

AGREEMENT FOR SETTLEMENT AND RELEASE

This Settlement Agreement (“Agreement”) is entered into between the United States, acting through the United States Department of Justice (“Department of Justice”), and Nomura Holding America Inc., Nomura America Mortgage Finance, LLC, Nomura Asset Acceptance Corporation, Inc., Nomura Asset Capital Corporation, Nomura Credit & Capital, Inc., Nomura Home Equity Loan, Inc., and Nomura Securities International, Inc. (collectively, “Nomura”). The United States and Nomura are collectively referred to as “the Parties.”

RECITALS

A. The United States Attorney’s Office for the Eastern District of New York conducted an investigation of the marketing, structuring, sponsorship, arrangement, underwriting, issuance, and sale of residential mortgage-backed securities (“RMBS”) by Nomura. Based on that investigation, the United States contends that there is an evidentiary basis to compromise potential legal claims by the United States against Nomura for violations of federal laws in connection with the marketing, structuring, arrangement, underwriting, issuance, and sale of RMBS.

B. The United States sets forth its allegations in the attached Annex 1, which is hereby incorporated.

C. All Parties desire to bring this matter to an expeditious and mutually acceptable resolution so as to avoid the delay, uncertainty, inconvenience, and expense of litigation.

D. The Parties have therefore determined and decided to enter into this Agreement, in mutual consideration of the promises, covenants, and obligations set forth below.

E. The Parties acknowledge that this Agreement is made without any trial or adjudication or judicial finding of any issue of fact or law, and is not a final order of any court or governmental authority. This Agreement does not constitute an admission by Nomura of any facts or liability or wrongdoing, including, but not limited to, any liability or wrongdoing with respect to any allegations that were or could have been raised. This Agreement also does not constitute a concession by the United States that its potential claims are not well-founded, and nothing in this Agreement should be construed as, or deemed to constitute, approval, sanction, or authorization by the United States of any of Nomura's actions or business practices. Nomura disputes the allegations of the United States set forth in Annex 1.

TERMS AND CONDITIONS

1. **Payment.**

a. Nomura agrees to pay the amount of \$480,000,000.00 (the "Settlement Amount") to the United States to resolve the potential claims in connection with the Covered Conduct, as defined in Paragraph 2 below, no later than 20 calendar days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instruction to be provided by the Civil Division of the United States Department of Justice.

b. The entirety of the Settlement Amount is a civil monetary penalty recovered pursuant to the Financial Institutions Reform, Recover, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 498, tit. IX, § 951, *codified as amended at* 12 U.S.C. § 1833a.

c. Each Party shall bear its own legal and other costs, fees, and expenses incurred in connection with this matter, including those incurred in the preparation and performance of this Agreement.

2. **Covered Conduct.** “Covered Conduct” as used in this Agreement is defined as the conduct alleged by the United States in Annex 1, as well as, more broadly: the creation, pooling, structuring, sponsorship, arranging, formation, packaging, marketing, underwriting, sale, or issuance by Nomura of RMBS before January 1, 2009, including but not limited to the RMBS identified in the attached Annex 2, and includes the representations, disclosures, or non-disclosures by Nomura to RMBS investors, or to third-parties that were passed through to RMBS investors, in connection with the RMBS identified in Annex 2. Covered Conduct includes representations, disclosures, or non-disclosures to RMBS investors and rating agencies made in connection with the activities set forth above, where the representation, disclosure, or non-disclosure involves information about or obtained during the origination, purchase, acquisition, securitization, underwriting, or servicing of residential mortgage loans included in the RMBS identified in Annex 2. Covered Conduct includes the administration of RMBS identified in Annex 2 to the extent such administration relates to any actions or inactions with respect to representations and warranties or the cure, substitution or repurchase (or failure to do or seek any of the same) of residential mortgage loans. Covered Conduct includes representations, disclosures, or non-disclosures to trustees made in connection with the activities set forth above about the residential mortgage loans included in the RMBS identified in Annex 2. Covered Conduct does not include: (i) conduct relating to the origination of residential mortgages, except representations, disclosures, or non-

disclosures to investors and ratings agencies in the RMBS listed in Annex 2 about the origination of, or about information obtained in the course of originating, such loans; (ii) the servicing of residential mortgage loans, except representations, disclosures, or non-disclosures to investors and rating agencies in the RMBS listed in Annex 2 about servicing, or information obtained in the course of servicing, such loans; or (iii) representations, disclosures, or non-disclosures made in connection with collateralized debt obligations, other derivative securities, or the trading of RMBS, except to the extent that the representations, disclosures, or non-disclosures are related to the underlying RMBS listed in Annex 2.

3. **Releases by the United States.** Subject to the exceptions set forth in Paragraph 4 (“Excluded Claims”), in consideration for and conditioned upon Nomura’s full and timely payment of the Settlement Amount, the United States fully and finally releases Nomura, each of its current and former parents, subsidiaries, and affiliates, each of their respective successors and assigns (collectively, the “Released Entities”), from any civil claims that could have been asserted by the United States, as well as any other civil claim the United States has against the Released Entities for the Covered Conduct, where such civil claim arises under:

- a. FIRREA, 12 U.S.C. § 1833a;
- b. the False Claims Act, 31 U.S.C. §§ 3729, et seq.;
- c. the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, et seq.;
- d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq.;
- e. the Injunctions Against Fraud Act, 18 U.S.C. § 1345;

f. common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; and

g. any other claim that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 CFR § 0.45(d).

4. **Excluded Claims.** Notwithstanding the Releases by the United States set forth in Paragraph 3, and notwithstanding any other term(s) of this Agreement, the United States specifically reserves, and does not release the Released Entities from, the following claims, regardless of the relationship of such claims to the Covered Conduct:

- a. any conduct other than the Covered Conduct;
- b. any criminal liability;
- c. any liability of any person or entity other than the Released Entities;
- d. any liability of any individual;
- e. any liability arising under Title 26 of the United States Code (the

Internal Revenue Code);

f. any administrative liability, including the suspension and debarment rights of any federal agency, establishment, instrumentality, or corporation; and

- g. any liability based upon obligations created by this Agreement.

5. **Clarification of Excluded Claims.** For the avoidance of doubt, nothing in this Agreement shall be construed as suggesting that the United States Department of Justice has the authority to release, or by this Agreement is releasing:

a. any private right of action that entities other than the United States may have against the Released Entities, regardless whether such claims have been asserted or not; or

b. any liability to or claims of the Federal Deposit Insurance Corporation (“FDIC”) (in its capacity as a corporation, receiver, or conservator), National Credit Union Administration (in its capacity as a corporation, receiver, or conservator), Federal Housing Finance Agency, any of the Federal Home Loan Banks, the Federal Reserve Board and its member institutions, the Consumer Financial Protection Bureau, the Securities & Exchange Commission (“SEC”), the Department of Housing and Urban Development/Federal Housing Administration, the Department of Veterans Affairs, the Federal Trade Commission, the Department of Agriculture, or any other agency of the United States.

6. **Releases by Nomura.** The Released Entities hereby irrevocably release the United States, its agencies, establishments, and instrumentalities, together with their respective officers, officials, agents, employees, and servants, from any and all claims (including claims for attorneys’ fees, costs, and expenses of every kind), however denominated, that the Released Entities have asserted, could have asserted, or may assert in the future against the United States, its agencies, establishments, instrumentalities, officers, officials, agents, employees, and servants, related to the Covered Conduct to the extent released hereunder and the investigation to date thereof.

7. **Waiver of Potential FDIC Indemnification Claims by Nomura.** The Released Entities hereby irrevocably waive, and agree not to assert, any rights that they otherwise might have to seek any form of indemnification, reimbursement, or contribution from the

FDIC in any capacity, including the FDIC in its corporate capacity or its receiver and conservator capacities, for any payment under this Agreement.

8. **Waiver of Potential Defenses by Nomura.** The Released Entities hereby irrevocably waive and agree not to assert any defenses that they may have to any criminal prosecution or administrative action relating to the Covered Conduct as to which the defense is based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. **Unallowable Costs Defined.** All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the Released Entities or any of their present and former officers, directors, employees, shareholders, and agents, in connection with:

- a. the matters covered by this Agreement;
- b. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- c. the Released Entities' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- d. the negotiation and performance of this Agreement; and

e. the payment Nomura makes to the United States pursuant to this Agreement are unallowable costs for government contracting purposes (hereinafter referred to as “Unallowable Costs”).

10. **Future Treatment of Unallowable Costs.** The Released Entities hereby agree to separately determine and account for all Unallowable Costs for government contracting purposes, and not to charge such Unallowable Costs, directly or indirectly, to any contract with the United States, or with any agency, establishment, or instrumentality of the United States.

11. **Cooperation.** Until the date upon which the United States concludes and completes all investigations and any prosecution or litigation relating to or arising out of the Covered Conduct, whether or not they are concluded within the term of this Agreement, the Released Entities shall, subject to applicable laws or regulations:

a. cooperate fully with the Department of Justice (including the Federal Bureau of Investigation) and any other agency designated by the Department of Justice regarding matters relating to or arising out of the Covered Conduct;

b. assist the Department of Justice in any investigation or prosecution or litigation relating to or arising out of the Covered Conduct by providing logistical and technical support for any meeting, interview, deposition or other sworn testimony, grand jury proceeding, or any trial or other court proceeding;

c. use their best efforts to secure the attendance and truthful statements or testimony of any current or former officer, director, agent, or employee of the Released Entities at any meeting, interview, deposition or sworn testimony, grand jury proceeding,

or at any trial or other court proceeding regarding matters relating to or arising out of the Covered Conduct; and

d. provide the Department of Justice, upon request, all non-privileged information, documents, records, or other tangible evidence regarding matters relating to or arising out of the Covered Conduct about which the Department of Justice or any designated agency or designated person inquires.

12. **Miscellaneous Provisions.**

a. This Agreement is governed by, and shall be construed according to, the laws of the United States.

b. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement or its construction is the United States District Court for the Eastern District of New York.

c. This Agreement is intended for the benefit of the Parties only and does not create any third-party rights.

d. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. Each Party and signatory to this Agreement represents that it/he/she freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

e. For the purposes of construing this Agreement, this Agreement, but not Annex 1 to this Agreement, shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute.

f. This Agreement constitutes the complete and entire agreement between the Parties and may not be amended except by written consent of all of the Parties.

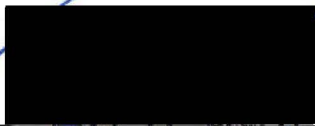
g. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

h. This Agreement is binding on Nomura's successors, transferees, heirs, and assigns.

13. **Disclosure**. All Parties agree that this Agreement may be made public in its entirety, and expressly consent to such release and disclosure.

14. **Effective Date**. This Agreement shall take effect on the date of signature of the last signatory to the Agreement (the "Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

For the United States of America:



JOSEPH H. HUNT
Assistant Attorney General, Civil Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dated: October 15, 2018



RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York
271A Cadman Plaza East
Brooklyn, NY 11201

Dated: 10/5/18

For Nomura:



Faron R. Webb
Managing Director and Chief Legal Officer
Nomura Holding America Inc.
309 West 49th Street
New York, New York 10019-7316

Dated: 10/4/2018