

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU
October 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 2014-CFPB-0002

In the Matter of	:	
	:	ORDER TAKING OFFICIAL
PHH CORPORATION,	:	NOTICE AND GRANTING IN
PHH MORTGAGE CORPORATION,	:	PART RESPONDENTS'
PHH HOME LOANS LLC,	:	OBJECTION TO JUDICIAL
ATRIUM INSURANCE CORPORATION, and	:	NOTICE
ATRIUM REINSURANCE CORPORATION	:	

On January 29, 2014, the Consumer Financial Protection Bureau (Bureau) filed a Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty. The hearing took place over nine days in Philadelphia, PA, between March 24 and June 4, 2014.

On July 14, 2014, I closed the hearing record. Document 171. On August 8, 2014, the parties submitted their initial posthearing briefs. Documents 177, 178. In their briefs, Enforcement Counsel (Enforcement) requested I take official notice of a fact documented in a public official record contained in the Securities and Exchange Commission's (SEC's) Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system filed by Genworth Financial, Inc., and Respondents requested I take official notice of certain facts documented in federal court records and, presumably, in state administrative proceedings. Document 177 at 53 & n.18; Document 178-A at 7-9. On September 23, 2014, I issued an order taking official notice of EDGAR filings by Respondent PHH Corporation. Document 188. On September 25, 2014, I issued an order taking official notice of the EDGAR filings of Genworth Financial, Inc., Radian Group Inc., The PMI Group, Inc., and Arch Capital Group Ltd., including the EDGAR filing documenting the fact for which Enforcement had sought official notice. Document 189.

On September 29, 2014, Respondents filed an Objection, Motion for Reconsideration or, in the Alternative, Request for Clarification of the Orders Taking Judicial Notice (Motion), as well as a supporting Memorandum (Memo.). Documents 190, 191. On October 15, 2014, Enforcement filed its Response in Opposition (Opp'n), and on October 20, 2014, Respondents filed their Reply. Documents 192, 194.

Respondents argue that the Bureau's Rules of Practice for Adjudication Proceedings (Rules) do not permit supplementation of the record "once the Record is closed." Memo. at 2 (citing Rule 304(b)-(c)). Respondents mischaracterize Rule 304, which pertains to closure of the "hearing record," not the entire record. 12 C.F.R. § 1081.304(c). Closing the hearing record does not close the entire record; otherwise the parties would not be able to file posthearing briefs, among other documents.

Respondents argue that they have not been afforded notice and an opportunity to object, on the record, to the taking of official notice. Memo. at 2-3. The present Motion constitutes such an objection, however, and Respondents will be given another opportunity, as explained *infra*.

Respondents argue that it is inappropriate to take official notice because Enforcement did not request it. Memo. at 3. Rule 303(c) establishes no such requirement, however, nor does Rule 303(a), on which Respondents rely. 12 C.F.R. § 1081.303; Memo. at 3.

Respondents argue that they have not been given the opportunity to disprove the facts officially noticed. Memo. at 2-4 (citing Rule 303(c)). Enforcement correctly points out that taking judicial notice of entire EDGAR filings, as opposed to taking judicial notice of specific facts contained in those EDGAR filings, is permissible and is tantamount to treating the filings as exhibits. Opp'n at 9 (citing *Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000)). However, it is possible that certain facts in the officially noticed EDGAR filings are not true. This possibility is not fanciful; Cendant, PHH's corporate predecessor, "virtually conceded liability" for false statements in documents filed with the SEC in the 1990's. *In re Cendant Corp. Litig.*, 264 F.3d 201, 218, 221-22 (3d Cir. 2001); *see also Anne M. Pember*, Securities Exchange Act of 1934 Release No. 56136, 2007 WL 2188168 (Jul. 26, 2007). Moreover, not all facts contained in the officially noticed EDGAR filings are necessarily relevant. The parties should therefore be placed on notice of which particular facts are at issue.

Accordingly, the parties will be given the opportunity, pursuant to Rule 303(c), to refute the following facts in the officially noticed EDGAR filings:

- Both PHH Mortgage and PHH Home Loans originate mortgage loans.
- PHH Home Loans is a joint venture between PHH Corporation, through its subsidiaries, and Realogy, with PHH Corporation controlling 50.1% of PHH Home Loans and Realogy 49.9%.
- PHH Corporation has the exclusive right to use the Century 21, Coldwell Banker, and ERA brand names in marketing PHH mortgage loan products through PHH Home Loans and other arrangements that PHH has with Realogy.
- Substantially all PHH loans that are originated for sale are sold, and historically have been sold, pursuant to programs sponsored by Fannie Mae, Freddie Mac, or the Government National Mortgage Association.
- PHH Corporation conducted its reinsurance business through Atrium Insurance Corporation and Atrium Reinsurance Corporation, which were wholly-owned corporate vehicles.
- Genworth Financial, Inc. is the parent company of Genworth Mortgage Insurance Corporation (Genworth).
- As of December 31, 2011, Genworth exceeded the maximum risk-to-capital ratio of 25:1 established under North Carolina law and enforced by the North Carolina

department of insurance. As of December 31, 2011 and 2010, Genworth's risk-to-capital ratio was approximately 32.9:1 and 23.8:1, respectively. However, effective January 31, 2011, the North Carolina department of insurance granted Genworth a revocable two-year waiver of compliance with its risk-to-capital requirement.

- CMG Mortgage Insurance Company (CMG) was a joint venture equally controlled by The PMI Group, Inc. and CUNA Mutual Insurance Society, part of CUNA Mutual Group.
- CMG provided mortgage insurance exclusively to credit unions.
- In January 2014, Arch Capital Group Ltd. completed its acquisition of CMG from The PMI Group, Inc. and CUNA Mutual Insurance Society.

Also, in the interest of timely resolving any potential dispute over the facts for which Respondents seek official notice, I take official notice, pursuant to Rule 303(c), of the facts cited in paragraphs 31 through 36 of Addendum A to Respondents' posthearing brief. 12 C.F.R. § 1081.303(c); Document 178-A at 7-9.

It is, therefore, ORDERED that Respondents' Objection, Motion for Reconsideration or, in the Alternative, Request for Clarification of the Orders Taking Judicial Notice is GRANTED IN PART as outlined above.

It is FURTHER ORDERED that any party seeking to disprove any officially noticed fact shall file an objection thereto no later than October 31, 2014. Responses to objections shall be filed no later than November 7, 2014. The parties shall not file replies without further order.



Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission