

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

In the Matter of

HSBC NORTH AMERICA HOLDINGS, INC.
New York, New York

and

HSBC FINANCE CORPORATION
Mettawa, Illinois

Docket Nos. 12-011-CMP-HC
12-011-CMP-DEO

Order of Assessment of a Civil
Money Penalty Issued Upon Consent
Pursuant to the Federal Deposit
Insurance Act, as Amended

WHEREAS, HSBC North America Holdings, Inc., New York, New York (“HNAH”), a registered bank holding company, indirectly owns and controls HSBC Bank USA, National Association, McLean, Virginia (the “Bank”), a national bank, and numerous direct and indirect nonbank subsidiaries, including HSBC Finance Corporation, Mettawa, Illinois (“HBIO”), and its direct and indirect subsidiaries;

WHEREAS, HNAH engages in the business of servicing residential mortgage loans through certain HBIO residential mortgage loan subsidiaries (collectively, the “Mortgage Servicing Companies”), as well as through the Bank. The Mortgage Servicing Companies service, or previously serviced, residential mortgage loans that are held in the portfolios of (a) HNAH, HBIO, the Bank, and their respective subsidiaries; (b) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association; and (c) various investors, including securitization trusts pursuant to

Pooling and Servicing Agreements and similar agreements (collectively, the “Servicing Portfolio”). The Mortgage Servicing Companies have substantial responsibilities with respect to the Servicing Portfolio for the initiation and handling of foreclosure proceedings, and loss mitigation activities (“Loss Mitigation” or “Loss Mitigation Activities” include activities related to special forbearances, repayment plans, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure);

WHEREAS, HNAH, through the Bank and the Mortgage Servicing Companies, collectively, as of April 2011 was the twelfth largest servicer of residential mortgages in the United States and serviced a portfolio of 892,200 residential mortgage loans. During the recent financial crisis, a substantially larger number of residential mortgage loans became past due than in earlier years. Many of the past due mortgages have resulted in foreclosure actions. From January 1, 2009, to December 31, 2010, the Mortgage Servicing Companies initiated 43,442 foreclosure actions;

WHEREAS, the Mortgage Servicing Companies, in connection with the process leading to certain foreclosures involving the Servicing Portfolio, allegedly:

- (a) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of the Mortgage Servicing Companies or employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such knowledge or review;

(b) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts or in the local land record offices, numerous affidavits and other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(c) Litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosures without always confirming that documentation of ownership was in order at the appropriate time, including confirming that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party;

(d) Failed to respond in a sufficient and timely manner to the increased level of foreclosures by increasing financial, staffing, and managerial resources to ensure that the Mortgage Servicing Companies adequately handled the foreclosure process; failed to respond in a sufficient and timely manner to the increased level of Loss Mitigation Activities to ensure timely, effective and efficient communication with borrowers with respect to Loss Mitigation Activities and foreclosure activities, and full exploration of Loss Mitigation options or programs prior to completion of foreclosure activities; and

(e) Failed to have adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process, including sufficient oversight of outside counsel and other third-party providers handling foreclosure-related services with respect to the Servicing Portfolio;

WHEREAS, as part of a horizontal review of various major residential mortgage servicers conducted by the Board of Governors of the Federal Reserve System (the “Board of Governors”), the Federal Deposit Insurance Corporation (the “FDIC”), the Office of the

Comptroller of the Currency (the “OCC”), and the Office of Thrift Supervision, examiners from the Federal Reserve Bank of Chicago (the “Reserve Bank”) reviewed certain residential mortgage loan servicing and foreclosure-related processes at the Mortgage Servicing Companies, and examiners from the OCC reviewed certain residential mortgage loan servicing and foreclosure-related practices at the Bank;

WHEREAS, on April 13, 2011, the Bank and the OCC entered into a consent order to address areas of alleged weakness identified by the OCC in loan servicing, Loss Mitigation, foreclosure activities, and related functions (the “OCC Consent Order”);

WHEREAS, in the OCC Consent Order, the OCC made findings, which the Bank neither admitted nor denied, that there were unsafe or unsound practices with respect to the manner in which the Bank handled various foreclosure and related activities;

WHEREAS, as evidenced by the findings in the OCC Consent Order and the alleged deficiencies at the Mortgage Servicing Companies, HNAH allegedly failed to provide effective oversight with respect to the loan servicing, Loss Mitigation, foreclosure activities, and related functions of the Mortgage Servicing Companies and the Bank, including the Mortgage Servicing Companies’ and the Bank’s risk management, audit, and compliance programs, vendor management, document execution practices, and staffing and managerial resources as they pertain to those activities and related functions;

WHEREAS, on April 13, 2011, the Board of Governors, on the one hand, and HNAH and HBIO, on the other hand, entered into a Consent Order designed to correct the aforementioned alleged conduct (the “Board Consent Order”);

WHEREAS, the conduct which was the subject of the Board Consent Order allegedly constitutes unsafe or unsound practices in conducting the affairs of HNAH and the Mortgage

Servicing Companies within the meaning of section 8(i)(2)(B) of the Federal Deposit Insurance Act, as amended (12 U.S.C. § 1818(i)(2)(B)) (the “FDI Act”);

WHEREAS, the Board of Governors issues this Order of Assessment of a Civil Money Penalty Issued Upon Consent (the “Consent Assessment Order”) against HNAH and the Mortgage Servicing Companies in conjunction with the Board Consent Order;

WHEREAS, HNAH and the Mortgage Servicing Companies have taken steps to comply with the Board Consent Order and continue to take additional steps;

WHEREAS, on the 5th day of February, 2016, HNAH, the Mortgage Servicing Companies, and/or certain of their affiliates (the “HNAH Parties”) entered into an agreement with the United States, acting through the United States Department of Justice and the Consumer Financial Protection Bureau, and with the Attorneys General of various states to settle certain potential civil claims against the HNAH Parties for their conduct, among other things, in connection with the servicing of mortgage loans by the Mortgage Servicing Companies (the “Settlement Agreement”);

WHEREAS, as part of the Settlement Agreement, the HNAH Parties agreed to provide \$370,000,000 of consumer relief, which may include mortgage principal reductions or refinancing, and other assistance to certain residential mortgage borrowers (the “Borrower Assistance”). As part of the Settlement Agreement, the HNAH Parties also agreed that a direct payment settlement of \$100,000,000 would be made to the United States (the “Hard Dollar Payments”). Portions of those payments may go directly to various agencies of the federal government (the “Federal Payments”);

WHEREAS, HNAH and the Mortgage Servicing Companies have consented to the assessment of a civil money penalty in the amount of \$131,000,000 by the Board of Governors

(the “CMP”) pursuant to section 8(b)(3) and (i)(2)(B) of the FDI Act (12 U.S.C. §§ 1818(b)(3) and 1818(i)(2)(B)) for allegedly unsafe or unsound practices described above, which penalty shall be remitted by the Board to the extent, in compliance with this Consent Assessment Order: (i) the HNAH Parties provide the Borrower Assistance pursuant to the Settlement Agreement or make the Federal Payments pursuant to the Settlement Agreement; or (ii) HNAH and the Mortgage Servicing Companies provide funding for nonprofit housing counseling organizations pursuant to a plan acceptable to the Reserve Bank;

WHEREAS, the boards of directors of HNAH and HBIO, at duly constituted meetings, adopted resolutions authorizing and directing Patrick J. Burke, President and CEO of HNAH and Stuart A. Alderoty, Senior Executive Vice President and General Counsel of HNAH and Kathryn Madison, President of HBIO to enter into this Consent Assessment Order on behalf of HNAH and the Mortgage Servicing Companies, respectively, and consenting to compliance with each and every applicable provision of this Consent Assessment Order by HNAH and the Mortgage Servicing Companies, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(3)), and waiving any and all rights that HNAH and the Mortgage Servicing Companies may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of assessment of civil money penalty; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Consent Assessment Order; (iii) judicial review of this Consent Assessment Order; (iv) contest the issuance of this Consent Assessment Order by the Board of Governors; and (v) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Consent Assessment Order or any provision hereof.

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ORDERED by the Board of Governors, pursuant to sections 8(b)(3) and (i)(2)(B) of the FDI Act (12 U.S.C. §§ 1818(b)(3) and 1818(i)(2)(B)), that:

1. HNAH and the Mortgage Servicing Companies are hereby jointly and severally assessed a CMP in the amount of \$131,000,000 to be paid as provided in this Consent Assessment Order.

2. Pursuant to section 8(i)(2)(F) of the FDI Act (12 U.S.C. § 1818(i)(2)(F)), the Board of Governors shall remit up to \$131,000,000 of the CMP by an amount equivalent to the aggregate dollar value of the Borrower Assistance provided and Federal Payments made by the HNAH Parties pursuant to the Settlement Agreement (with crediting to be determined pursuant to the same mechanism used in the Settlement Agreement, provided that no amount shall be remitted for bonuses or incentives received by or credited to the HNAH Parties), under the following conditions:

(i) The Borrower Assistance is provided for the remedial programs specified in the Settlement Agreement in accordance with the terms and conditions specified in the Settlement Agreement for such programs;

(ii) Any documents associated with the Borrower Assistance provided and Federal Payments made by the HNAH Parties pursuant to the Settlement Agreement are made available to the Reserve Bank upon request;

(iii) On a quarterly basis and until the earlier of the date on which the Settlement Agreement's requirements pertaining to the Borrower Assistance and Federal Payments are fully satisfied or on which the CMP has been fully satisfied, HNAH and the Mortgage Servicing Companies submit to the Reserve Bank a detailed report and accounting on the Borrower Assistance provided and Federal Payments made pursuant to the Settlement Agreement and a certification by HNAH and the Mortgage Servicing Companies that any such Borrower Assistance provided and Federal Payments made were provided and made in full compliance with the terms and conditions of the Settlement Agreement; and

(iv) Within the earlier of 30 days of full satisfaction of the terms and conditions of the Settlement Agreement's requirements pertaining to Borrower Assistance and Federal Payments or two years after the date of execution of this Consent Assessment Order, HNAH and the Mortgage Servicing Companies submit to the Reserve Bank a certification that any Borrower Assistance provided and Federal Payments made pursuant to the Settlement Agreement were provided and made in full compliance with the terms and conditions of the Settlement Agreement.

3. Pursuant to section 8(i)(2)(F) of the FDI Act (12 U.S.C. § 1818(i)(2)(F)), the Board of Governors shall also remit up to \$131,000,000 of the CMP, to the extent not remitted pursuant to paragraph 2, by an amount equivalent to the aggregate amount of funds expended by HNAH and the Mortgage Servicing Companies on funding for nonprofit housing counseling organizations, approved by the U.S. Department of Housing and Urban Development, to provide counseling to borrowers who are at risk of or are in default or foreclosure, under the following conditions:

(i) Within 30 days prior to the making of any expenditures pursuant to this paragraph 3, HNAH and the Mortgage Servicing Companies submit to the Reserve Bank an acceptable written plan for making such expenditures, including the manner by which such expenditures shall be credited to HNAH and the Mortgage Servicing Companies; and

(ii) HNAH and the Mortgage Servicing Companies fully comply with the accepted plan.

4. No later than two years after the date of execution of this Consent Assessment Order, HNAH and the Mortgage Servicing Companies shall pay any portion of the CMP that has not been remitted pursuant to paragraphs 2 or 3 of this Consent Assessment Order as of such date, plus interest on such portion calculated from the date of execution of this Consent Assessment Order at the rate set forth in 28 U.S.C. § 1961.

5. Payment of the CMP pursuant to paragraph 4 of this Consent Assessment Order shall be made by a Fedwire transfer to the Federal Reserve Bank of Richmond, ABA No. 05 1000033, to the order of the Board of Governors General Fund, FRB General Ledger Account number 220 400 010, which penalties the Board of Governors shall deposit on behalf of the Board of Governors into the United States Treasury as required by section 8(i)(2)(J) of the FDI Act, (12 U.S.C. § 1818(i)(2)(J)).

Notices

6. All communications regarding this Order shall be sent to:

(a) Ms. Cathy Lemieux
Executive Vice President
Supervision and Regulation Department
Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, Illinois 60604-1413

(b) Patrick J. Burke
President and CEO
Stuart A. Alderoty
Senior Executive Vice President and General Counsel
HSBC North America Holdings, Inc.
425 Fifth Avenue, 10th Floor
New York, New York 10018

(c) Ms. Kathryn Madison
President
HSBC Finance Corporation
26525 North Riverwoods Boulevard
Mettawa, Illinois 60045

Miscellaneous

7. The provisions of this Consent Assessment Order shall be binding on HNAH, HBIO and the Mortgage Servicing Companies, and each of their institution-affiliated parties in their capacities as such, and their successors and assigns.

8. Each provision of this Consent Assessment Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank.

9. Notwithstanding any provision of this Consent Assessment Order, the Reserve Bank may, in its sole discretion, grant written extensions of time to HNAH and the Mortgage Servicing Companies to comply with any provision of this Consent Assessment Order.

10. Except as provided for in this Consent Assessment Order, the Board of Governors hereby releases and discharges HNAH, the Mortgage Servicing Companies, and their affiliates, successors, and assigns from all potential liability that has been or might have been asserted by the Board of Governors based on the conduct that is the subject of this Consent Assessment Order, to the extent known to the Board of Governors as of the effective date of this Consent Assessment Order. The foregoing release and discharge shall not preclude or affect any right of

the Board of Governors to determine and ensure compliance with the Board Consent Order or this Consent Assessment Order, or any proceedings brought by the Board of Governors to enforce the terms of the Board Consent Order or this Consent Assessment Order.

11. Nothing in this Consent Assessment Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any legal or equitable right, remedy or claim under this Consent Assessment Order.

By Order of the Board of Governors effective this 5th day of February, 2016.

HSBC NORTH AMERICA
HOLDINGS, INC.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: /s/ Patrick Burke
Patrick Burke
President and CEO

By: /s/ Robert deV. Frierson
Robert deV. Frierson
Secretary of the Board

HSBC FINANCE CORPORATION

By: /s/ Kathryn Madison
Kathryn Madison
President