



United States Department of Justice

*United States Attorney
District of Connecticut*

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October 25, 2017

Via Email and Overnight Mail

Jonathan M. Moses
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Counsel for RBS Securities Inc.

Re: Non-Prosecution Agreement with RBS Securities Inc.

Dear Mr. Moses:

On the understandings specified below, the United States Attorney's Office for the District of Connecticut (the "Office") will not criminally prosecute RBS Securities Inc., or its parents, subsidiaries, and corporate affiliates (collectively, "RBS" or the "Company"), for any conspiracy, securities fraud or other crime related to RBS employees' misrepresentations in the purchase and sale of collateralized loan obligations ("CLOs") and residential mortgage-backed securities ("RMBS")—including to or from victim-customers affiliated with or subsidiaries of entities that received funds from the United States Government's Troubled Asset Relief Program—as described in the Statement of Facts attached hereto as Appendix A, which is incorporated herein by reference.

The Office enters into this Agreement based, in part, on the following factors: (a) RBS's timely and voluntary self-reporting of criminal conduct, including as described in the attached Statement of Facts; (b) RBS's extensive cooperation with the Office, including conducting an internal investigation, voluntarily making employees available for interviews, collecting, analyzing and organizing voluminous evidence and information for the Office, making voluntary document disclosures, and making multiple presentations on the status and findings of the internal investigation; (c) RBS's acceptance of responsibility for its and its employees' criminal conduct; (d) RBS's remediation efforts, including its discipline and/or termination of employees and its commitment to make complete restitution to all impacted customers; and (e) RBS's agreement to continue to cooperate with the Office in this or any related matters.

RBS admits, accepts, and acknowledges that it is responsible for the criminal acts of its officers, directors, employees, and agents set forth in the Statement of Facts as provided under United States law, and stipulates that the facts described in the Statement of Facts are true and accurate. RBS expressly agrees that it shall not, through present or future attorneys, officers,

directors, employees, agents or any other person authorized to speak on behalf of RBS, make any public statement in litigation or otherwise contradicting the acceptance of responsibility by RBS set forth above or the facts described in the Statement of Facts. Provided, however, that nothing in this paragraph precludes RBS from taking good-faith positions in any other litigation or regulatory proceeding. Provided further that this paragraph does not apply to any statement or testimony by any officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case, unless such individual is speaking in a representative capacity on behalf of RBS.

This Agreement does not provide any protection against prosecution for any actions except as set forth herein and applies only to RBS and not to any other entities or to any individuals. RBS expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement.

This Agreement shall have a term of one year from the date that this Agreement is executed, except as specifically provided herein. However, RBS shall continue to cooperate fully with the Office, the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”), the Federal Bureau of Investigation and all law enforcement and regulatory agencies in this or related matters, subject to applicable law and regulations, until the date upon which all investigations and prosecutions arising out of or related to the conduct described in this Agreement are concluded, whether or not those investigations are concluded within one year. At the request of the Office, RBS shall also cooperate fully with other domestic or foreign law enforcement authorities and agencies in any investigation of RBS relating to this matter. RBS agrees that its cooperation pursuant to this paragraph shall include, but is not limited to, the following:

- a. RBS shall truthfully disclose, consistent with applicable law and regulations including data protection and privacy laws, all information not protected by a valid claim of privilege or work product with respect to its activities, and those of its present and former directors, officers, employees and agents, about which the Office may inquire in this or related matters. This obligation of truthful disclosure includes the obligation of RBS to provide to the Office, upon request, any document, record, or other tangible evidence about which the Office may inquire in this or related matters.
- b. During the term of this Agreement, RBS shall bring to the Office’s attention any and all conduct by RBS, its present and former directors, officers, employees and agents acting within the scope of their employment that violates federal law, or any investigation of any such conduct that comes to the attention of RBS’s board, management, or legal or compliance personnel, as well as any administrative proceeding or civil action brought by any United States governmental authority that alleges fraud or corruption by RBS.

- c. Upon request of the Office, RBS shall designate knowledgeable employees, agents, or attorneys to provide to the Office the information and materials described above on behalf of RBS in this or related matters. RBS must at all times provide complete, truthful, and accurate information.
- d. With respect to any issue relevant to the Office in this or related matters, RBS shall make available to the Office all current and, to the extent possible, former directors, officers, employees and agents of RBS for interviews and testimony in the United States. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement and regulatory authorities. Cooperation under this paragraph shall include identification of witnesses who, to the knowledge of RBS, may have material information regarding the matter under investigation.
- e. With respect to any information, testimony, documents, records or other tangible evidence provided to the Office pursuant to this Agreement, RBS consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, of such materials as the Office, in its sole discretion, shall deem appropriate. Before making any disclosures, the Office will notify RBS of such proposed disclosures. Any disclosures made by RBS pursuant to this Agreement are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing.

RBS represents that it substantially ceased operations of its U.S. Asset-Backed Securities, Mortgage-Backed Securities and Commercial Mortgage-Backed Securities Trading group in March 2015, and—prior to that date—improved its compliance and ethics program to reasonably prevent and detect violations of the securities fraud statutes and other applicable anti-fraud laws. Based on these representations, the Office has agreed not to require as an additional condition of this Agreement that RBS retain and pay an independent individual or entity to consult with respect to RBS’s compliance and ethics program.

RBS agrees to pay a monetary penalty in the amount of thirty-five million dollars (\$35,000,000), plus complete restitution to all impacted customers in an amount not less than nine million, ninety-one thousand, three-hundred seventeen dollars and fourteen cents (\$9,091,317.14). RBS will pay the \$35,000,000 penalty to the United States Treasury within thirty (30) days of the execution of this Agreement. RBS acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this \$35,000,000 penalty. RBS will make all required restitution payments during the term of this Agreement pursuant to the terms of the Restitution Agreement attached hereto as Appendix B.

The Office agrees that, except as provided herein, it will not bring any criminal or civil case against RBS related to the conduct described in the attached Statement of Facts or relating to information that RBS disclosed to the Office prior to the date of this Agreement. The Office, however, may use any information related to the conduct described in the attached Statement of

Facts against RBS: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code; provided, however, that any such prosecution or other proceeding does not relate to any potentially obstructive conduct disclosed by RBS or known to the Office prior to the date of this agreement. This Agreement does not provide any protection against prosecution for any future conduct by RBS. In addition, this Agreement does not provide any protection against prosecution of any present or former directors, officers, employees and agents of RBS for any violations committed by them.

If, during the term of this Agreement, the Office determines, in its sole discretion, that RBS has materially breached the Agreement by (a) committing, subsequent to the date of this Agreement, any felony under federal or state law or any violation of the anti-fraud provisions of United States securities law, (b) at any time providing in connection with this Agreement deliberately false, incomplete, or misleading information, (c) failing to cooperate as set forth in this Agreement, (d) otherwise failing to perform or to fulfill completely each and every one of its obligations under this Agreement, RBS shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge. The decision whether conduct or statements of any current director or employee, or any person acting on behalf of, or at the direction of, RBS will be imputed to RBS for the purpose of determining whether RBS has violated any provision of this Agreement shall be in the sole discretion of the Office. Any prosecution of RBS described in this paragraph may be premised on information provided by RBS. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against RBS notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the term of this Agreement plus one year. Thus, by signing this Agreement, RBS agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the term of this Agreement plus one year.

In the event that the Office determines that RBS has materially breached this Agreement, the Office agrees to provide RBS with written notice of such breach prior to instituting any prosecution resulting from such breach. Within fourteen (14) days of receipt of such notice, RBS shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of such material breach, as well as the actions RBS has taken to address and remediate the situation. The Office shall consider RBS's written submission in determining whether to institute any prosecution.

In the event that the Office determines that RBS has materially breached this Agreement: (a) all statements made by or on behalf of RBS to the Office or to the Court, including the attached Statement of Facts, and any testimony given by RBS before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against RBS; and (b) RBS shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure,

Rule 410 of the Federal Rules of Evidence, or any other federal rule that statements made by or on behalf of RBS prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The Office agrees that in the event of a material breach, prosecution, and conviction, it will recommend to the Court that the amount of penalty paid by RBS to the United State Treasury pursuant to this Agreement be offset against any fine the Court shall impose as part of its judgment; RBS understands that such a recommendation will not be binding on the Court.

This Agreement is binding on RBS and the Office but specifically does not bind any other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring RBS's self-reporting, cooperation, and compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by RBS.

It is further understood that RBS and the Office may disclose this Agreement to the public at a time to be determined in the sole discretion of the Office, except for Appendix B, which will remain confidential. Nothing in this paragraph shall be interpreted to prevent RBS from complying with its obligations under disclosure laws.

This Agreement sets forth all the terms of the agreement between RBS and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for RBS, and a duly authorized representative of RBS.

Sincerely,

DEIRDRE M. DALY
UNITED STATES ATTORNEY


JONATHAN N. FRANCIS
HEATHER L. CHERRY
ASSISTANT U.S. ATTORNEYS

AGREED AND CONSENTED TO:
RBS SECURITIES INC.

Date: 10/25/17

BY: _____

Paul Sterelman

Date: 10/25/17

BY: _____


Jonathan M. Moses
Wachtell, Lipton, Rosen & Katz
Counsel for RBS Securities Inc.

**APPENDIX A TO NON-PROSECUTION
AGREEMENT WITH RBS SECURITIES INC.**

STATEMENT OF FACTS

This Statement of Facts is incorporated by reference as part of the Non-Prosecution Agreement, dated October 25, 2017, between the U.S. Attorney's Office for the District of Connecticut (the "Office"), and RBS Securities Inc. ("RBS"). The Office and RBS agree that the following facts are true and correct:

1. From approximately 2008 until approximately 2013, RBS, by, through, and with certain of its employees, engaged in a scheme to commit criminal violations of federal law in connection with the use of fraudulent misrepresentations in the purchase and sale of certain asset-backed products.

Relevant Entities

2. RBS is a broker-dealer registered with the Securities and Exchange Commission ("SEC") and a Financial Industry Regulatory Authority ("FINRA") member firm. RBS had offices in Greenwich, then Stamford, Connecticut, where relevant employees worked.

3. RBS's U.S. Asset-Backed Securities, Mortgage-Backed Securities and Commercial Mortgage-Backed Securities Trading group engaged in the purchase, sale and brokering of asset-backed products. RBS substantially ceased operations of this group in or about March 2015.

4. RBS also maintained a proprietary trading operation, known as its "prop desk," which was meant to trade in assets with RBS's money and to make a profit for RBS. RBS's prop desk purported to be independent from RBS's broker-dealer operations, and was supposed to be treated like any other customer by RBS's asset-backed products trading group.

5. The following RBS customers, funds or entities managed by or affiliated with them were victims of RBS's scheme ("victim-customers"):

- a. Anchorage Capital Group, L.L.C.
- b. Ares Management, L.P.
- c. AVM, L.P.
- d. Babson Capital Management, L.L.C.
- e. Barclays Capital Inc.
- f. Black Diamond Capital Management, L.L.C.
- g. BlueMountain Capital Management, L.L.C.
- h. Brevan Howard Asset Management, L.L.P.
- i. The Carlyle Group, L.P.

- j. Citigroup Global Markets Inc.
- k. Elliott Associates, L.P.
- l. GE Asset Management (now State Street Global Advisors, Inc.)
- m. GoldenTree Asset Management, L.P.
- n. Goldman Sachs Asset Management, L.P.
- o. Guggenheim Partners Investment Management, L.L.C.
- p. Highland Capital Management, L.P.
- q. Jefferies & Company, Inc. (now Jefferies, L.L.C.)
- r. King Street Capital Management, L.P.
- s. Libremax Captital, L.L.C.
- t. Macquarie Group Limited
- u. Merrill Lynch & Co., Inc. (now Merrill Lynch Wealth Management)
- v. MKP Capital Management, L.L.C.
- w. Moore Capital Management, L.P.
- x. Morgan Stanley & Co., L.L.C.
- y. Oak Hill Advisors, L.P.
- z. Pacific Investment Management Company, L.L.C.
- aa. Putnam Investments, L.L.C.
- bb. QVT Financial, L.P.
- cc. SEI Investments Company
- dd. Soros Fund Management, L.L.C.
- ee. Stone Tower Capital (now Apollo Global Management, L.L.C.)
- ff. Tolis Advisors, L.P.
- gg. Whitebox Advisors, L.L.C.

6. RBS's victim-customers included investment advisors and hedge funds investing as fiduciaries on behalf of pension funds, charitable and educational endowments, insurance companies, and others.

7. Certain of RBS's victim-customers were affiliated with or subsidiaries of entities that received funds from the United States Government's Troubled Asset Relief Program.

Relevant Terms

8. The asset-backed products that RBS traded included collateralized loan obligations ("CLOs") and residential mortgage-backed securities ("RMBS").

9. A CLO is a type of bond secured by an interest in a pool of corporate loans. Under certain specified conditions, CLO holders receive quarterly payments based on the income generated when the borrower-corporations make principal and interest payments on their loans.

10. A RMBS is a type of bond secured by an interest in a pool of residential mortgages and home equity loans. RMBS owners receive payments on a monthly basis based on repayments from the homeowners that took out the mortgages or loans, until the homeowners repay their debt, refinance or default.

11. CLO and RMBS bonds are securities within the meaning of the federal securities laws.

12. Unlike stocks that trade on the New York Stock Exchange or the NASDAQ, CLO and RMBS bonds are not publicly traded on an exchange and pricing information is not made publicly available. Instead, buyers and sellers of CLO and RMBS bonds use broker-dealers like RBS to execute individually-negotiated transactions.

13. CLO and RMBS bonds are typically traded in one of three ways:

- a. "Position" or "Inventory" - When a broker-dealer like RBS sells a bond it has held for position or in its inventory, it negotiates directly with the buyer regarding a bond that the broker-dealer has owned for a period of time;
- b. "Order" - An order is a purchase or sale in which a customer engages a broker-dealer like RBS to find another customer interested in trading a particular bond; and
- c. "BWIC" or "Bid List" - In a "BWIC" ("bids wanted in competition") or "bid list" transaction, a seller uses one or more broker-dealers to circulate a list of specific bonds for sale to interested parties, collect the potential buyers' bids, and then trade with the winning bidder. It is similar to an auction, in which broker-dealers transmit information between the seller and the bidders, and the customer with the highest bid "wins" and buys the bond through the broker-dealer.

14. In order and BWIC trades, the buyer and the seller do not know each other's identity and must communicate through a broker-dealer's traders and salespeople.

15. A broker-dealer's profit, if any, on a transaction is the difference or "spread" between the price it pays the seller and the price it charges the buyer.

16. In order and BWIC trades, the broker-dealer acts as a conduit or match-maker between the buyer and seller, taking little to no financial risk and often being paid a specifically negotiated amount of compensation, typically referred to as a "commission," for executing the trade.

17. In inventory trades, the broker-dealer profits by buying and holding a bond for a period of time, then selling at a higher price. Buyers do not pay a broker-dealer an additional “commission” to buy a bond from the broker-dealer’s inventory.

18. A “tick” is a common price term in the trading market for asset-backed products. A tick refers to 1/32nd of one percent of a bond’s face value. Parties to CLO and RMBS bond trades negotiate prices in increments as small as half a tick (meaning 1/64 of a percent of a bond’s face value or 0.015625 cents on the dollar), sometimes expressed as “+” in writing.

19. A customer can agree to compensate a broker-dealer for a trade in one of two ways:

- a. The customer can agree to pay the broker-dealer a specific “commission” for facilitating the trade. This is commonly referred to as a “paying on top,” as it is a separately negotiated payment by the customer to the broker-dealer. Broker-dealers are often “paid on top” in order or BWIC trades.
- b. Alternatively, a broker-dealer and its customer can negotiate a transaction price without including any “commission” and without reference to the broker-dealer’s profit or loss on the trade. The agreed-upon price in such instances is referred to as the customer’s “all in” price. For instance, a buyer can agree to pay a certain price for a bond without reference to the price the broker-dealer must pay to acquire the bond from the seller; in this case, the buyer does not know the broker-dealer’s profit, which is the difference between the price the broker-dealer charges the buyer and the price it pays to the seller.

Summary of RBS’s Criminal Conduct

20. Beginning in approximately 2008 and continuing until approximately 2013, in certain CLO and RMBS trades, RBS, by, through, and with certain of its employees (including supervisors) in its U.S. Asset-Backed Securities, Mortgage-Backed Securities and Commercial Mortgage-Backed Securities Trading group committed acts in furtherance of a scheme to fraudulently increase the profitability of certain CLO and RMBS trades for RBS, including by:

- a. Using materially false and fraudulent misrepresentations and omissions to take secret and unearned compensation from RBS customers in CLO and RMBS bond trades and to deprive RBS customers of information relevant to their discretionary economic decisions regarding CLO and RMBS trades, as follows:
 - i. where the buying victim-customer agreed to buy a bond from RBS at a price equivalent to RBS’s purchase price plus a commission, RBS misrepresented the price that RBS had actually paid in order to fraudulently induce the victim-customer to pay a higher overall

price, thereby providing RBS with an extra and unearned profit at the buying victim-customer's expense;

- ii. where the selling victim-customer agreed to sell a bond to RBS at a price equivalent to RBS's sale price less a commission, RBS misrepresented the price at which the buyer had agreed to purchase the bond in order to fraudulently induce the victim-customer to sell the bond at a lower price, thereby providing RBS with an extra and unearned profit at the selling victim-customer's expense; and
 - iii. in transactions in which RBS sought to sell a bond from its inventory to a victim-customer, RBS misrepresented to the victim that RBS was buying that bond from a fictitious third party seller in order to fraudulently induce the victim-customer to pay an unwarranted "on top" commission, thereby providing RBS with an extra and unearned profit at the buying victim-customer's expense;
- b. Instructing RBS traders in fraudulent trading practices, and permitting and causing them to engage in those practices;
 - c. Making misrepresentations and omissions to RBS's victim-customers which detected or suspected that they had been the victims of fraudulent trading practices;
 - d. Ignoring or otherwise refusing to act on complaints from RBS employees who were not participants in the scheme;
 - e. Using RBS's prop desk to secretly conduct trades with rival broker-dealers on behalf of RBS's trading desk, including by directing the prop desk's negotiations in the sale of bonds in which the prop desk had no economic interest or ownership; and
 - f. Concealing all of the aforementioned conduct from RBS customers and employees who were not participants in the scheme, in order to prevent or delay discovery.

21. RBS, by, through, and with its employees, used various means and instruments of interstate commerce and the mails in carrying out such trades, including:

- a. Electronic communications with customers, including by telephone, email, instant messages and electronic group "chats";
- b. Trade confirmations or tickets documenting such transactions; and
- c. Funds wired to and from RBS.

22. RBS employees with supervisory authority or in compliance-related functions were aware of, encouraged, or participated in one or more of the acts set forth above in Paragraph 20.