February 15, 2018

BY HAND AND E-MAIL DELIVERY

The Honorable Mick Mulvaney
Acting Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Re: *In the matter of: PHH Corporation, et al.*, Administrative Proceeding, File No. 2014-CFPB-0002.

Dear Mr. Mulvaney:

We write regarding our clients, PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation, each of whom is named as a respondent in the above-referenced administrative action.[1] Former Director Richard Cordray issued a final decision in this matter on June 4, 2015. PHH appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. A panel opinion vacating Director Cordray's final decision was issued by the D.C. Circuit on October 11, 2016. Thereafter, following rehearing by the full Court, the D.C. Circuit issued its decision on January 31, 2018, reinstating the panel decision in favor of PHH on the merits of the administrative action.

Today, the D.C. Circuit issued its mandate remanding this matter back to you for a decision consistent with its October 11, 2016 panel opinion ("Op."). For the reasons stated below, PHH asks that you review the facts of this matter and the D.C. Circuit's October 11, 2016 opinion and dismiss the Notice of Charges. Director Cordray's decision to pursue an enforcement proceeding against PHH in this matter is exactly the kind of aggressive "push[ing] the envelope" which is "not appropriate for any government

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[1] As used herein, PHH Mortgage Corporation and PHH Home Loans, LLC, are referred to collectively as the "PHH Lenders" and Atrium Insurance Corporation and Atrium Reinsurance Corporation are referred to collectively as "Atrium." Collectively, all of the Respondents are referred to herein as "PHH."

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entity" as you stated in your January 23, 2018 opinion piece in the Wall Street Journal. The administrative action should never have been filed for many reasons, including: 1) it is based on an expansive reinterpretation of Section 8 of the Real Estate Settlement Procedures Act ("RESPA") applied retroactively; 2) there was no borrower harm and consumers had the right to opt out; 3) PHH was acting in compliance with existing regulatory compliance and was constitutionally entitled to do so; 4) it completely disregards the applicable statute of limitations; and 5) it evidences a fundamental misunderstanding of the mortgage reinsurance industry.

While literally thousands of pages have been drafted in the litigation of this matter, the salient facts are straightforward and warrant the dismissal of this matter.[2] The PHH Lenders originated loans that were sold on the secondary market, primarily to Fannie Mae, Freddie Mac, and Ginnie Mae. PHH did not originate subprime loans when virtually every other lender in the industry was originating such risky loan products. It was the PHH Lenders' conservative lending policies that allowed them to weather the catastrophic meltdown of the real estate market that began in 2007.

Private mortgage insurance ("pmi") is typically required by a lender when a borrower makes a down payment of less than 20% for the purchase of a home. PMI protects the lender in the event the borrower defaults on the loan – if a borrower defaults and foreclosure proceeds do not fully pay off the loan amount, pmi covers some or all of the lender's loss.

Private mortgage insurers ("MIs") reduce their exposure on the loans they insure by transferring part of the risk to a reinsurer that assumes the transferred risk in return for a share of the premiums collected. In most states, pmi rates are filed with, and approved by, insurance regulators; accordingly, the existence of a reinsurance arrangement has no effect on the price paid by borrowers for pmi since they pay no more than the filed rate. During the relevant time period, the most common form of reinsurance was a captive arrangement. In such an arrangement, an affiliate of the lender acts as the reinsurer for

[2] In response to the CFPB's Notice and Opportunity to Respond and Advise ("NORA") process, PHH filed two detailed submissions, the first on September 6, 2013, and the second on November 26, 2013. Those submissions contain additional details that support the statements in this letter.

loans originated by that lender. Such a structure is not only a common risk-spreading device, but it provides many benefits to the MI such as: aligning the interests of the MI and lender on origination quality, servicing and loss mitigation; enabling the MI to lower its expense ratio; reducing the MI's volatility of returns; and serving as an important source of reinsurance to protect against market downturns. The alignment of interests, or "skin-in-the-game," incentivizes the lender to originate high quality loans, since the less losses suffered by the MI, the less losses that will be paid by the reinsurer. PHH disclosed its affiliated-reinsurance arrangements in writing to its borrowers, giving them the choice to secure a different mortgage insurer or to request that the policy not be reinsured.

In 1997, the Department of Housing and Urban Development ("HUD") – the federal agency responsible for the enforcement of RESPA prior to the transfer of that authority to the CFPB in 2011 – recognized the existence of such reinsurance arrangements and specifically held they were permissible under RESPA. Similarly, both Fannie Mae and Freddie Mac also allowed such arrangements, and the Office of the Comptroller of the Currency gave explicit approval to national banks to form mortgage reinsurance subsidiaries for this specific purpose.

Atrium stopped offering reinsurance on loans on January 1, 2010, or more than seventeen months prior to the CFPB's startup date of July 21, 2011. Prior to the final termination of its reinsurance agreements, however, Atrium paid out more than $156 million in claims to the MIs as a result of the collapse of the housing market, which provided the much needed injection of money into those MIs, thus saving them from financial ruin.[3]

PHH was required to defend itself in an administrative hearing conducted by an Administrative Law Judge ("ALJ") "borrowed" from the SEC who committed numerous legal errors including: improperly placing the burden of demonstrating compliance with RESPA on PHH; incorrectly ignoring RESPA's three-year statute of limitations; and relying on documents that were never discussed during the hearing. PHH was then

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[3] Three MIs, none of whom had reinsurance agreements with PHH, did not survive the financial crisis: Triad Guaranty Insurance Corp., The PMI Group, and Republic Mortgage Insurance Co.

required to challenge these and other numerous errors before Director Cordray prior to getting to the court of appeals. Rather than considering any of PHH's objections, Director Cordray completely rejected the ALJ's 102-page opinion and instead elected to "push the envelope" with an entirely new reading of RESPA § 8 that was completely contrary to the guidance issued by HUD, and he hiked the penalty against PHH to $109 million, an amount which, by the way, would have gone to the U.S. Treasury, not to any consumers.

The D.C. Circuit could not be clearer, reversal of Director Cordray's reading of RESPA § 8 was "not a close call." Op. at 73. Further, the three-year statute of limitations in RESPA controls and the Director's decision to penalize PHH for prior conduct under his new interpretation of RESPA violated PHH's right to due process. *Id.* at 86 & 100.

To get to these unremarkable legal conclusions, PHH Corporation, a publicly traded entity, has been forced to incur millions of dollars in defense costs as well as the adverse publicity associated with being the first and most visible entity to stand up to former Director Cordray. Atrium has not provided reinsurance services since January 1, 2010. It is time to end the administrative action and allow PHH to rebuild its business without the pall of the Bureau's administrative action hanging over it, and without the necessity of expending more time and resources defending itself.

In sum, PHH played by the rules with respect to its reinsurance activities and Atrium paid every claim presented, to the tune of more than $156 million. Atrium was a licensed insurance company, its trust accounts were fully funded and met all applicable statutory and regulatory requirements, its insurance activities were fully disclosed to state regulators, and its reinsurance had no effect on the rates paid by borrowers, all of whom were provided notice prior to closing that their loans would be reinsured. Prior to the Bureau's investigation and subsequent administrative action seventeen months after Atrium stopped reinsuring loans, not one regulator had ever questioned PHH regarding its reinsurance activities. There is no consumer interest to be served by allowing the Enforcement Division to start anew.

For these reasons, we ask that you utilize the remand from the court of appeals to immediately dismiss the Notice of Charges against PHH.

Thank you for your attention this matter. Our clients would be happy to meet with you or provide any additional information you deem necessary to reach a decision.

Sincerely,

Mitchel H. Kider

cc: Mary McLeod
General Counsel
(by E-mail only)