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.

RESPONDENTS' MOTION TO STAY THE DIRECTOR'S FINAL DECISION AND ORDER

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Pursuant to 12 C.F.R. § 1081.407, Respondents PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively, "Respondents"), hereby move for a stay of the Director's Final Decision and Order issued on June 4, 2015 (collectively, "Final Order"). Respondents plan shortly to file in the United States Court of Appeals for the District of Columbia Circuit a Petition for Review of the Final Order, and ask that the Final Order be stayed pending judicial review. As set forth more fully below, a stay of the Final Order is appropriate because Respondents are likely to succeed on the merits of their appeal; the injunctive provisions of the Final Order are impermissibly vague, are beyond the scope of the Notice of Charges, and violate Respondents' due process rights; there is no need for injunctive relief because no mortgage loans have been placed in reinsurance books since 2009; the payment of $109 million before Respondents have had the opportunity to seek judicial review is unwarranted and would cause irreparable harm; and the public interest lies with allowing Respondents to "have their day in court" before suffering the consequences of the Final Order.

LEGAL STANDARD

The Director considers four factors in assessing the propriety of granting a stay pending appeal: (1) the likelihood of the movant's success on appeal, (2) whether the movant will suffer irreparable harm if a stay is not granted, (3) the degree of injury to other parties if a stay is granted, and (4) why the stay is in the public interest. 12 C.F.R. § 1081.407(c). "The Director may, in his or her discretion, and on such terms as he or she finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for judicial review of that order." *Id.* § 1081.407(e).

As this action represents the first appeal of an administrative enforcement proceeding before the Bureau, there are no prior decisions regarding the granting of a stay. However, the factors in Rule 407(c) are analogous to the well-established standard governing stays of both administrative proceedings and civil actions: "(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *D.C. v. Vinyard*, 901 F. Supp. 2d 77, 89 (D.D.C. 2012) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

ARGUMENT

I. RESPONDENTS' APPEAL PRESENTS REAL AND SUBSTANTIAL ISSUES UPON WHICH THEY ARE LIKELY TO PREVAIL

Respondents respectfully submit there is a substantial likelihood that they will prevail in their appeal. After a lengthy hearing conducted by an ALJ, and a written opinion explaining the basis for the ALJ's decision, the Director decided the dispute on "different grounds" and increased the amount of the ALJ's disgorgement award *seventeen-fold*. Fundamental principles of fairness dictate that Respondents should be afforded a full and fair opportunity to seek judicial review of this decision—rendered in the first administrative hearing conducted by the Bureau—before being required to comply with the extensive and punitive provisions of the Final Order.

Even if the Bureau disagrees that Respondents are likely to succeed, given the harm to Respondents pending appeal, Respondents need only show "serious legal questions going to the merits, so serious, substantial, difficult as to make them a fair ground of litigation and thus for more deliberative investigation." *Population Inst. v. McPherson*, 797 F.2d 1062, 1078 (D.C. Cir. 1986) (internal quotation marks omitted). The Final Order presents many serious legal issues, both with respect to liability and remedies. As the Director's Decision acknowledges, there are substantial differences of opinion regarding the weight to be given to longstanding judicial interpretations of RESPA, including *Snow v. First American Title*, 332 F.3d 356 (5th Cir. 2003), and *Mullinax v. Radian Guaranty, Inc.*, 199 F. Supp. 2d 311 (M.D.N.C. 2002). According to the Director, *Snow's* analysis is inapplicable to the facts here and *Mullinax* is inconsistent with RESPA Section 8(a). Decision at 22-26. While Respondents obviously disagree with the Director's position, and are likely to prevail in that regard, at a minimum the Director's frank disagreement with the reasoning of multiple federal courts confirms how substantial Respondents' legal arguments are.

Strikingly, the Final Order is the first time that any federal agency has "interpreted" RESPA Section 8(c) as simply a "clarif[ication]" of Section 8(a) and "not . . . a substantive exemption to liability." Decision at 17. The Final Order also rejects for the first time ever the 1997 HUD Letter as "inconsistent with [the Director's] textual and structural interpretation of section 8(c)(2)" of RESPA. *Id.* The Director's rejection of the HUD Letter implicitly sweeps aside other policy statements and guidance. *See, e.g.*, HUD Statement of Enforcement Standards: Title Insurance Practices in Florida; Final Rule, 61 Fed. Reg. 49397, 49399 (September 19, 1996) (stating that RESPA section 8(c)(1)(B) is an "exemption" and noting that, "[i]f the practices of a title insurance company or its agents do not qualify under the section 8(c)(1)(B) exemption, the company and the agent may still qualify under section 8(c)(2) . . . [where] HUD will examine the amount of the payments to or retentions by the title insurance agent to see if they are reasonably related to services actually performed by the agent"); HUD Statement of Policy 1996-3 (Rental of Office Space, Lock-outs, and Retaliation), 61 Federal Register 29264, 29265 (June 7, 1996) (explaining that "[t]he value of a referral (*i.e.*, the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services[,]" and explaining permissible circumstances whereby "a person is renting space from a person who is referring business to that person").

As Respondents demonstrated at the administrative hearing, this guidance was relied upon by Respondents and the entire industry for well more than a decade in structuring and maintaining reinsurance arrangements so that the contracts complied with RESPA. Further, the HUD Letter was relied upon even by Enforcement Counsel's expert witness, Dr. Crawshaw. *See, e.g.*, Expert Report of Mark Crawshaw at 34 ("Another guideline for assessing risk transfer is described in a 1997 letter from Nicholas Retsinas of the Department of Housing and Urban Development to another lender."). The ALJ also found the HUD Letter relevant. And its guidance was also relied upon by both the Office of the Comptroller of the Currency ("OCC") and the Office of Thrift Supervision ("OTS") in approving their respective regulated entities' participation in identical private mortgage insurance ("pmi") reinsurance arrangements, as a way of ensuring "skin in the game" on the part of the originating lenders. *See, e.g.*, Letter from Carolyn J. Buck, Chief Counsel, OTS (March 11, 1999) (advising that "[t]he Department of Housing and Urban Development . . . issued an August 6, 1997 letter on captive mortgage reinsurance arrangements ***that will assist you in meeting your responsibility to comply with RESPA***. You should contact HUD if you require further clarification." (emphasis added)). Respondents are likely to prevail in establishing that the Director's new interpretation of Section 8 and his retroactive application of that interpretation to Respondents was unlawful—violating, among other things, fundamental principles of fair notice. At a minimum, Respondents should be afforded the opportunity to seek judicial review of the Director's decision to reject this guidance before being subjected to disgorgement and other adverse actions.

Further still, Respondents raised a panoply of issues during the administrative proceeding, including: the statute of limitations for administrative enforcement actions; the scope of the Bureau's authority to regulate insurance; the scope of the Bureau's authority over Atrium and Atrium Re; the appropriate standard of proof under RESPA Section 8(c)(2); application of the rule of lenity to RESPA; and the effect of the Bureau's deliberate decision to allow mortgage insurers to continue—to this day—to cede reinsurance premium payments to lender-affiliated captive reinsurers. These legal issues, too, were decided by the Director in a way contrary to the preexisting interpretations maintained by HUD—the agency previously charged with the interpretation and enforcement of RESPA—and by numerous courts and the mortgage industry.

Given the consequential legal issues at stake, as well as the clear differences of opinion regarding those issues, this case, at a minimum, presents numerous "serious legal questions," and a stay is warranted because the balance of harms favors Respondents. *Holiday Tours*, 559 F.2d at 844; *cf. Sherley v. Sebelius*, 644 F.3d 388, 392-93, 398 (D.C. Cir. 2011).

II. <u>RESPONDENTS WILL SUFFER IRREPARABLE INJURY ABSENT A STAY</u>

Implementation of the Final Order, even during the pendency of Respondents' appeal, will cause lasting and irrevocable harm, and will violate Respondents' due process rights.

A. The Injunctive Relief Set Forth in the Final Order Is Unlawful And Will Cause Irreparable Harm Absent A Stay

In issuing the injunctive relief set forth in the Final Order, the Director relies on Section 5563 of the Consumer Financial Protection Act of 2010 ("CFPA"), which permits the Bureau to issue "an order to cease and desist" from "any violation specified in the notice of charges." 12 U.S.C. § 5563(b)(1)(D). The statute further provides that the Bureau may order a covered person to "cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from such violation." *Id.*

Federal Rule of Civil Procedure 65 is instructive in defining the scope of the Bureau's cease-and-desist powers. Rule 65 requires every injunctive order to "state its terms specifically [and] describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(B)-(C). The Rule is "designed to prevent uncertainty and confusion on the part of those faced with injunctive orders," *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (citation omitted), and is rooted in "basic principles of due process." *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 842 (7th Cir. 2013). Because an injunction "prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt*, 414 U.S. at 476.

Courts reject injunctions as impermissibly vague if they enjoin the "violation[] of a statute in the abstract without any further specification, or when they include, as a necessary descriptor of the forbidden conduct, an undefined term that the circumstances of the case do not clarify." *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1137 (D.C. Cir. 2009)*; see, e.g.*, *SEC v. Wash. Inv. Network*, 475 F.3d 392, 397 (D.C. Cir. 2007) (order enjoined all future violations of the Investment Advisors Act, without clarifying the specific activities restrained); *Gulf Oil Corp. v. Brock*, 778 F.2d 834, 843 (D.C. Cir. 1985) (order enjoined "substantially similar" conduct without further definition or example of what is "similar").

The injunctive provisions set forth in the Final Order are impermissibly broad and will have sweeping consequences for Respondents if a stay is not granted pending Respondents' appeal. The injunctive provisions are insufficiently specific to provide Respondents with sufficient notice of the conduct prohibited. In addition, they encompass a broader range of conduct than stated in the Notice of Charges and, accordingly, deny Respondents due process. Implementation of the injunctive provisions will also require Respondents to incur significant, unrecoverable monetary expenses. For these reasons, the injunctive relief set forth in the Final Order fails to meet basic legal requirements, and Respondents will face irreparable harm if the injunctive relief set forth in the Final Order is not stayed.

1. Injunctive Provisions I and III Are Unduly Broad and Not Sufficiently Specific to Provide Notice of the Specific Acts These Provisions Purport To Enjoin

Injunctive provisions I and III of the Final Order prohibit Respondents from "violating section 8" of RESPA in "connection with the referral of any borrower to a provider of mortgage insurance;" and from "referring any borrower to any provider of a real estate settlement service if that provider has agreed to purchase or pay for any service from any of the Respondents, and the provider's purchase of or payment for that service is triggered by those referrals." Final Order at 1-2. These provisions seek, in two broad strokes, to enjoin Respondents from violating the Bureau's newfound interpretation of RESPA Section 8. Such "obey-the-law" injunctions are impermissible and also (in this case) encompass a broad range of conduct not identified in the Bureau's Notice of Charges.

In *SEC v. Wash. Inv. Network*, the D.C. Circuit considered the validity of an order enjoining defendants "from future violations of Sections 203(f), 206(1), and 206(2) of the [Investment] Advisers Act." 475 F.3d at 407. The Court found that the "injunction fail[ed] to clarify 'the act or acts sought to be restrained,' and . . . might subject defendants to contempt for activities having no resemblance to the activities that led to the injunction, thereby being overly broad in its reach." *Id*. (*quoting* Fed. R. Civ. P. 65(d)).

Injunctive provision I of the Final Order falls squarely within the scenario addressed in *Wash. Inv. Network*, in that the provision generally enjoins Respondents from violating Section 8 of RESPA. The provision, however, both fails to identify the specific acts prohibited, and relies exclusively on Section 8 of RESPA for its essential terms. As such it constitutes an "obey the law" injunction that is overbroad and unenforceable, and fails to provide Respondents with notice of the acts it purports to enjoin, which violates basic notice principles of due process.

Similarly, injunctive provision III, which is apparently intended to implement the Bureau's newly-minted interpretation of Section 8, prohibits an exceedingly broad range of conduct. Most startling, injunctive provision III can be read to encompass conduct not actually prohibited by RESPA or Regulation X. Indeed, Regulation X clearly provides: "Any referral of a settlement service is not a compensable service, **except** as set forth in section 1024.14(g)(1)." 12 C.F.R. § 1024.14(b) (emphasis added). Section 1024.14(g), entitled "Fees, salaries, compensation, or other payments," in turn, sets forth the seven categories of payments that "**Section 8 of RESPA permits**[,]" including "payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed[.]" 12 C.F.R. § 1024.14(g)(1)(iv) (emphasis added).

Moreover, injunctive provision III would subject Respondents to contempt for "activities having no resemblance to" the provision of mortgage reinsurance since this provision covers all "real estate settlement service[s]" (Final Order at 2), or to the conduct identified in the Notice of Charges. *Wash. Inv. Network*, 475 F.3d at 407. The infirmity is all the more worrisome in light of the provisions use of the vague term "triggered," which is undefined by the Order or by any other standard and thus could encompass any range of conduct. Declaration of Eric Sadow ("Sadow Decl.") ¶ 9. Respondents should not be left to wonder what conduct would potentially violate injunctive provision III of the Final Order.

2. Injunctive Provision II Exceeds the Scope of the Notice of Charges and Thus Violates Due Process

Injunctive provision II of the Final Order seeks to enjoin Respondents from "entering into *any* captive reinsurance agreement." Final Order at 1 (emphasis added). This demand far exceeds the scope of this administrative proceeding, and could later subject Respondents to contempt for engaging in *legal* activities bearing no resemblance to the allegedly illegal conduct described in the Notice of Charges. This provision also exposes the Bureau's misunderstanding of captive reinsurance. Such reinsurance is regularly utilized by a variety of different industries—including life insurance, property insurance, product liability, professional liability, and workers' compensation—and is purely used to offset risk. As demonstrated at the hearing, Atrium's and Atrium Re's reinsurance activities were overseen by their respective insurance regulators for New York and Vermont. The 15-year blanket ban presumes all such activities are illegal, which was not adduced by evidence at the hearing. More importantly, Section 8 (and its implementing regulations) do *not* outlaw all affiliated mortgage reinsurance arrangements but only those that do not involve reasonable compensation for services actually provided.

Accordingly, the Final Order's prohibition of Respondents' engaging in *all* forms of captive reinsurance for a period of 15 years is necessarily overbroad, and encompasses future conduct that is neither covered by RESPA, nor overseen by the Bureau. The injunctive relief set forth in injunctive provision II is not only punitive, but seeks to prohibit Respondents from engaging in perfectly legal conduct not encompassed by the Notice of Charges.

3. The Monitoring Provision Exceeds the Scope of the Bureau's Cease-And-Desist Powers and, Even if Permissible, Will Cause Irreparable Harm

Injunctive provision IV of the Final Order ("Monitoring Provision") is perhaps the most onerous mandate. The Monitoring Provision compels Respondents and their officers, agents, representatives, and employees to "maintain records of all things of value that any Respondent receives or has received from any real estate settlement service provider to which any Respondent has referred borrowers since July 21, 2008, and for the next 15 years." Final Order at 2. This obligation—intended to "permit the Bureau to monitor PHH's conduct" (Decision at

33)—exceeds the scope of the Bureau's cease-and-desist powers, which are limited to orders enjoining acts constituting violations, or requiring "affirmative action to *correct the conditions resulting from such violation*." 12 U.S.C. § 5563(b)(1)(D) (emphasis added). Moreover, to the extent that the Monitoring Provision can be implemented, it will subject Respondents to irreparable harm if it is not stayed pending their appeal. Sadow Decl. ¶¶ 11-17.

The Monitoring Provision's open-ended terms ask for the recordation of *any* "thing of value" received by *any* Respondent from *any* settlement service provider within 24 months of a referral, dating back to 2008 and continuing for the next 15 years. These terms carry egregiously broad obligations, and far exceed what would be necessary to "correct" the purported violations here. For example, any Respondent that receives any purported "thing of value" from a settlement service provider must determine if it, *or any other Respondent*, has referred a single borrower to that particular settlement service provider since July 21, 2008. Moreover, even if no Respondent has conducted a "referral," the phrase "has received" requires every Respondent to maintain records of all things of value received from any settlement service provider for five years, in the event that *any* Respondent is subsequently deemed to have "referred" a borrower to that settlement service provider. For example, if Respondent A receives a "thing of value" and it is determined that Respondent B has conducted a covered referral, *all* Respondents must have maintained records of *all* things of value received from that single settlement services company.

Because the Monitoring Provision seeks to encompass all "things of value" received by one Respondent—even "things" bearing *no relationship* to a referral conducted by another Respondent—its retention obligations will yield absurd results. For example, if a branch receptionist for Respondent A receives a logo pen by a real estate agent, that "thing of value" must be recorded. Later, Respondent A would need to determine whether, in the 24 months before and after receipt of the pen, a loan officer employed by another Respondent at a separate branch referred an unrelated borrower to the same real estate agent. Similarly, the Monitoring Provision obligations would be triggered if a Respondent's employee refinanced his home, and at the closing the title insurance agent gave the employee a nominal buyer's credit—or, for that matter, a bottle of water. Though these examples may border the periphery, they fall squarely within the directive of the overbroad Monitoring Provision. Most significantly, the language of the provision fails to tie any "thing of value" to any particular referral. This has the effect of ballooning Respondents' obligations under the injunction, and requires the recordation of activity that is simply not prohibited by RESPA.

Compliance with the Monitoring Provision, in only 30 days, would require the creation of a complex monitoring and record-keeping system that no law or regulation requires and so does not presently exist. Sadow Decl. ¶ 17. As written and if interpreted broadly, to comply Respondents would be required to spend and divert vast resources to hire and train new employees, and to revise record retention and disclosure policies. *Id.* This is not to mention the burden of compelling "officers, agents, representatives, and employees" to report innocuous daily interactions, as described above, to ensure compliance with the Monitoring Provision. *Id.* ¶ 11. Notably, each Respondent must undertake these changes, because the Monitoring Provision applies to each Respondent without limitation.

The terms and apparent obligations of the Monitoring Provision will cause Respondents real harm. Implementing the aforementioned processes and measures would require expenditures that cannot be recovered, undone, or recouped. *Id.* ¶ 17; *see Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt*, 704 F. Supp. 2d 50, 52 (D.D.C. 2010) ("In analyzing when a harm is irreparable in the context of economic harms, the movant must show . .

. the moneys lost as a result of the lack of a stay would be unrecoverable."). A stay of the Monitoring Provision pending judicial review is accordingly warranted.

B. Respondents' Payment of the Disgorgement Award into an Escrow Account For the Duration of the Appeal Will Cause Irreparable Harm

Respondents will suffer irreparable harm absent a stay of the Final Order compelling the payment of $109,188,618.00 into an escrow account for the pendency of Respondents' appeal. The payment of this enormous sum on such short notice will require the reallocation of capital from productive uses, including the origination of mortgage loans. Declaration of Hugo Arias ("Arias Decl.") ¶¶ 6-7. To compensate for the loss of these funds, PHH will be required to utilize its warehouse lines of credit, at a cost of approximately $1,250,000 per annum. *Id.* ¶ 8.

The non-recoverable economic costs associated with Respondents' compliance with Provision V of the Final Order constitute irreparable harm. *Sunday Sch. Bd. v. United States Postal Serv.*, No. 99-5018, 1999 U.S. App. LEXIS 11061, at *2-3 (D.C. Cir. Apr. 30, 1999) ("economic loss may constitute irreparable harm" where such losses are "unrecoverable"); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (considering the availability of adequate compensatory or other corrective relief at later date); *District of Columbia v. Masucci*, 13 F. Supp. 3d 33, 41 (D.D.C. 2014) ("Courts have recognized . . . non-recoverable economic costs as irreparable harm."); *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt*, 704 F. Supp. 2d 50, 52 (D.D.C. 2010) ("in analyzing when a harm is irreparable in the context of economic harms, the movant must show that the harm would threaten the existence of its business or that the moneys lost as a result of the lack of a stay would be unrecoverable").

Notably, the financial cost to Respondents of diverting $109 million in funds from their ongoing operations cannot be redressed by later legal relief. If Respondents prevail, the escrow would be unwound but Respondents would not be made whole for their losses in having to escrow over $109 million in the first place. The Bureau is shielded by sovereign immunity from a suit for monetary damages. *See, e.g.*, *Odebrecht Constr. v. Sec'y, Fla. DOT*, 715 F.3d 1268, 1289 (11th Cir. 2013) ("In the context of preliminary injunctions, numerous courts have held that the inability to recover monetary damages because of sovereign immunity renders the harm suffered irreparable."); *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 770-71 (10th Cir. 2010) ("Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury.").

Further, the possibility that the funds may be deposited in escrow in lieu of payment is insufficient to ameliorate Respondents' financial losses. *First*, even an escrow account restricts Respondents' access to its own funds, which cannot be used for ongoing business operations. *Second*, Respondents are unaware of any authority of the Director to fashion such an interim remedy. *Third*, and finally, the possibility of an escrow account remains illusory since it is subject to acceptance by the Bureau. Accordingly, Respondents will suffer irreparable harm if stay of the Final Order for disgorgement is not granted pending appeal.

III. THE BALANCE OF HARMS FAVORS RESPONDENTS

A stay of the Bureau's Final Order during the pendency of Respondents' appeal will preserve the *status quo* and will not harm the Bureau or the public.

First, Respondents stopped placing loans into reinsurance books in 2009, more than five years ago. Accordingly, before the Bureau even came into existence, all reinsurance agreements subject to this action had been placed in run-off. As a result, there were no new "payments" for purported referrals after 2009—the only payments that were being made by borrowers after that date were pmi payments that were previously agreed to at the time of origination. Similarly, pursuant to agreements between the reinsurer, Atrium/Atrium Re, and the four mortgage insurers, the reinsurance agreements have long since been commuted.[1] Since June 1, 2013, Atrium/Atrium Re has not received a single premium in connection with any agreement.

Second, the unrefuted evidence adduced at the hearing demonstrated that no person or entity contemplates the formation of any new pmi reinsurance arrangements. Stated otherwise, the record is barren of any assertion that Respondents have any intention to enter into any new arrangement. Indeed, Enforcement Counsel did not even bother to ask a single witness whether Respondents have any intention of entering into any new reinsurance arrangements. Thus, a stay of the injunctive relief imposed by the Final Order will not harm the Bureau or the public. There is no threat to the public from Respondents' pmi reinsurance arrangements, if there ever was such a threat, because the arrangements have all been terminated.

In addition, there is no public interest in enforcing an "injunction" that so plainly violates basic principles of clarity and fair notice. Moreover, because the Final Order's injunctive provisions are vague and overbroad, allowing those restrictions to go into effect could deprive the public of beneficial mortgage services. The risk to the public interest that Respondents would violate those very laws included in the Final Order while their appeal is pending is non-existent. *See SEC v. Steadman*, 798 F. Supp. 733, 748 (D.D.C. 1991) ("[W]hile an injunction is required long-term to assure defendants' future compliance with the securities laws, the risk to shareholders and to the public interest that they would violate those laws while their appeal is pending is an acceptable one.").

[1] For the CMG and Radian arrangements, which were commuted on August 31, 2009, and July 22, 2009, respectively, Respondents received no premiums, as all such monies, including Respondents' capital contributions, were returned to the mortgage insurers. The other two arrangements, Genworth and UGI, were commuted on April 1, 2012, and May 31, 2013, respectively, and in connection with those terminations, the parties reached an arms-length resolution that compensated the mortgage insurer for expected future losses.

A stay of Respondents' obligation to either pay the disgorgement amount or deposit that amount into an escrow account will not harm the Bureau or the public.[2] There can be no assertion that the United States Treasury will suffer harm by not receiving these funds during the short period that Respondents' appeal is pending. To the contrary, depriving Respondents of funds used for its operations, consisting of the lawful origination of mortgage loans for qualified borrowers, and thereby promoting home ownership, would be detrimental to the public interest.

CONCLUSION

For the foregoing reasons, Respondents respectfully seek a stay of the Final Order in its entirety pending judicial review. If the Director denies Respondents' request for a stay, Respondents request that the implementation of the Final Order be temporarily delayed by an additional period of 30 days to permit the D.C. Circuit sufficient time to consider a potential motion for a stay by Respondents. Given the exigencies of the appeals process with respect to a request for a judicial stay, we respectfully ask that this Motion to Stay be ruled upon by the close of business on June 25, 2015. If we do not receive a ruling by that time, Respondents will deem the motion denied.

[2] In either scenario, the Bureau will not have access to the subject funds until after the appeal. And the public will never see any portion of the disgorgement the Bureau has ordered. The Final Order fails to specify whether the Bureau intends to deposit the funds into the Consumer Financial Civil Penalty Fund, to which the Bureau shall deposit "civil penalties" collected in any judicial or administrative action. 12 U.S.C. § 5497(d)(1). The term "civil penalty" is not defined by statute, and does not otherwise encompass disgorgement awards. *Zacharias v. SEC*, 569 F.3d 458, 471 (D.C. Cir. 2009) (disgorgement is not a penalty because "disgorgement restores the status quo ante by depriving violators of ill-gotten profits."). Thus, it appears that the funds will be sent to the general fund of the United States Treasury.

Dated: June 16, 2015

Respectfully submitted,
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RULE 205 CERTIFICATION

Pursuant to Rule 205(f), counsel for Respondents certify that they have conferred with counsel for the Enforcement Division in a good faith effort to resolve the issues raised by this Motion and have been unable to resolve the matter by agreement.

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CERTIFICATION OF SERVICE

I hereby certify that on the 16th day of June, 2015, I caused a copy of the foregoing Motion to Stay the Director's Final Decision and Order to be filed with the Office of Administrative Adjudication and served by hand delivery on Enforcement Counsel and electronic mail on the following parties who have consented to electronic service:

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