44. Respondents dispute Undisputed Fact No. 44. Enforcement Counsel's use of the word "referral" in this Undisputed Fact is wholly inappropriate, and in fact, presumes that Enforcement Counsel have carried their burden of proving this ultimate material fact, although they have not. Similarly, Enforcement Counsel's use of the phrase "maximally steered" is improper. Steering appears to be used as a synonym for "referring" and, again, Enforcement Counsel have not proven that any prohibited referrals took place. Additionally, the document that Enforcement Counsel cite in order to support the proposition that "PHH should avoid sending business to MIs without captive arrangements[,]" i.e., ECX 744, is not helpful for that purpose. For example, ECX 744 provides that PHH will set RMIC's dialer percentage at 10% although Atrium never had a captive with RMIC (which meant giving less volume to UGI – a company with which Atrium did have a captive agreement).

45. Respondents dispute Undisputed Fact No. 45. Enforcement Counsel's use of the word "referral" in this Undisputed Fact is wholly inappropriate and, in fact, presumes that Enforcement Counsel have carried their burden of proving this ultimate material fact, although they have not. Additionally, the testimony of Mr. Culver cited to by Enforcement Counsel is incomplete; the full statement provides: "[I]t wasn't until 2008 when captives were no longer important that we started doing business, **and I don't know why. Mark Krauter then was the account manager and I wasn't involved**." Mar. 25 Tr. at 381:17-21 (emphasis added). Thus, Mr. Culver has no idea why MGIC ever started doing business with PHH because he was not involved in establishing, or maintaining, a business relationship with PHH.

46. Respondents dispute Undisputed Fact No. 46. As discussed above in response to Undisputed Fact No. 45, Mr. Rosenthal testified that in November 2007, "we were attempting to add MGIC and several other entities to the dialer because we were going to open up and do more business with them. And my recollection was it was more product eligibility that was the driver because the MIs had started to not permit as many loans, we were trying to add more [di]versification of MIs." Mar. 25 Tr. at 287:1-10. Enforcement Counsel also state that "into 2009, PHH negotiated with each potentially new MI partner to shape plans to enter into captive reinsurance agreements"; yet, the document, ECX 53, cited to is from June 2008. More importantly, ECX 53 does not contain any discussion regarding captives. Instead, ECX 53 merely discusses the possibility of MGIC providing pmi coverage on loans for which PHH does not otherwise have coverage. ECX 53 also does not contain some of the information quoted by Enforcement Counsel.

47. Respondents dispute Undisputed Fact No. 47. This purported undisputed fact insinuates that MGIC was added to the dialer merely because it was discussing the creation of a captive with PHH. As Enforcement Counsel are aware, Atrium never entered into any type of reinsurance agreement with MGIC. Mar. 13 Order at 18, ¶ 13 ("Neither Atrium, nor Atrium Reinsurance Corporation, ever entered into reinsurance agreements with MGIC, RMIC, the PMI Group, or Triad Guaranty Insurance Corporation."). Furthermore, although Enforcement Counsel cite ECX 53 in support of the proposition that MGIC and PHH "negotiated terms for a captive arrangement[,]" "[f]rom June until at least October 2008," ECX 53 makes no reference to any captive discussion. Instead, ECX 53 is an email in June 2008 from Kelly Redfearn to Mark Krauter at MGIC, and its sole discussion pertains to the possibility of MGIC providing pmi coverage on loans for which PHH does not otherwise have coverage from another MI.

Enforcement Counsel's reference to ECX 13 is also unhelpful. While ECX 13 appears to be an MGIC packet, titled "PHH - Product Discussion – October, 2008," it is simply an informational "memorandum" in which MGIC "offer[s PHH] a **quota share** reinsurance structure[.]" ECX 13 at 1 (emphasis added). Enforcement Counsel have not taken the position in this litigation, nor can they, that quota share arrangements are at issue or somehow illegal.

48. Respondents do not dispute Undisputed Fact No. 48.

49. In response to Undisputed Fact No. 49, Respondents state that the document, ECX 159, speaks for itself.

50. Respondents do not dispute Undisputed Fact No. 50.

51. Respondents dispute Undisputed Fact No. 51. Enforcement Counsel's statement that "Atrium continued to receive payments continuously until the end of its captive arrangements in 2013[]" is misleading. [redacted]. As stated in the March 13 Order, the Radian agreement was commuted on July 22, 2009, meaning no premiums were collected for that arrangement after that date. *Id.* at 17, ¶ 7. Similarly, the CMG agreement was commuted on August 31, 2009, meaning no premiums were collected for that arrangement after that date. *Id.* at 17, ¶ 8. As for the Genworth agreement, it was terminated on April 1, 2012, meaning no premiums were collected for that arrangement after that date. *Id.* at 18, ¶ 10. [redacted] at least

$137.2 million from Genworth, at least $3,534,924.32 from Radian, and at least $2,726,736.47 from CMG." *Id.* at 18, ¶ 14.

52. In response to Undisputed Fact No. 52, Respondents state that the documents speak for themselves.

53. Respondents dispute Undisputed Fact No. 53. Although HUD did send a letter addressed to Countrywide Funding Corporation's General Counsel on August 6, 1997, providing informal guidance on captive reinsurance agreements, Enforcement Counsel's characterization of the letter is misleading, and they conveniently omit a discussion of important statements made by HUD. On pages 4-5 of the letter, HUD does list 8 "factors" it plans to look at with respect to captive reinsurance arrangements, one of which Enforcement Counsel quote in this Undisputed Fact; however, on page 5, HUD states that it "does not consider any of these eight factors to be determinative of whether an arrangement merits scrutiny by the Department[.]" Furthermore, in the letter, HUD also recognizes that as a result of a captive reinsurance agreement a lender "has a financial interest in having the primary insurer in the captive reinsurance program selected to provide the mortgage insurance." HUD Letter at 1. Despite this, HUD specifically allowed lenders to enter into such arrangements as long as the payments to the reinsurer "(1) are for reinsurance services 'actually furnished or for services performed' and (2) are bona fide compensation that does not exceed the value of such services." HUD Letter at 3.

54. Respondents dispute Undisputed Fact No. 54. Respondents object to this Undisputed Fact on the grounds that it is not material because the 2006 Request for Proposal issued by PHH did not result in any new captive agreements. Mar. 26 Tr. at 575:17-20.

55. Respondents dispute Undisputed Fact No. 55. Respondents object to the characterization of dividend payments made to Atrium. All dividends paid to Atrium were in

accordance with the parties' agreements, and dividends did not impact the required capital or reserves mandated by state law. Furthermore, any reference to Daniel Walker's investigational hearing testimony is improper. Mr. Walker's investigational hearing testimony is hearsay, and during the course of his hearing, only Enforcement Counsel were able to ask him questions. Respondents have not been afforded that opportunity, more specifically, the chance to cross-examine him on statements made during his investigational hearing, nor will they be, until Mr. Walker takes the stand to testify on behalf of Enforcement Counsel.

Dated: May 2, 2014

Respectfully submitted,

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