

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 12 day of March, 2021, by, between, and among the following undersigned parties (collectively, "Parties," and each a "Party"): the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Colonial Bank ("FDIC-R"), on the one hand, and HSBC Securities (USA) Inc. ("HSBC"), on the other.

WHEREAS:

Colonial Bank was a depository institution organized and existing under the laws of the United States and the State of Alabama. When Colonial Bank was closed, the FDIC was appointed Receiver pursuant to 12 U.S.C. § 1821(c).

In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of Colonial Bank, including those with respect to its assets.

The FDIC-R represents that among the assets of Colonial Bank to which the FDIC-R succeeded were any and all of Colonial Bank's claims, demands, and causes of action arising from any action or inaction related to any loss incurred by Colonial Bank.

The FDIC-R is the plaintiff in a residential mortgage-backed securities ("RMBS") lawsuit, *FDIC as Receiver for Colonial Bank v. Chase Mortgage Finance Corp., et al., No. 12-CV-06166 (LLS) (S.D.N.Y.)*, pending in the United States District Court for the Southern District of New York, in which HSBC is a defendant (the "RMBS Action"). An RMBS certificate at issue in the RMBS Action is [REDACTED] (the "HSBC Certificate").

HSBC denies all liability with respect to all claims that the FDIC-R has brought against it in the RMBS Action.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation of claims asserted against HSBC in the RMBS Action.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the Parties agree, each with the other, as follows:

- 1. Payment of the Settlement Funds.** As an essential covenant and condition to this Agreement, and as consideration for the releases and dismissals contained herein, HSBC shall pay or cause to be paid FIFTEEN MILLION FOUR HUNDRED THOUSAND DOLLARS (\$15,400,000) to the FDIC-R ("Settlement Funds") within 30 days of the effective date of this Agreement ("Payment Date"). The effective date of this Agreement shall be the later of the day upon which the FDIC-R provides HSBC with a current W-9 and wire instructions, and the date upon which all Parties shall have executed this Agreement as evidenced by the latest date on the signature pages hereto. In the event that

the Settlement Funds are not delivered to the FDIC-R by the Payment Date, interest shall accrue on all unpaid amounts at the rate of 5 percent per annum from the Payment Date until the date the FDIC-R receives payment. Without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received by the FDIC-R by the Payment Date, then the FDIC-R, in its sole discretion, shall have the right to declare this Agreement null and void, shall have the right to extend the terms of this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement, in which event HSBC agrees to jurisdiction in the United States District Court for the District of Columbia. The non-prevailing party in any such litigation agrees to pay the other's reasonable attorney's fees. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided, however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return to HSBC any and all amounts paid to the FDIC-R under this Agreement.

2. **Dismissal.** No later than five business days after the Settlement Funds are received by the FDIC-R, the FDIC-R shall move for the entry of an order in the RMBS Action in the form of Exhibit A, dismissing with prejudice the claims asserted against HSBC.
3. **FDIC-R Releases.** Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges HSBC and all of its current or former direct or indirect parents, subsidiaries, and affiliates, together with each of their respective successors and each of their respective current or former shareholders, officers, directors, employees, attorneys and other agents, but solely in their capacities as such ("HSBC Releasees"), from any and all claims, demands, actions, causes of action, and liabilities of any type, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, whether fixed or contingent, whether direct or indirect, and whether at law or in equity, based upon or relating to Colonial Bank's purchase, ownership, or sale of the HSBC Certificate identified above, including the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action. For the avoidance of doubt, this release does not apply to any claims, demands, actions, causes of action, or liabilities of any type, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, whether fixed or contingent, whether direct or indirect, and whether at law or in equity based upon or relating to Colonial Bank's purchase, ownership, or sale of any RMBS certificates other than the HSBC Certificate.

For the avoidance of doubt, and without limiting the generality of the foregoing in any way, it is understood and agreed that the releases set forth in this paragraph 3 release and discharge any and all released claims that at any time were owned or controlled by or could have been asserted by CBG Investments, Inc. ("CBGI"), formerly a subsidiary of Colonial Bank, to the fullest extent the FDIC-R has legal ability and authority to release such claims in its capacity as Receiver for Colonial Bank.

4. **Reciprocal Releases.** Upon entry of the order of dismissal described in paragraph 2 above, HSBC hereby releases and discharges the FDIC-R and the FDIC, and each of them, and each of their current or former employees, officers, directors, representatives, successors, and assigns, from any and all claims, demands, actions, causes of action, and liabilities of any type, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, whether fixed or contingent, whether direct or indirect, and whether at law or in equity, based upon or relating to Colonial Bank's purchase, ownership, or sale of the HSBC Certificate identified above.
5. **Release of Unknown Claims.** Each of the FDIC-R and HSBC acknowledges that it has been advised by its attorneys concerning, and is familiar with, California Civil Code Section 1542 and expressly waives any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 or any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the provisions of the California Civil Code Section 1542, including that provision itself, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Parties acknowledge that inclusion of the provisions of this Paragraph 5 of this Agreement was a material and separately bargained-for element of this Agreement. The Parties further acknowledge that the releases granted herein are specific releases, not general releases.

6. **Authority.** The FDIC-R represents that under the Federal Deposit Insurance Act, the FDIC is authorized to be appointed as receiver for failed depository institutions and that it succeeded to all rights, titles, powers, and privileges of Colonial Bank, and any shareholder, member, accountholder, depositor, officer, and director of Colonial Bank with respect to Colonial Bank and the assets of Colonial Bank, including, but not limited to, Colonial Bank's claims against HSBC. The FDIC-R further represents that it is empowered to sue and complain in any court of law to pursue, *inter alia*, the claims against HSBC asserted in the RMBS Action and that no other person or entity has such right. The FDIC-R further represents and warrants that CBGI has been dissolved and no longer exists, that none of the released claims that at any time were owned or controlled by CBGI, or any interest in such claims, has been assigned, transferred, or otherwise given (in whole or in part) to any third parties, and that the FDIC-R has not received any information suggesting that any third party intends to assert any such released claims that at any time were owned or controlled by CBGI. Notwithstanding the foregoing, subject to Paragraph 7, the FDIC-R represents that it has the authority to release all of the claims based upon or relating to the purchase, ownership, or sale of the HSBC Certificate

identified above by Colonial Bank or CBGI to the full extent set forth in paragraph 3. Each Party represents that it has full authority to enter into this Agreement and that it has the full power and authority to bind such Party to each and every provision of the Agreement.

7. **Certain FDIC Claims Not Released.** Notwithstanding the releases in Paragraph 3 above, the FDIC, in any capacity, shall not release, and shall expressly preserve fully and to the same extent as if the Agreement had not been executed (provided, that this provision shall not be construed as an acknowledgment that any such claims or causes of action exist or are valid):
- a. any claims or causes of action against HSBC or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC, to any financial institutions in receivership, to other financial institutions, or to any other person or entity (including without limitation any claims acquired by the FDIC as successor in interest to any financial institutions in receivership or any person or entity, excluding for avoidance of doubt any claims or causes of action expressly released in the Agreement);
 - b. any claims or causes of action against HSBC or any other person or entity relating in any way to the London Interbank Offered Rate including, but not limited to, *FDIC as Receiver for Amcore Bank, N.A. v. Bank of America Corp., et al.*, No. 14-cv-1757 (S.D.N.Y.) and *FDIC as Receiver for Amcore Bank, N.A., and others v. Barclays Bank PLC, and others*, No. FL-2017-000002 (EWHC (Ch.));
 - c. any claims or causes of action against HSBC or any other person or entity by or on behalf of the FDIC, in any capacity, as a class member in any actions that are, are part of, or are related to the consolidated actions, centralized actions, or multi-district litigations: (i) *In re GSE Bonds Antitrust Litigation, case No. 1:19-cv-01704* (S.D.N.Y.); (ii) *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789 (S.D.N.Y.); (iii) *Alaska Electrical Pension Fund v. Bank of America, et al.*, No. 1:14-cv-07126 (S.D.N.Y.); and (iv) *Sullivan v. Barclays PLC, et al.*, No. 1:13-cv-02811 (S.D.N.Y.); including any successor actions, or in the event the FDIC, in any capacity, elects to opt out of any class in any of those actions, to any opt-out claim brought by the FDIC, in any capacity, on the same subject;
 - d. any claims or causes of action by the FDIC against HSBC or any other person or entity relating in any way to HSBC's performance of duties or obligations as trustee for structured finance securities, including but not limited to RMBS, purchased by any failed financial institution;
 - e. any claims or causes of action by the FDIC in any capacity other than as Receiver for Colonial Bank;

- f. any claims or causes of action relating to RMBS certificates other than the HSBC Certificate identified above; and
 - g. any claims or causes of action against any person or entity, including, but not limited to, HSBC, not expressly released in this Agreement.
 - h. HSBC fully reserves all of its rights, claims and defenses relating to any claim or causes of action that is not released by the FDIC under this Agreement.
- 8. Enforcement.** Except as otherwise expressly stated herein, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition, or any other administrative enforcement action which may arise by operation of law, rule, or regulation.
- 9. Actions of the United States.** Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency, or instrumentality thereof (other than the FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.
- 10. No Confidentiality.** HSBC and the FDIC-R acknowledge and agree that this Agreement shall not be confidential and will be disclosed pursuant to the FDIC's applicable policies, procedures, and other legal requirements.
- 11. No Admission of Liability.** The Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and that the Agreement is not an admission or evidence of liability or the insufficiency of any defense by any of them regarding any claim, all of which are expressly disputed. The Parties further acknowledge that they may not base any claim of waiver or estoppel in any other matter upon the execution of the Agreement or payment of consideration described herein.
- 12. Representations and Acknowledgements.**
- a. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to the Agreement.
 - b. Binding Effect. Each of the signatories below represents and warrants that he or she is authorized to sign this Agreement on behalf of the Party for which he or she signs, and that he or she has the full power and authority to bind such Party to

each and every provision of the Agreement. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

- c. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of New York, without regard to conflicts of law principles.
- d. Jurisdiction. All Parties hereto submit to the personal jurisdiction of the United States District Court for the District of Columbia for purposes of implementing and enforcing the settlement embodied in this Agreement.
- e. Entire Agreement and Amendments. Except as otherwise provided herein, this Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about such matters. The Agreement may not be amended or modified except by another written instrument signed by the Parties.
- f. Reasonable Cooperation. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, and execution of any documents necessary to perform the terms of this Agreement.
- g. Advice of Counsel. Each Party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that the Agreement has been explained to that Party by his or her counsel.
- h. Notices. Notices required or permitted by this Agreement shall be communicated by email and any form of overnight mail or in person to:

(b)(6)

If to the Federal Deposit Insurance Corporation:

Attn: Mark Black [REDACTED]
Professional Liability & Financial Crimes Section
Room VS-B 7010
3501 Fairfax Drive
Arlington, VA 22226

(b)(6)

and

David J. [REDACTED]
Grais & Ellsworth LLP
950 Third Avenue, 24th Floor
New York, New York 10022

Attorneys for FDIC-R

If to HSBC:

(b)(6)

Domenic C. Cervoni
HSBC Securities (USA) Inc.
452 Fifth Avenue
New York, NY 10018

and

(b)(6)

Andrew Z. Michaelson
King & Spalding LLP
1185 Avenue of the Americas, 34th Floor
New York, NY 10036


Attorneys for HSBC

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
COLONIAL BANK

(b)(6)

Date: 2/12/21

BY: 
PRINT NAME: Mark Black
TITLE: Counsel

HSBC SECURITIES (USA) INC.

Date: _____

BY: _____
PRINT NAME: Jason Henderson
TITLE: Head of Global Markets, North America

Attorneys for FDIC-R

If to HSBC:

(b)(6)

Domenic C. Cervoni
HSBC Securities (USA) Inc.
452 Fifth Avenue
New York, NY 10018

and

(b)(6)

Andrew Z. Michaelson
King & Spalding LLP
1185 Avenue of the Americas, 34th Floor
New York, NY 10036

Attorneys for HSBC

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
COLONIAL BANK

Date: _____

BY: _____

PRINT NAME: Mark A. Black

TITLE: Counsel

(b)(6)

HSBC SECURITIES (USA) INC.

Date: 3/12/21

BY: _____

PRINT NAME: Jason Henderson

TITLE:

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for
COLONIAL BANK,

Plaintiff,

v.

CHASE MORTGAGE FINANCE CORP., et
al.,

Defendants.

No. 12 Civ. 6166 (LLS)

**STIPULATION AND [PROPOSED] ORDER REGARDING
PARTIAL DISMISSAL WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal Deposit Insurance Corporation as Receiver for Colonial Bank and Defendant HSBC Securities (USA) Inc. stipulate that all claims relating to CMALT 2007-A5 1A6 are hereby dismissed with prejudice, with each side to bear its own costs and attorneys' fees. All remaining claims are expressly preserved.

Dated: _____

GRAIS & ELLSWORTH LLP

By: _____

David J. Grais
Vickie Reznik
950 Third Avenue, 24th Floor
New York, New York 10022
Telephone: (212) 755-0010
Facsimile: (212) 755-0052

SPOTSWOOD SANSOM & SANSBURY LLC

Robert K. Spotswood
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1819 Fifth Avenue North, Suite 1050
Birmingham, Alabama 35203
Telephone: (205) 986-3620
Facsimile: (205) 986-3639

Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for Colonial Bank

KING & SPALDING LLP

By: _____

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MAYER BROWN LLP

Michael O. Ware, Esq.
1221 Avenue of the Americas
New York, New York 10020
Phone: (212) 506-2500

Attorneys for Defendant HSBC Securities (USA) Inc.

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IT IS SO ORDERED:

DATED:

The Honorable Louis L. Stanton
United States District Judge