

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On ) Behalf of Itself and All Others Similarly ) Situating, )  Plaintiff, )  vs. )  HOUSEHOLD INTERNATIONAL, INC., et ) al., )  Defendants. ) _____ )	)	Lead Case No. 02-C-5893 (Consolidated)  <u>CLASS ACTION</u>  Honorable Jorge L. Alonso
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**DECLARATION OF MICHAEL J. DOWD IN SUPPORT OF PLAINTIFFS’  
OPPOSITION TO DEFENDANT HOUSEHOLD INTERNATIONAL INC.’S MOTION  
FOR AN AWARD OF COSTS PURSUANT TO FEDERAL RULE OF APPELLATE  
PROCEDURE 39(e)**

I, Michael J. Dowd, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California and I am also admitted *pro hac vice* in this Court for this action. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP, one of Lead Counsel of record for plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached are true and correct copies of the following exhibits:

- Ex. 1: Letter from Spencer A. Burkholz to R. Ryan Stoll dated Oct. 16, 2013;
- Ex. 2: Email from R. Ryan Stoll to Michael J. Dowd and Spencer A. Burkholz dated June 25, 2013;
- Ex. 3: Relevant excerpt from HSBC Finance Corporation's SEC Form 10-Q for the period ended Mar. 31, 2009 filed with the SEC on May 11, 2009;
- Ex. 4: Relevant excerpt from HSBC Finance Corporation's SEC Form 10-Q for the period ended Sept. 30, 2013 filed with the SEC on Nov. 3, 2013; and
- Ex. 5: Relevant excerpt from HSBC Finance Corporation's SEC Form 10-K for the year ended 2013 filed with the SEC on Feb. 24, 2014.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 7th day of October, 2015 at San Diego, California.

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/s/ MICHAEL J. DOWD  
MICHAEL J. DOWD

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 7, 2015.

/s/ MICHAEL J. DOWD

MICHAEL J. DOWD

ROBBINS GELLER RUDMAN  
& DOWD LLP

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## Mailing Information for a Case 1:02-cv-05893 Jaffe v. Household Intl Inc, et al

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## Manual Notice List

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# EXHIBIT 1

**Robbins Geller  
Rudman & Dowd LLP**

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Chicago

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New York  
Philadelphia

San Diego  
San Francisco  
Washington, DC

Spencer A. Burkholz  
spenceb@rgrdlaw.com

October 16, 2013

VIA EMAIL & U.S. MAIL

R. Ryan Stoll  
Skadden, Arps, Slate, Meagher  
& Flom LLP & Associates  
155 N. Wacker Drive  
Chicago, IL 60606

Re: *Lawrence E. Jaffe Pension Plan v. Household International, Inc. et al.*  
Lead Case No. 02-CV-5893 (N.D. Ill.)

Dear Ryan:

Over the past year, defendants Household International (renamed "HSBC Finance"), William Aldinger, David Schoenholz and Gary Gilmer, proposed that the plaintiff class ("plaintiffs") accept funding an escrow account as an alternative to the posting of a supersedeas bond while they appeal the Rule 54(b) final judgment of approximately \$2.46 billion. Defendants asserted that the cost of the escrow account would be significantly less than the supersedeas bond premium. Both sides have exchanged information regarding the adequacy of an escrow account and plaintiffs' concerns about the use of an escrow account, including whether the escrow account can be used to satisfy the judgment in the event that defendant HSBC Finance files for bankruptcy protection and the trustee claims the escrow account is property of the estate.

As you know, in an effort to alleviate our concerns, we asked defendants whether HSBC Finance's parent company would provide us with a guarantee of the amounts in the escrow account. However, defendants declined. Thereafter, on September 26, 2013, prior to the Court's October 4, 2013 Order denying defendants' post-trial motions and ordering that Rule 54(b) judgment be entered, we proposed that defendants consider posting a letter of credit ("LOC") as an alternative to the supersedeas bond or escrow account. The LOC arrangement offers superior assurance to the payee (plaintiff class) that the judgment will be payable even in the event of a bankruptcy filing by HSBC Finance. Unlike the escrow option, the LOC option does not have inconsistent decisions or sparse caselaw on its independence from any bankruptcy estate. In addition, our understanding is that the cost of the LOC option is significantly less than a bond. On October 8, 2013, we spoke again and you informed us that defendants will not agree to the LOC option.

Unlike the escrow option (discussed below), the law concerning the LOC's independence from the bankruptcy estate is clear. It is a "well-established rule of bankruptcy law that a letter of credit and the proceeds therefrom are *not property of the debtor's estate.*" *In re Kaiser Grp. Int'l*



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*Inc.*, 399 F.3d 558, 566 (3d Cir. 2005) (internal quotations and citations omitted); *see also In re Kmart Corp.*, 297 B.R. 525, 529 (N.D. Ill. 2003) (noting that “letters of credit are not considered property of a debtor’s estate”); *Duplitronics*, 183 B.R. at 1015 (“Because a bank’s obligation on a letter of credit is independent of the transaction between the beneficiary and the bank’s customer, it is settled law that the letter of credit is not property of the estate and that the §362 automatic stay is inapplicable.”); 5-541 Collier on Bankruptcy ¶541.08 n.2 (16th ed. 2010) (“***Funds from which a bank must honor a letter of credit are its property and do not constitute property of the debtor.***”); 5-547 Collier on Bankruptcy ¶47.03 n.25 (16th ed. 2010) (explaining that “payments by the issuer of a letter of credit cannot be recovered as a preference because they are not transfers of the debtor’s property”). Pursuant to the “independence principle that underlies letter of credit law,” LOCs consist of separate and independent obligations. *In re P.A. Bergner & Co.*, 140 F.3d 1111, 1118-19 (7th Cir. 1998).<sup>1</sup> Thus, ***the issuer of the LOC must honor its obligation to pay the beneficiary irrespective of the issuer’s ability to collect from the debtor.*** As the court in Bergner explained,

letters of credit really are different from other financing mechanisms . . . . [***There were] independent obligations that ran from the bank to the beneficiaries.*** From the point of view of the beneficiaries, . . . the way that [the bank] settled its accounts with [the debtor] was of no importance, either legal or practical. As soon as [the bank] issued the irrevocable letters in favor of each beneficiary (for a fee, as [the debtor] reminds us), it assumed the obligation of paying upon a draft supported by documents that conformed to the terms of the credit. Thus, when [the beneficiary] presented its draft with conforming documents to [the bank] . . . , [the bank] was required to pay [the beneficiary] the full [amount] that the letter of credit then provided, whether or not [the debtor] gave it a red cent. If [the debtor] did not comply with its own agreement with [the bank], under which it was required to give the bank the amount of the draw either before or at the time of the payment to the beneficiary, then [the bank] would have had a perfectly good contract action against [the debtor], but it would have had no defense against honoring the beneficiary’s demand.

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<sup>1</sup> In fact, the independence of LOC obligations is mandated by law. *See* U.C.C. §5-103(d) (“Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.”); c.f. also 12 C.F.R. §7.1016(b)(1)(i) (“The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character) . . . .”); *see also* 810 Ill. Comp. Stat. 5/5-103(d) (identical to U.C.C. §5-103(d)).

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Rudman & Dowd LLP**

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140 F.3d at 1119.

In contrast to the LOC option, the law regarding the escrow account's independence from the bankruptcy estate is not as clear. In fact, there are conflicting decisions concerning whether the funds in an escrow account are property of the bankruptcy estate. On one hand, some courts have held that, "[a]s a general rule, money held in an escrow account is not property of a debtor's bankruptcy estate." *Raymond*, 408 B.R. at 743; *see also Johnson*, 355 B.R. at 110 n.5 ("In the bankruptcy context, as a general rule, money held in a 'true' escrow account is not property of the debtor's estate.") (citing *In re Kemp*, 52 F.3d 546 (5th Cir.1995)).<sup>2</sup>

On the other hand, in *BNT*, 125 B.R. at 970, the court applied Illinois escrow law and found that funds in escrow were property of the estate. Even more troublesome is the decision in *In re Alwan*, 105 BR 886 (Bankr. C.D. Ill. 1989), reconsideration denied, 112 B.R. 294 (Bankr. C.D. Ill. 1990), where the Court allowed a portion of the pledged real estate to become part of the bankruptcy estate. *See also In re Missionary Baptist Foundation of America*, 792 F.2d 502, 506 (5th Cir. 1986) (the court found that funds in escrow became property of the estate); *In re Berkley Multi-Units, Inc.*, 69 B.R. 638 (Bankr. M.D. Fla. 1987) (Funds placed into escrow by the debtor estate become estate property unless the contingency of the escrow was fulfilled pre-petition).

Finally, some courts have applied an intermediate approach, in which the court examines the particular facts and circumstances of the transaction at issue. As one court explained:

Escrow accounts are . . . difficult to diagnose. Factors that are relevant, although not necessarily determinative, include whether the debtor initiated and/or agreed to the creation of the escrow, what if any control the debtor exercises over it, the incipient source of it, the nature of the funds put into it, the recipient of its remainder (if any),

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<sup>2</sup> *See, e.g., Expert S. Tulsa LLC*, 456 BR at 87; *Atl. Gulf*, 369 B.R. at 164-65 (concluding under New York law "that the Escrow is not property of the estate, even though the contingent interest that the Debtor has in the Escrow is property of the estate"); *In re Holmes Environmental, Inc.*, 287 B.R. 363, 382 (Bankr. E.D. Va. 2002) ("When an escrow or trust is created, the only interest left in the escrowed funds is a contingent right to any surplus after payment of the claims against the fund."); *In re Royal Bus. Sch., Inc.*, 157 B.R. 932, 940 (Bankr. E.D.N.Y. 1993) ("[W]hen considering preference actions, the predominant rule is that a subsequent judgment or release of escrow monies does not deprive the estate of anything of value since the debtor reserves only a contingent right to the escrowed funds."); *In re Cedar Rapids Meats, Inc.*, 121 B.R. 562, 568 (Bankr. N.D. Iowa 1990) ("[O]nce the escrow was created the only interest in the escrow funds remaining in the debtor was a contingent right to the funds . . .") (emphasis in original; quoting *In re Newcomb*, 744 F.2d 621, 627 (8th Cir. 1984)); *In re O.P.M. Leasing Servs., Inc.*, 46 B.R. 661, 668 (Bankr. S.D.N.Y. 1985) (holding that the debtor "retained only a contingent right to the funds [in escrow] which was of no value to the estate"); *In re Palm Beach Heights Dev. & Sales Corp.*, 52 B.R. 181, 183 (Bankr. S.D. Fla. 1985) ("Any claim, contingency or chose in action against the trust fund is the property of the estate but the fund itself is not.").



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the target of its benefits, and the purpose for its creation. In short, whether an escrow constitutes property of a debtor's estate depends entirely on the nature and circumstances of the escrow in question.

*In re World Commc'ns, Inc.*, 72 B.R. 498, 500-01 (D. Utah 1987) (footnotes omitted); *accord In re Cedar Rapids Meats, Inc.*, 121 B.R. 562, 567 (Bankr. N.D. Iowa 1990) (following *World Communications*); *In re Mona Lisa at Celebration, LLC*, 472 B.R. 582, 647 (Bankr. M.D. Fla. 2012), *aff'd*, 495 B.R. 535 (M.D. Fla. 2013) ("Whether the deposits become property of the estate depends on the nature of the escrow agreement.") (citing *Cedar Rapids*).

In sum, unlike with the LOC approach, the law is not clear whether the escrow account will be considered property of the bankruptcy estate. Given the uncertainty, we cannot place the judgment for the class at risk by entering into an escrow agreement, especially in light of the fact that the LOC option is available and offers superior assurance to the plaintiffs.

Based on our phone conversations, HSBC Finance is apparently posting a LOC as part of obtaining the supersedeas bond. If so, it would seem to be more cost effective to just post the LOC as security instead of the supersedeas bond. We remain available to discuss this issue with you

Very truly yours,



SPENCER A. BURKHOLZ

SAB:mm

# EXHIBIT 2

**Mike Dowd**

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**From:** Stoll, R. Ryan <Ryan.Stoll@skadden.com>  
**Sent:** Tuesday, June 25, 2013 2:46 PM  
**To:** Mike Dowd; Spence Burkholz  
**Cc:** McDevitt, Donna L; Rakoczy, Mark E  
**Subject:** Jaffe

Mike and Spence: We would like to continue the discussions regarding the appeal escrow, which we continue to believe is in the parties' mutual interest for the reasons we previously spoke with you about. In response to the questions you raised, the cash escrow account would be fully funded by HSBC Finance Corporation and there is no intention of a solvency opinion or parent guarantee. Please let me know if you are in agreement and we can begin to put together the structure on the appeal escrow. Thanks, Ryan

**R. Ryan Stoll**  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Drive | Chicago | Illinois | 60606-1720  
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[ryan.stoll@skadden.com](mailto:ryan.stoll@skadden.com)

\*\*\*\*\*

To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

\*\*\*\*\*  
\*\*\*\*\*

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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# EXHIBIT 3

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**UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION**Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2009

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-8198

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**HSBC FINANCE CORPORATION**

(Exact name of registrant as specified in its charter)

Delaware

(State of Incorporation)

26525 North Riverwoods Boulevard, Mettawa, Illinois  
(Address of principal executive offices)

86-1052062

(I.R.S. Employer Identification No.)

60045

(Zip Code)

(224) 544-2000

Registrant's telephone number, including area code

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐Accelerated filer ☐Non-accelerated filer ☒Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of April 30, 2009, there were 63 shares of the registrant's common stock outstanding, all of which are owned by HSBC Investments (North America) Inc.

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HSBC Finance Corporation

**CONSOLIDATED BALANCE SHEET (UNAUDITED)**

	March 31, 2009	December 31, 2008
	(in millions, except share data)	
<b>Assets</b>		
Cash	\$ 354	\$ 255
Interest bearing deposits with banks	22	25
Securities purchased under agreements to resell	5,601	1,025
Securities available for sale	2,977	3,094
Receivables, net	92,291	98,021
Receivables held for sale	1,409	16,680
Intangible assets, net	866	922
Goodwill	1,641	2,294
Properties and equipment, net	178	201
Real estate owned	764	885
Derivative financial assets	-	8
Deferred income taxes, net	1,850	3,318
Other assets	3,197	4,057
<b>Total assets</b>	<b>\$ 111,150</b>	<b>\$ 130,785</b>
<b>Liabilities</b>		
Debt:		
Due to affiliates	\$ 12,217	\$ 13,543
Commercial paper	5,273	9,639
Long term debt (including \$22.7 billion at March 31, 2009 and \$28.3 billion at December 31, 2008 carried at fair value)	75,159	90,024
Total debt	92,649	113,206
Insurance policy and claim reserves	964	965
Derivative related liabilities	163	461
Liability for post-retirement benefits	251	298
Other liabilities	2,456	2,418
<b>Total liabilities</b>	<b>96,483</b>	<b>117,348</b>
<b>Shareholders' equity</b>		
Redeemable preferred stock, 1,501,100 shares authorized, Series B, \$0.01 par value, 575,000 shares issued	575	575
Common shareholder's equity:		
Common stock, \$0.01 par value, 100 shares authorized, 63 shares issued at March 31, 2009 and 60 shares issued at December 31, 2008	-	-
Additional paid-in capital	21,592	21,485
Accumulated deficit	(6,382)	(7,245)
Accumulated other comprehensive loss	(1,118)	(1,378)
<b>Total common shareholder's equity</b>	<b>14,092</b>	<b>12,862</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 111,150</b>	<b>\$ 130,785</b>

The accompanying notes are an integral part of the consolidated financial statements.



# EXHIBIT 4

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**UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-Q**

---

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

**For the quarterly period ended September 30, 2013**

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
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**Commission file number 1-8198**

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**HSBC FINANCE CORPORATION**  
(Exact name of registrant as specified in its charter)

**Delaware**

(State of incorporation)

**26525 North Riverwoods Boulevard, Mettawa, Illinois**  
(Address of principal executive offices)

**86-1052062**

(I.R.S. Employer Identification No.)

**60045**

(Zip Code)

**(224) 880-7000**

Registrant's telephone number, including area code

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of October 31, 2013, there were 68 shares of the registrant's common stock outstanding, all of which are owned by HSBC Investments (North America) Inc.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**1. Organization**

HSBC Finance Corporation is an indirect wholly owned subsidiary of HSBC North America Holdings Inc. (“HSBC North America”), which is an indirect wholly owned subsidiary of HSBC Holdings plc (“HSBC”). The accompanying unaudited interim consolidated financial statements of HSBC Finance Corporation and its subsidiaries have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all normal and recurring adjustments considered necessary for a fair presentation of financial position, results of operations and cash flows for the interim periods have been made. HSBC Finance Corporation and its subsidiaries may also be referred to in this Form 10-Q as “we,” “us” or “our.” These unaudited interim consolidated financial statements should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2012 (the “2012 Form 10-K”). Certain reclassifications have been made to prior period amounts to conform to the current period presentation.

The consolidated financial statements have been prepared on the basis that we will continue as a going concern. Such assertion contemplates the significant losses recognized in recent years and the challenges we anticipate with respect to a sustainable return to profitability on a continuing operations basis under prevailing and forecasted economic conditions. HSBC continues to be fully committed and has the capacity to continue to provide the necessary capital and liquidity to fund continuing operations.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates. Unless otherwise noted, information included in these notes to the consolidated financial statements relates to continuing operations for all periods presented. See Note 2, “Discontinued Operations,” for further details. Interim results should not be considered indicative of results in future periods.

**2. Discontinued Operations****2012 Discontinued Operations:**

*Insurance* On March 29, 2013, we sold our interest in substantially all of our insurance subsidiaries to Enstar Group Ltd. (“Enstar”) for \$153 million in cash and recorded a gain on sale of \$21 million (\$13 million after-tax), which is reflected in the table below. During the twelve months ended December 31, 2012, we had previously recorded a lower of amortized cost or fair value less cost to sell adjustment of \$119 million (\$90 million after-tax).

intense and subject to foreclosure delays. Receivables which were at one time greater than 180 days past due require substantial amounts of capital under U.K. banking regulatory requirements and the extension of the foreclosure timeline in the U.S. has increased the capital requirements for this run-off book of business. These factors combined with the increase in the market's appetite for this asset class, led us to the decision that the sale of certain of these assets would be the best financial decision.

During the second and third quarters of 2013, we sold two separate pools of real estate secured loans to a third-party investor with an aggregate unpaid principal balance of \$1,124 million (aggregate carrying value of \$634 million) at the time of sale for aggregate cash consideration of \$632 million which resulted in a loss of \$18 million during the nine months ended September 30, 2013 primarily related to transaction fees. On October 1, 2013 we completed the sale of an additional pool of real estate secured receivables with an unpaid principal balance of \$1,541 million (carrying value of \$901 million) at the time of sale to a third-party investor for cash consideration of \$901 million. As these receivables were carried at the lower of amortized cost or fair value at September 30, 2013, we do not expect any significant impact to our earnings will be recorded during the fourth quarter of 2013.

The market demand for first lien partially charged-off accounts has been strong throughout the first nine months of 2013. As a direct result of this increased market demand, in June 2013, we decided we no longer have the intent to hold for investment first lien real estate secured receivables once they have been written down to the lower of amortized cost or fair value of the collateral less cost to sell, subject to certain exceptions, principally receivables associated with secured financings which are not saleable. As a result, we adopted a formal program to initiate sale activities for real estate secured receivables in our held for investment portfolio when a receivable meeting pre-determined criteria is written down to the lower of amortized cost or fair value of the collateral less cost to sell in accordance with our existing charge-off policies (generally 180 days past due). During the three and nine months ended September 30, 2013, we transferred real estate secured receivables to held for sale with an unpaid principal balance of approximately \$473 million and \$3,077 million, respectively, at the time of transfer. The net realizable value (carrying value) of these receivables prior to transfer after considering the fair value of the property less cost to sell was approximately \$346 million and \$2,101 million, respectively, for the three and nine months ended September 30, 2013.

As we now plan to sell these receivables to third party investors fair value represents the price we believe a third party investor would pay to acquire the receivable portfolios. A third party investor would incorporate a number of assumptions in predicting future cash flows, such as differences in overall cost of capital assumptions, which may result in a lower estimate of fair value for the cash flows associated with the receivables. Accordingly, during the three and nine months ended September 30, 2013 we recorded a lower of amortized cost or fair value adjustment of \$46 million and \$145 million, respectively, associated with the newly transferred loans, all of which was attributable to non-credit related factors and was recorded as a component of total other revenues in the consolidated statement of income (loss).

We expect that receivables held for sale at September 30, 2013 will be sold in multiple transactions generally over the next 15 months or, if the foreclosure process is completed prior to sale, the underlying properties acquired in satisfaction of the receivables will be classified as real estate owned ("REO") and sold. As we continue to work with borrowers, we may also agree to a short sale whereby the property is sold by the borrower at a price which has been pre-negotiated with us and the borrower is released from further obligation. Accordingly, based on the projected timing of loan sales and the expected flow of foreclosure volume into REO over the next 15 months, a portion of the real estate secured receivables classified as held for sale will ultimately become REO. As a result, a portion of the fair value adjustment on receivables held for sale may be reversed in earnings over time. This estimate of fair value is highly dependent upon the timing and size of future receivable sales as well as the volume and timelines associated with foreclosure activity. During the three and nine months ended September 30, 2013, we transferred a portion of our real estate secured receivable portfolio held for sale with a carrying value of \$175 million and \$405 million, respectively, to REO after obtaining title to the underlying collateral and reversed a portion of the lower of amortized cost or fair value adjustment previously recorded totaling \$1 million and \$50 million, respectively. Additionally, during the three and nine months ended September 30, 2013, we completed short sales on real estate secured receivables with a carrying value of \$63 million and \$151 million, respectively. As a result of these short sales, we reversed a portion of the lower of amortized cost or fair value adjustment previously recorded totaling \$11 million and \$22 million during the three and nine months ended September 30, 2013, respectively, as the agreed price was higher than the carrying value.

and \$1,047 million, respectively, of the lower of amortized cost or fair value adjustment recorded during the year ended December 31, 2012 primarily due to an increase in the fair value of the real estate secured receivables held for sale during the first nine months of 2013 as well as improvements in derivative related income (expense). As discussed above, the increase in the relative fair value of the real estate secured receivables held for sale is largely due to improved conditions in the housing industry driven by increased property values and, to a lesser extent, lower required market yields and increased investor demand for these types of receivables.

See "Results of Operations" for a more detailed discussion of our operating trends. In addition, see "Receivables Review" for further discussion on our receivable trends and "Credit Quality" for additional discussion on our credit trends.

Our return on average common shareholder's equity ("ROE") was 11.8 percent and 17.0 percent for the three and nine months ended September 30, 2013, respectively, compared with (17.3) percent and (55.0) percent for the year-ago periods. Our return on average assets ("ROA") was 1.9 percent and 2.4 percent for the three and nine months ended September 30, 2013, respectively, compared with (1.6) percent and (5.8) percent for the year-ago periods. ROE and ROA in all periods were significantly impacted by the change in the fair value of own debt attributable to credit spread for which we have elected the fair value option. Excluding this item from the periods presented, both ROE and ROA improved during the three and nine months ended September 30, 2013 largely due to net income during the three and nine months ended September 30, 2013 as discussed above compared with a net loss in the year-ago periods.

**Funding and Capital** During the nine months ended September 30, 2013 and 2012, we did not receive any capital contributions from HSBC Investments (North America) Inc. ("HINO"). During the nine months ended September 30, 2013, we retired \$4,324 million of term debt as it matured or was redeemed. The maturing and redeemed debt cash requirements were met through funding from cash generated from operations including balance sheet attrition. The balance sheet and credit dynamics described above continue to have an impact on our liquidity and risk management processes. Continued success in reducing the size of our receivable portfolios as discussed above as well as the sale of pools of real estate secured receivables will be the primary driver of our liquidity during the remainder of 2013. However, lower cash flow as a result of declining receivable balances will not provide sufficient cash to fully repay maturing debt over the next four to five years. As we continue to liquidate our receivable portfolios, HSBC's continued support will be required to properly manage our business operations and maintain appropriate levels of capital. HSBC has historically provided significant capital in support of our operations and has indicated that it is fully committed and has the capacity and willingness to continue that support. Any required incremental funding has been integrated into the overall HSBC North America funding plans and will be sourced through HSBC USA Inc. or through direct support from HSBC or its affiliates. HSBC has indicated it remains fully committed and has the capacity to continue to provide such support.

As discussed above, a portion of our real estate secured receivable portfolio is currently classified as held for sale as we no longer have the intent to hold these receivables for the foreseeable future for capital or operational reasons. In the current market environment, market pricing continues to value the portion of our real estate secured receivable portfolio held for investment at amounts that would not provide a sufficient economic benefit to us upon sale. Therefore, we have determined that we have the positive intent and ability to hold these remaining real estate secured receivables for the foreseeable future and, as such, continue to classify these real estate secured receivables as held for investment. However, should market pricing improve in the future or if HSBC calls upon us to execute certain strategies in order to address capital considerations, it could result in the reclassification of additional real estate secured receivables to held for sale.

## **Basis of Reporting**

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP"). Unless noted, the discussion of our financial condition and results of operations included in MD&A are presented on a continuing operations basis of reporting. Certain reclassifications have been made to prior year amounts to conform to the current year presentation.

In addition to the U.S. GAAP financial results reported in our consolidated financial statements, MD&A includes reference to the following information which is presented on a non-U.S. GAAP basis:

**Equity Ratios** Tangible common equity to tangible assets is a non-U.S. GAAP financial measure that is used by HSBC Finance Corporation management and certain rating agencies to evaluate capital adequacy. This ratio excludes from equity the impact of unrealized gains (losses) on cash flow hedging instruments, postretirement benefit plan adjustments and unrealized gains (losses) on investments as well as subsequent changes in fair value recognized in earnings associated with debt for which we elected the fair value option and the related derivatives. This ratio may differ from similarly named measures presented by other companies. The most directly comparable U.S. GAAP financial measure is the common and preferred equity to total assets ratio. For a

# EXHIBIT 5

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2013

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-8198

## HSBC FINANCE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State of incorporation)

26525 North Riverwoods Boulevard, Suite 100, Mettawa, Illinois  
(Address of principal executive offices)

86-1052062

(I.R.S. Employer Identification No.)

60045

(Zip Code)

(224) 880-7000

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
5.0% Notes due June 30, 2015	New York Stock Exchange
5.5% Notes due January 19, 2016	New York Stock Exchange
Floating Rate Notes due June 1, 2016	New York Stock Exchange
Depository Shares (each representing one-fortieth share of 6.36% Non-Cumulative Preferred Stock, Series B, \$.01 par, \$1,000 liquidation preference)	New York Stock Exchange
Guarantee of Preferred Securities of HSBC Finance Capital Trust IX	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of February 21, 2014, there were 68 shares of the registrant's common stock outstanding, all of which are owned by HSBC Investments (North America) Inc.

- At December 31, 2013 and 2012, we had a \$455 million, 364-day uncommitted revolving credit facility with HSBC North America. There were no balances outstanding under this facility at December 31, 2013 or December 31, 2012.
- At December 31, 2012, we had a \$1.5 billion uncommitted secured credit facility from HSBC Bank USA with no outstanding balance. In December 2013, the amount available under this facility was reduced to \$0.
- At December 31, 2012, we had a \$2.0 billion committed credit facility with HSBC USA Inc. with no outstanding balance. In December 2013, the amount available under this facility was reduced to \$1.0 billion. There were no balances outstanding at December 31, 2013 or December 31, 2012.
- At December 31, 2013 and December 31, 2012, we had a \$100 million committed revolving credit facility with HSBC Investments (Bahamas) Limited. There were no balances outstanding under this facility at December 31, 2013 or December 31, 2012.

We have derivative contracts with a notional amount of \$16.5 billion, or 100.0 percent of total derivative contracts outstanding with HSBC affiliates at December 31, 2013 and \$26.0 billion, or approximately 99.7 percent at December 31, 2012.

See Note 17, "Related Party Transactions," in the accompanying consolidated financial statements for a more detail description of all our funding arrangements with HSBC affiliates.

**Short-Term Investments** Securities purchased under agreements to resell totaled \$6,924 million and \$2,160 million at December 31, 2013 and December 31, 2012, respectively. Securities purchased under agreements to resell increased as compared with December 31, 2012 as a result of the proceeds from the sale of our personal non-credit card receivable portfolio on April 1, 2013, the sale of various pools of real estate secured receivables, \$1.0 billion funding received from HSBC USA Inc. during 2013, the run-off of our liquidating receivable portfolios, the sale of REO properties and a requirement to post collateral with us under our derivative agreements, partially offset by the retirement of long term debt.

Interest bearing deposits with banks totaled \$1,371 million at December 31, 2012. As previously discussed in August 2013, we completed the surrender of the national bank charter of HSBC Bank Nevada to the OCC. As a result, during the third quarter of 2013 we liquidated our interest bearing deposits with banks and invested it in securities purchased under agreements to resell.

**Long-Term Debt** (excluding amounts due to affiliates) decreased to \$20,839 million at December 31, 2013 from \$28,426 million at December 31, 2012. There were no issuances of long-term debt during 2013 or 2012. Repayments of long-term debt totaled \$7,011 million and \$11,408 million during 2013 and 2012, respectively.

At December 31, 2012, we had a third-party back-up line of credit totaling \$2.0 billion principally to support our commercial paper program which was terminated in 2012. We eliminated this third-party back-up line of credit in 2013.

During the fourth quarter of 2013, we called \$102 million of senior long-term debt. This transaction was completed during November 2013 and resulted in an immaterial loss.

During the third quarter of 2012, we called \$512 million of senior long-term debt. This transaction was funded through a \$512 million loan agreement with HSBC USA Inc. which matures in September 2017. At December 31, 2013 and December 31, 2012, \$512 million was outstanding under this loan agreement and is included as a component of Due to Affiliates.

During 2011, the shelf registration statement, under which we have historically issued long-term debt, expired and we chose not to renew it. Third-party long-term debt is not currently a source of funding for us given the run-off nature of our business subsequent to the sale of our Card and Retail Services business as previously discussed.

Secured financings previously issued under public trusts of \$2,200 million at December 31, 2013 are secured by \$4,020 million of closed-end real estate secured receivables. Secured financings previously issued under public trusts of \$2,878 million at December 31, 2012 were secured by \$4,898 million of closed-end real estate secured receivables.

In order to eliminate future foreign exchange risk, currency swaps were used at the time of issuance to fix in U.S. dollars all foreign-denominated notes previously issued.

We use derivatives for managing interest rate and currency risk and have received loan commitments from third parties and affiliates, but we do not otherwise enter into off balance sheet transactions.

**Preferred Shares** In November 2010, we issued 1,000 shares of Series C preferred stock to HINO for \$1.0 billion. Dividends on the Series C Preferred Stock are non-cumulative and payable quarterly at a rate of 8.625 percent. The Series C preferred stock may be redeemed at our option after November 30, 2025. Dividends paid during 2013 and 2012 totaled \$86 million and \$86 million, respectively. This transaction also enhanced both our common and preferred equity to total assets and tangible shareholders' equity to tangible assets ratios. It did not, however, impact our tangible common equity to tangible assets ratio.



In June 2005, we issued 575,000 shares of Series B Preferred Stock to third parties for \$575 million. Dividends on the Series B preferred stock are non-cumulative and payable quarterly at a rate of 6.36 percent. The Series B preferred stock may be redeemed at our option after June 23, 2010. In 2013 and 2012, we paid dividends each year totaling \$37 million on the Series B Preferred Stock.

**Common Equity** During 2013, we did not receive any capital contributions from HINO. However, as we continue to liquidate our receivable portfolios, HSBC's continued support will be required to properly manage our business and maintain appropriate levels of capital. HSBC has historically provided significant capital in support of our operations and has indicated that they remain fully committed and have the capacity to continue that support.

**Selected capital ratios** In managing capital, we develop a target for tangible common equity to tangible assets. This ratio target is based on discussions with HSBC and rating agencies, risks inherent in the portfolio and the projected operating environment and related risks. Our targets may change from time to time to accommodate changes in the operating environment or other considerations such as those listed above.

The following table summarizes selected capital ratios:

	December 31, 2013	December 31, 2012
Tangible common equity to tangible assets <sup>(1)</sup>	13.45%	9.87%
Common and preferred equity to total assets	17.59	13.05

<sup>(1)</sup> Tangible common equity to tangible assets represents a non-U.S. GAAP financial ratio that is used by HSBC Finance Corporation management and applicable rating agencies to evaluate capital adequacy and may differ from similarly named measures presented by other companies. See "Basis of Reporting" for additional discussion on the use of non-U.S. GAAP financial measures and "Reconciliations of Non-U.S. GAAP Financial Measures to U.S. GAAP Financial Measures" for quantitative reconciliations to the equivalent U.S. GAAP basis financial measure.

**2014 Funding Strategy** The following table summarizes our current range of estimates for funding needs and sources for 2014:

	(in billions)
<b>Funding needs:</b>	
Term debt maturities	\$ 4 - \$ 5
Secured financing maturities	1 - 1
Litigation bond	— - 2
Total funding needs	\$ 5 - 8
<b>Funding sources:</b>	
Net asset attrition <sup>(1)</sup>	\$ 2 - \$ 3
Liquidation of short-term investments	1 - 2
Asset sales and transfers	2 - 2
Other <sup>(2)</sup>	— - 1
Total funding sources	\$ 5 - \$ 8

<sup>(1)</sup> Net of receivable charge-offs.

<sup>(2)</sup> Primarily reflects cash provided by operating activities and sales of REO properties.

For 2014, the combination of cash generated from operations including balance sheet attrition, liquidation of short-term investments and asset sales will generate the liquidity necessary to meet our maturing debt obligations.

**Capital Expenditures** We made capital expenditures of \$6 million and \$3 million for continuing operations during 2013 and 2012, respectively. Capital expenditures in 2014 for continuing operations are not expected to be significant.

**Commitments** We entered into commitments to meet the financing needs of our customers. In some cases, we have the ability to reduce or eliminate these open lines of credit. At December 31, 2013 and 2012, we had \$97 million and \$508 million, respectively, of open consumer lines of credit, including accounts associated with receivables held for sale.

**Contractual Cash Obligations** The following table summarizes our long-term contractual cash obligations at December 31, 2013 by period due:

	2014	2015	2016	2017	2018	Thereafter	Total
	(in millions)						
<b>Principal balance of debt:</b>							
Due to affiliates.....	\$ 1,805	\$ 2,005	\$ 500	\$ 512	\$ 2,500	\$ 1,331	\$ 8,653
Long-term debt (including secured financings).....	3,939	5,490	5,308	1,590	292	3,723	20,342
Total debt .....	5,744	7,495	5,808	2,102	2,792	5,054	28,995
<b>Operating leases:</b>							
Minimum rental payments .....	9	5	4	—	—	—	18
Minimum sublease income .....	(4)	(4)	(3)	—	—	—	(11)
Total operating leases.....	5	1	1	—	—	—	7
<b>Obligation to the HSBC North America Pension Plan<sup>(1)</sup> .....</b>	24	19	14	9	5	2	73
<b>Non-qualified postretirement benefit liability<sup>(2)</sup> .....</b>	21	21	20	19	18	291	390
<b>Total contractual cash obligations.....</b>	<b>\$ 5,794</b>	<b>\$ 7,536</b>	<b>\$ 5,843</b>	<b>\$ 2,130</b>	<b>\$ 2,815</b>	<b>\$ 5,347</b>	<b>\$ 29,465</b>

<sup>(1)</sup> Our contractual cash obligation to the HSBC North America Pension Plan included in the table above is based on the Pension Funding Policy which establishes required annual contributions by HSBC North America through 2019. The amounts included in the table above, reflect an estimate of our portion of those annual contributions based on plan participants at December 31, 2013. See Note 16, "Pension and Other Postretirement Benefits," in the accompanying consolidated financial statements for further information about the HSBC North America Pension Plan.

<sup>(2)</sup> The expected benefit payments included in the table above covers both continuing and discontinued operations and includes a future service component.

These cash obligations could be funded through cash generated from operations, asset sales, liquidation of short-term investments, funding from affiliates or capital contributions from HSBC.

As discussed more fully below, in November 2013, we obtained a surety bond to secure a stay of execution of a partial judgment against us in the Jaffe litigation during the appeal process. In addition to the partial judgment that has been entered, there also remain approximately \$527 million, prior to imposition of pre-judgment interest, in claims that still are subject to objections that have not yet been ruled upon by the District Court. The above funding table includes a funding need for these claims and the prejudgment interest. However, subject to availability and pricing, our current intention is to obtain a surety bond to secure the remaining judgment.

The contractual cash obligation table above does not include any amounts for the partial final judgment involving the Jaffe litigation as we have obtained a surety bond to stay execution of the partial judgment while the appeal is on going. See "Off-Balance Sheet Arrangements" in this MD&A for discussion of the surety bond that was obtained in November 2013 and Note 22, "Litigation and Regulatory Matters," in the accompanying consolidated financial statements for more detailed discussion of the Jaffe litigation.

Our purchase obligations for goods and services at December 31, 2013 were not significant.

### Off-Balance Sheet Arrangements

On October 17, 2013, the District Court entered a partial final judgment against us in the Jaffe litigation in the amount of approximately \$2.5 billion. We are currently appealing this judgment. In addition to the partial judgment that has been entered, there also remain approximately \$527 million, prior to imposition of pre-judgment interest, in claims that still are subject to objections that have not yet been ruled upon by the District Court. In November 2013, we obtained a surety bond to secure a stay of execution of the partial judgment while the appeal is on going. The surety bond has a term of three years and an annual fee of \$7 million. To reduce costs associated with posting cash collateral with the insurance companies, the surety bond has been guaranteed by HSBC North America and we will pay HSBC North America a fee of \$6 million annually for this guarantee. See Note 22, "Litigation and Regulatory Matters," in the accompanying consolidated financial statements for additional information.