

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

Form N-2

(Check Appropriate Box or Boxes)

- REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**
- Pre-Effective Amendment No.  
 Post-Effective Amendment No. 1

**HMS INCOME FUND, INC.**

(Exact Name of Registrant as Specified in Charter)

**2800 Post Oak Boulevard, Suite 5000  
Houston, Texas 77056-6118**

Address of Principal Executive Offices (Number, Street, City, State, Zip Code)

Registrant's Telephone Number, Including Area Code: **(888) 220-6121**

**Charles N. Hazen  
HMS Income Fund, Inc.  
2800 Post Oak Boulevard, Suite 5000  
Houston, Texas 77056-6118**

Name and Address (Number, Street, City, State, Zip Code) of Agent For Service

**COPIES TO:**

**John A. Good, Esq.  
Bass, Berry & Sims PLC  
100 Peabody Place, Suite 900  
Memphis, Tennessee 38103-3672  
Tel: (901) 543-5901  
Fax: (888) 543-4644**

Approximate Date of Proposed Public Offering: As soon as practicable after the effective date of this Registration Statement.

If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, other than securities offered in connection with a distribution reinvestment plan, check the following box.

It is proposed that this filing will become effective (check appropriate box):

when declared effective pursuant to section 8(c).

**CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933**

Title of Securities Being Registered	Amount Being Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price <sup>(1)</sup>	Amount of Registration Fee
Common Stock, \$0.001 par value per share	150,000,000 shares	\$10.00	\$1,500,000,000	\$171,900 <sup>(2)</sup>

(1) Estimated pursuant to Rule 457(o) under the Securities Act of 1933 solely for the purpose of determining the registration fee.

(2) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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#### EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-178548) of HMS Income Fund, Inc. (the "Registration Statement") is being filed pursuant to Rule 462(d) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purpose of filing an exhibit to the Registration Statement. Accordingly, this Post-Effective Amendment No. 1 consists only of a facing page, this explanatory note and Part C of the Registration Statement on Form N-2 setting forth the exhibits to the Registration Statement. This Post-Effective Amendment No. 1 does not change the final prospectus filed pursuant to Rule 497 under the Securities Act on June 11, 2012. Pursuant to Rule 462(d) under the Securities Act, this Post-Effective Amendment No. 1 shall become effective immediately upon filing with the Securities and Exchange Commission. The contents of the Registration Statement are hereby incorporated by reference.

**PART C**  
**OTHER INFORMATION**

**Item 25. Financial Statements and Exhibits**

(1) *Financial Statements*

The following financial statements of HMS Income Fund, Inc. (the “Registrant” or the “Company”) are included in Part A of this Registration Statement:

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<b><i>Unaudited Financial Statements as of March 31, 2012</i></b>	
Balance Sheet as of March 31, 2012 and December 31, 2011	F-2
Statement of Operations for the three months ended March 31, 2012	F-3
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<b><i>Audited Financial Statements as of December 31, 2011 and for the period from inception (November 22, 2011) through December 31, 2011</i></b>	
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Schedule of Investments as of December 31, 2011	F-26
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(2) *Exhibits*

- (a)(1) Articles of Incorporation of the Registrant<sup>(1)</sup>
- (a)(2) Articles of Amendment and Restatement<sup>(3)</sup>
- (b) Bylaws of the Registrant<sup>(3)</sup>
- (c) Not applicable
- (d) Form of Subscription Agreement (included in the Prospectus as Appendix A)
- (e) Distribution Reinvestment Plan<sup>(3)</sup>
- (f) Not applicable
- (g)(1) Investment Advisory and Administrative Services Agreement by and between the Registrant and the Adviser<sup>(3)</sup>
- (g)(2) Investment Sub-Advisory Agreement by and among the Registrant, the Adviser, the Sub-Adviser and Main Street Capital Corporation<sup>(3)</sup>
- (h)(1) Dealer Manager Agreement with Hines Securities, Inc.<sup>(3)</sup>

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- (h)(2) Form of Selected Dealer Agreement<sup>(2)</sup>
  - (i) Not applicable
  - (j) Custody Agreement<sup>(3)</sup>
  - (k)(1) Conditional Fee Waiver Agreement<sup>(3)</sup>
  - (k)(2) Loan and Security Agreement by and between HMS Income LLC and Main Street Capital Corporation<sup>(1)</sup>
  - (k)(3) Agreement and Plan of Merger<sup>(3)</sup>
  - (k)(4) Credit Agreement with Capital One, National Association<sup>(3)</sup>
  - (k)(5) Form of Indemnification Agreement by and between Registrant and each of its Affiliated Directors and Officers<sup>(3)</sup>
  - (k)(6) Form of Indemnification Agreement by and between Registrant and each of its Independent Directors<sup>(3)</sup>
  - (k)(7) Escrow Agreement
  - (l) Opinion of Venable LLP<sup>(4)</sup>
  - (m) Not applicable
  - (n)(1) Consent of Venable LLP (incorporated by reference to Exhibit I hereto)<sup>(4)</sup>
  - (n)(2) Consent of Independent Registered Public Accounting Firm<sup>(3)</sup>
  - (n)(3) Consent of John O. Niemann, Jr.<sup>(2)</sup>
  - (n)(4) Consent of Peter Shaper<sup>(2)</sup>
  - (n)(5) Consent of Phil D. Wedemeyer<sup>(2)</sup>
  - (o) Not applicable
  - (p) Not applicable
  - (q) Not applicable
  - (r)(1) Code of Ethics of the Registrant<sup>(3)</sup>
  - (r)(2) Code of Ethics of HMS Adviser LP<sup>(3)</sup>
  - (r)(3) Code of Ethics of Main Street Capital Corporation and Main Street Capital Partners, LLC<sup>(3)</sup>
  - (r)(4) Code of Ethics of Hines Securities, Inc<sup>(3)</sup>

<sup>(1)</sup> Previously filed as part of the Registrant's Registration Statement on Form N-2, filed with the SEC on December 16, 2011.

<sup>(2)</sup> Previously filed as part of the Registrant's pre-effective Amendment No. 2 to the Registration Statement on Form N-2, filed with the SEC on April 30, 2012.

<sup>(3)</sup> Previously filed as part of the Registrant's pre-effective Amendment No. 3 to the Registration Statement on Form N-2, filed with the SEC on May 31, 2012.

<sup>(4)</sup> Previously filed as part of the Registrant's pre-effective Amendment No. 4 to the Registration Statement on Form N-2, filed with the SEC on June 4, 2012.

## Item 26. Marketing Arrangements

The information contained under the heading "Plan of Distribution" in this Registration Statement is incorporated herein by reference.

**Item 27. Other Expenses of Issuance and Distribution**

SEC registration fee	\$	171,900
FINRA filing fee	\$	75,500
Printing and mailing expenses	\$	6,000,000
Blue sky filing fees and expenses	\$	500,000
Legal fees and expenses	\$	4,500,000
Accounting fees and expenses	\$	1,400,000
Transfer agent fees	\$	2,460,625
Advertising and sales literature	\$	3,000,000
Due diligence expenses	\$	3,750,000
Adviser Personnel Salaries	\$	391,975
Bank and other Administrative Expenses	\$	250,000
Total	\$	22,500,000

The amounts set forth above, except for the SEC and FINRA fees, will in each case be estimated and assumed that we sell all of the shares being registered by this registration statement. All of the expenses set forth above shall be borne by the Registrant.

**Item 28. Persons Controlled by or Under Common Control**

As of immediately prior to this offering, the Hines Investor owns 75% of our outstanding common stock and an unaffiliated investor own 25% of our outstanding common stock. Following the completion of this offering, the share ownership position in us of the Hines Investor and such unaffiliated investor is expected to represent less than 1% of our outstanding common stock.

See "Management," "Certain Relationships and Related Party Transactions" and "Control Persons and Principal Stockholders" in the prospectus contained herein.

**Item 29. Number of Holders of Securities**

The following table sets forth the number of record holders of the Registrant's capital stock at June 25, 2012.

Title of Class	Number of Record Holders
Common stock, \$0.001 par value per share	2

**Item 30. Indemnification**

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action.

Maryland law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that a personal benefit was improperly received, unless in either case a court orders indemnification, and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Our charter contains a provision that limits the liability of our directors and officers to us and our stockholders for money damages and our charter requires us to indemnify and advance expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) to (i) any present or former director or officer, (ii) any individual who, while a director or officer and, at our request, serves or has served another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner, member, manager or trustee and (iii) our Adviser and its directors, executive officers and controlling persons, and any other person or entity affiliated with it. However, in accordance with guidelines adopted by the North American Securities Administrators Association, our charter and the Investment Advisory Agreement provide that we may not indemnify an indemnitee for any liability or loss suffered by such indemnitee nor hold harmless such indemnitee for any loss or liability suffered by us unless (1) the indemnitee has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of our Company, (2) the indemnitee was acting on behalf of or performing services for us, (3) the liability or loss suffered was not the result of negligence or misconduct by our Adviser, an affiliate of our Adviser, or an interested director of the Company, or was not the result of gross negligence or misconduct by an independent director of the Company and (4) the indemnification or agreement to hold harmless is only recoverable out of our net assets and not from our stockholders. In addition, we expect that our Sub-Adviser and Main Street will indemnify us for losses or damages arising out of their respective misfeasance, bad faith, gross negligence in the performance of their respective duties or by reason of the reckless disregard of their respective duties and obligations under the Sub-Advisory Agreement or the violation of applicable law or the breach of any representation in the Sub-Advisory Agreement. In accordance with the 1940 Act, we will not indemnify any person for any liability to which such person would be subject by reason of such person's misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office. In addition, we will not provide indemnification to a person for any loss or liability arising from an alleged violation of federal or state securities laws unless one or more of the following conditions are met: (1) there has been a successful adjudication on the merits of each count involving alleged material securities law violations; (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction; or (3) a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the SEC and of the published position of any state securities regulatory authority in which the securities were offered or sold as to indemnification for violations of securities laws.

We may advance funds to an indemnitee for legal expenses and other costs incurred as a result of legal action for which indemnification is being sought only if all of the following conditions are met: (i) the legal action relates to acts or omissions with respect to the performance of duties or services on our behalf; (ii) the

indemnitee has provided us with written affirmation of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification; (iii) the legal action is initiated by a third party who is not a stockholder or the legal action is initiated by a stockholder acting in his or her capacity as such and a court of competent jurisdiction specifically approves such advancement; and (iv) the indemnitee undertakes to repay the advanced funds to us, together with the applicable legal rate of interest thereon, in cases in which he or she is found not to be entitled to indemnification.

**Item 31. Business and Other Connections of Investment Adviser**

A description of any other business, profession, vocation, or employment of a substantial nature in which our Adviser, and each director or executive officer of our Adviser, is or has been during the past two fiscal years, engaged in for his or her own account or in the capacity of director, officer, employee, partner or trustee, is set forth in Part A of this Registration Statement in the sections entitled "Management" and "Investment Advisory and Administrative Services Agreement."

**Item 32. Location of Accounts and Records**

All accounts, books and other documents required to be maintained by Section 31(a) of the Investment Company Act of 1940, and the rules thereunder will be maintained at the offices of:

- (1) the Registrant, 2800 Post Oak Boulevard, Suite 5000, Houston, Texas 77056-6118;
- (2) the Transfer Agent, DST Systems Inc., 333 W. 11th St. Kansas City, MO 64105;
- (3) the Custodian, Amegy Bank National Association, 1221 McKinney Street, Houston, TX 77010; and
- (4) the Investment Adviser, 2800 Post Oak Boulevard, Suite 5000, Houston, Texas 77056-6118.

**Item 33. Management Services**

Not Applicable.

**Item 34. Undertakings**

We hereby undertake:

- (1) To suspend the offering of shares until the prospectus is amended if:
  - (i) subsequent to the effective date of this registration statement, our net asset value declines more than ten percent from our net asset value as of the effective date of this registration statement, or
  - (ii) our net asset value increases to an amount greater than our net proceeds as stated in the prospectus.
- (2) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) to reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
  - (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

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- (3) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial *bona fide* offering thereof; and
  - (4) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
  - (5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the Registrant is subject to Rule 430C: Each prospectus filed pursuant to Rule 497(b), (c), (d) or (e) under the Securities Act of 1933 as part of a registration statement relating to an offering, other than prospectuses filed in reliance on Rule 430A under the Securities Act of 1933, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
  - (6) That for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of securities: the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:
    - (i) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 497 under the Securities Act of 1933;
    - (ii) the portion of any advertisement pursuant to Rule 482 under the Securities Act of 1933 relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
    - (iii) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.





## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into as of this ~~17<sup>th</sup>~~ day of May, 2012 by and among HMS Income Fund, Inc. a Maryland corporation (the "Company"), Hines Securities, Inc., a Delaware corporation (the "Dealer Manager") and UMB Bank, N.A., as escrow agent, a national banking association organized and existing under the laws of the United States of America (the "Escrow Agent").

### RECITALS

WHEREAS, the Company proposes to offer and sell up to 150,000,000 shares of its common stock, par value \$0.001 per share (the "Shares") on a best-efforts basis (including the shares of its common stock to be offered and sold pursuant to the Company's distribution reinvestment plan), at an initial subscription price of \$10.00 per share (the "Offering") to investors pursuant to the Company's Registration statement on Form N-2 (File No. 333-178548), as amended from time to time (the "Offering Document").

WHEREAS, the Dealer Manager has been engaged by the Company to offer and sell the Shares on a best efforts basis through a network of soliciting dealers (the "Soliciting Dealers").

WHEREAS, the Company and the Dealer Manager desire to establish an escrow account (the "Escrow Account"), as further described herein, in which funds received from subscribers ("Investor Funds") will be deposited into an interest-bearing account entitled "HMS Income Fund, Inc. Escrow Account" and the Company desires that UMB Bank, N.A. act as escrow agent to the Escrow Account and Escrow Agent is willing to act in such capacity.

WHEREAS, the Escrow Agent has engaged DST Systems, Inc. (the "Transfer Agent") to receive, examine for "good order" and facilitate subscriptions into the Escrow Account as further described herein and to act as record keeper, maintaining on behalf of the Escrow Agent the ownership records for the Escrow Account. In so acting, the Transfer Agent shall be acting solely in the capacity of agent for the Escrow Agent and not in any capacity on behalf of the Company or the Dealer Manager, nor shall they have any interest other than that provided in this Agreement in assets in Transfer Agent's possession as the agent of the Escrow Agent.

WHEREAS, in order to subscribe for Shares during the Escrow Period (as defined below), a subscriber must deliver the full amount of its subscription price by check or wire transfer, payable to HMS Income Fund, Inc. to the Transfer Agent at the address set forth in the subscription agreement.

### AGREEMENT

NOW, THEREFORE, the Company, Dealer Manager and Escrow Agent agree to the terms of this Agreement as follows:

1. Establishment of Escrow Account; Escrow Period. Upon commencement of the Offering, the Company shall establish the Escrow Account with the Escrow Agent, which shall

be entitled "HMS Income Fund, Inc. Escrow Account." The Company shall notify the Escrow Agent when the Offering becomes effective.

2. Operation of the Escrow.

(a) Deposits in the Escrow Account. During the Escrow Period, persons subscribing to purchase Shares will be instructed by the Company, the Dealer Manager and the Soliciting Dealers to make checks for subscriptions payable to the order of "HMS Income Fund, Inc." Completed subscription agreements and checks, or wire transfers, in payment for the subscription amount shall be remitted to the Transfer Agent at the address set forth in the subscription agreement. The Transfer Agent will promptly deliver all monies received in good order from subscribers for the payment of Shares to the Escrow Agent for deposit in the Escrow Account. Deposits shall be held in the Escrow Account until such Investor Funds are disbursed in accordance with this Agreement. Prior to disbursement of the Investor Funds deposited in the Escrow Account, such Investor Funds shall not be subject to claims by creditors of the Company or any of its affiliates. If any checks are returned to the Escrow Agent for nonpayment, the Escrow Agent shall promptly notify the Transfer Agent and the Company in writing via mail, email or facsimile of such nonpayment, and the Escrow Agent is authorized to debit the Escrow Account in the amount of such returned payment and the Transfer Agent shall delete the appropriate account from the records maintained by the Transfer Agent. The Transfer Agent will maintain a written account of each sale, which account shall set forth, among other things, the following information: (i) the subscriber's name and address; (ii) the subscriber's social security number; (iii) the number of Shares purchased by such subscriber, and (iv) the amount paid by such subscriber for such Shares.

(b) Disbursement of Investor Funds. During the Escrow Period, the Escrow Agent shall release the Investor Funds, including all earnings thereon, to the Company, when and as directed in writing (or via electronic mail) by the Company. The Escrow Agent agrees that Investor Funds in the Escrow Account shall not be released to the Company until and unless the Escrow Agent receives written instructions (or via electronic mail) to release the Investor Funds from an Authorized Representative of the Company as listed on Exhibit B. It is initially determined that Funds will be released to the Company on a semi-monthly basis. However, the Company reserves the right to initiate releases on different interval as it deems necessary.

(c) Duration of the Escrow Period. The Escrow Period shall be determined to be active for the duration of the Company's first offering, and continue through any extensions of such offering, and any follow on offering.

3. Investor Funds in the Escrow Account. Upon receipt of Investor Funds, the Escrow Agent shall hold such Investor Funds in escrow pursuant to the terms of this Agreement. All Investor Funds held in the Escrow Account shall be invested at the direction of the Company. Unless otherwise directed by the Company, the Escrow Agent is hereby directed to invest all funds received under this Agreement in UMB Bank Money Market Special, a UMB Bank interest-bearing money market deposit account. Notwithstanding the foregoing, Investor Funds shall not be invested in anything other than "Short Term Investments" in compliance with Rule 15c2-4 of the Securities Exchange Act of 1934, as amended. Income, if any, resulting from the

investment of the funds in the Escrow Account shall be distributed to the Company. The Escrow Agent shall provide to the Company monthly statements (or more frequently as reasonably requested by the Company) on the account balance in the Escrow Account and the activity in such accounts since the last report.

4. Duties of the Escrow Agent. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent is not a party to, or bound by, any other agreement among the other parties hereto with respect to the subject matter hereof, and the Escrow Agent's duties shall be determined solely by reference to this Agreement. The Escrow Agent shall have no duty to enforce any obligation of any person, other than as provided herein. The Escrow Agent shall be under no liability to anyone by reason of any failure on the part of any party hereto or any maker, endorser or other signatory of any document or any other person to perform such person's obligations under any such document.

5. Liability of the Escrow Agent and Transfer Agent; Indemnification. The Escrow Agent acts hereunder as a depository only. Each of the Escrow Agent and Transfer Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent or Transfer Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent or Transfer Agent to be genuine and to be signed or presented by the proper person(s). Each of the Escrow Agent and Transfer Agent shall not be held liable for any error in judgment made in good faith by an officer or employee of either unless it shall be proved that such officer or employee was grossly negligent or reckless in ascertaining the pertinent facts or acted intentionally in bad faith. The Escrow Agent shall not be bound by any notice of demand, or any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto.

Either of the Escrow Agent or Transfer Agent may consult legal counsel and shall exercise reasonable care in the selection of such counsel, in the event of any dispute or question as to the construction of any provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the reasonable opinion or instructions of such counsel.

Each of the Escrow Agent and Transfer Agent shall not be responsible, may conclusively rely upon and shall be protected, indemnified and held harmless by the Company, for the sufficiency or accuracy of the form of, or the execution, validity, value or genuineness of any document or property received, held or delivered by it hereunder, or of the signature or endorsement thereon, or for any description therein; nor shall the Escrow Agent or the Transfer Agent be responsible or liable in any respect on account of the identity, authority or rights of the



persons executing or delivering or purporting to execute or deliver any document, property or this Agreement.

In the event that either the Escrow Agent or Transfer Agent shall become involved in any arbitration or litigation relating to the Investor Funds in the Escrow Account, each is authorized to comply with any decision reached through such arbitration or litigation.

The Company, hereby agrees to indemnify both the Escrow Agent and the Transfer Agent for, and to hold it harmless against any loss, liability or expense incurred in connection herewith without gross negligence, recklessness or willful misconduct on the part of either of the Escrow Agent or Transfer Agent, including without limitation, legal or other fees arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including without limitation the costs and expenses of defending itself against any claim of liability in the premises or any action for interpleader. Neither the Escrow Agent nor the Transfer Agent shall be under any obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction in accordance with the foregoing, except that neither shall be indemnified against any loss, liability or expense arising out of its own gross negligence, recklessness or willful misconduct. Such indemnity shall survive the termination or discharge of this Agreement or resignation of the Escrow Agent.

The terms of this Section shall survive the termination of the Escrow Agreement and the resignation or removal of the Escrow Agent.

6. The Escrow Agent's Fee. Escrow Agent shall be entitled to fees and expenses for its regular services as Escrow Agent as set forth in Exhibit A. Additionally, Escrow Agent is entitled to reasonable fees for extraordinary services and reimbursement of any reasonable out of pocket and extraordinary costs and expenses related to its obligations as Escrow Agent under this Agreement, including, but not limited to, reasonable attorneys' fees. All of the Escrow Agent's compensation, costs and expenses shall be paid by the Company.

7. Security Interests. No party to this Escrow Agreement shall grant a security interest in any monies or other property deposited with the Escrow Agent under this Escrow Agreement, or otherwise create a lien, encumbrance or other claim against such monies or borrow against the same.

8. Dispute. In the event of any disagreement between the undersigned or the person or persons named in the instructions contained in this Agreement, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, the Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until: (a) the rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and

having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

9. Resignation of Escrow Agent. Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least 60 days before the date specified for such resignation or removal to take effect; upon the effective date of such resignation or removal:

(a) All cash and other payments and all other property then held by the Escrow Agent hereunder shall be delivered by it to such successor escrow agent as may be designated in writing by the Company, whereupon the Escrow Agent's obligations hereunder shall cease and terminate;

(b) If no such successor escrow agent has been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate, and the Escrow Agent's sole responsibility thereafter shall be to keep all property then held by it and to deliver the same to a person designated in writing by the Company or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

(c) Further, if no such successor escrow agent has been designated by such date, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor agent; further the Escrow Agent may pay into court all monies and property deposited with Escrow Agent under this Agreement.

The terms of this Section shall survive the termination of the Escrow Agreement and the resignation or removal of the Escrow Agent.

10. Notices. All notices, demands and requests required or permitted to be given under the provisions hereof must be in writing and shall be deemed to have been sufficiently given, upon receipt, if (i) personally delivered, (ii) sent by telecopy and confirmed by phone or (iii) mailed by registered or certified mail, with return receipt requested, or by overnight courier with signature required, delivered to the addresses set forth below, or to such other address as a party shall have designated by notice in writing to the other parties in the manner provided by this paragraph:

(1) If to Company: HMS Income Fund, Inc.  
2800 Post Oak Boulevard  
Suite 5000  
Houston, Texas 77056-6118  
Attention: Jeremy Davis

(2) If to the Escrow Agent: UMB Bank, N.A.  
1010 Grand Blvd., 4th Floor  
Mail Stop: 1020409

Kansas City, Missouri 64106  
Attention: Lara Stevens  
Corporate Trust & Escrow Services  
Telephone: (816) 860-3017  
Facsimile: (816) 860-3029

(3) If to Dealer Manager: Hines Securities, Inc.  
2800 Post Oak Boulevard, Suite 4700  
Houston, Texas 77056-6118  
Attention: Matt Fogg

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri without regard to the principles of conflicts of law.

12. Binding Effect; Benefit. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

13. Modification. This Agreement may be amended, modified or terminated at any time by a writing executed by the Dealer Manager, the Company and the Escrow Agent.

14. Assignability. This Agreement shall not be assigned by the Escrow Agent without the Company's prior written consent.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Copies, teletypes, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

16. Headings. The section headings contained in this Agreement are inserted for convenience only, and shall not affect in any way, the meaning or interpretation of this Agreement.

17. Severability. This Agreement constitutes the entire agreement among the parties and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power or remedy. In the event that any one or more of the provisions contained in this Agreement, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

18. Earnings Allocation; Tax Matters; Patriot Act Compliance; Office of Foreign Control Search Duties. The Company or its agent shall be responsible for all tax reporting under

this Escrow Agreement. The Company shall provide to Escrow Agent upon the execution of this Agreement any documentation requested and any information reasonably requested by the Escrow Agent to comply with the USA PATRIOT ACT of 2001, as amended from time to time. The Escrow Agent, or its agent, shall complete an Office of Foreign Assets Control ("OFAC") search, in compliance with its policy and procedures, of each subscription check and shall inform the Company if a subscription check fails the OFAC search. The Dealer Manager shall provide a copy of each subscription check in order that the Escrow Agent, or its agent, may perform such OFAC search.

19. Miscellaneous. This Agreement shall not be construed against the party preparing it, and shall be construed without regard to the identity of the person who drafted it or the party who caused it to be drafted and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product, and each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

20. Third Party Beneficiaries. The Transfer Agent shall be a third party beneficiary under this Agreement, entitled to enforce any rights, duties or obligations owed to it under this Agreement notwithstanding the terms of any other agreements between the Transfer Agent and any party hereto.

21. Relationship of Parties. The Dealer Manager, the Company and the Escrow Agent are unaffiliated parties, and this Agreement does not create any partnership or joint venture among them.

[SIGNATURE PAGES FOLLOW]




IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives as of the date first written hereinabove:


**HMS INCOME FUND, INC.**

By:   
Name: Ryan Sims  
Title: Chief Financial Officer and Secretary  
SD

**HINES SECURITIES, INC.**

By:   
Name: Frank Apollo  
Title: Chief Operating Officer  
SD

**UMB BANK, N.A.**

By:   
Name: Lara L. Stevens  
Title: Vice President

**EXHIBIT A**  
**ESCROW FEES AND EXPENSES**

**Acceptance Fee**

Review document, establish accounts, and	\$3,000
Set up recon file/feeds with Transfer Agent	\$ 250

**Annual Fee**

Annual Escrow Agent	\$3,000
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**Transactional Fees**

Outgoing Wire Transfer	\$35 each
Daily Recon File to TA	\$2.50 per Bus Day
Web Exchange Access	\$15 per month
Overnight Delivery/Mailings	\$16.50 each
IRS Tax Reporting	\$10 per 1099

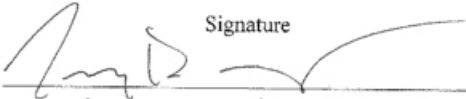
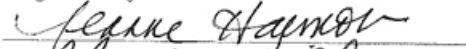

Acceptance fee and first year annual fee will be payable at the initiation of the escrow. Thereafter, annual Escrow Agent fee will be billed in advance and Transactional fees, if any, will be billed quarterly in arrears. Other fees and expenses will be billed as incurred.

Fees specified are for the regular, routine services contemplated by the Escrow Agreement, and any additional or extraordinary services, including, but not limited to disbursements involving a dispute or arbitration, or administration while a dispute, controversy or adverse claim is in existence, will be charged based upon time required at the then standard hourly rate. In addition to the specified fees, all expenses related to the administration of the Escrow Agreement (other than normal overhead expenses of the regular staff) such as, but not limited to, travel, postage, shipping, courier, telephone, facsimile, supplies, legal fees, accounting fees, etc., will be reimbursable.

EXHIBIT B

CERTIFICATE AS TO AUTHORIZED SIGNORS

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as Authorized Representatives of HMS Income Fund, Inc. and are authorized to initiate and approve transactions of all types for the HMS Income Fund, Inc. Escrow Account.

Name/Title	Signature
<u>Jeremy Davis</u>	
<u>Jeanne Harmon</u>	
<u>Leronica Hill</u>	
<u>Chelsea McDaniel</u>	