

Commerce Commission
Forsyth Barr Limited
Forsyth Barr Group Limited
Credit Agricole Corporate and Investment Bank
Credit Sail Limited
Calyon Hong Kong Limited

SETTLEMENT AGREEMENT

**REGARDING COMMERCE COMMISSION INVESTIGATION INTO
CREDIT SALEABLE INDEX LINKED SECURITIES (CREDIT SAILS)**

December 2012

AGREEMENT DATED day of December 2012

Parties

Forsyth Barr Limited (Forsyth Barr) a duly incorporated company having its registered office in Dunedin

Forsyth Barr Group Limited (FB Group) a duly incorporated company having its registered office in Dunedin

(together the Forsyth Barr parties)

Credit Agricole Corporate and Investment Bank (CACIB) a company incorporated in France having its registered office in Paris

Credit Sail Limited (CSL) a company incorporated in the Cayman Islands having its registered office in George Town, Grand Cayman

Calyon Hong Kong Limited (CACHK) a company incorporated in Hong Kong having its registered office in Hong Kong

(together the CACIB parties)

Commerce Commission (the Commission) a body corporate established under section 8 of the Commerce Act 1986 having its head office in Wellington

Purpose of agreement

1. The Commission has investigated alleged contraventions of the Fair Trading Act 1986 (the Act) by the Companies in relation to the marketing, promotion and sale of an investment product called Credit Saleable Index Linked Securities (Credit Sall.S).
2. The Companies have co-operated with the Commission during its investigation.
3. This agreement records the background to the investigation, the Commission's views, and the means by which the investigation is to be resolved.
4. The Companies agree to make payments to eligible investors from a settlement fund established for that purpose, and to satisfy the Commission that the payments have been made.
5. The Companies agree to provide information to investors as to the timing, method and amount of the payments.
6. The Companies and the Commission agree to take such steps as are necessary or desirable to give full effect to the terms of this agreement.

7. The Commission acknowledges that nothing in this agreement constitutes an admission of liability by the Companies.
8. By this agreement, the Commission agrees that it will not issue or encourage civil or criminal proceedings against the Companies or their respective past, present and future directors, officers, parents, subsidiaries, members, affiliates, assigns, shareholders, employees, advisers, auditors, agents or insurers, or against any other party in relation to Credit Salls.
9. The Companies and the Commission acknowledge that nothing in this agreement will affect, compromise or exclude any legal claim that an investor who does not receive or accept a settlement offer might have in respect of Credit Salls.
10. The Commission understands that, in agreeing to accept a payment as a result of this agreement, eligible investors will be required to waive any legal claim they may have in respect of Credit Salls.

Interpretation

11. For the purposes of this agreement:

- (a) Companies means the Forsyth Barr parties and the CACIB parties.
- (b) Credit Salls means Credit Saleable Index Linked Securities issued by CSL on 15 June 2006 and listed on the New Zealand Stock Exchange under Security Code CSAFA.
- (c) Subject to clause 11(d), eligible investor means:
 - (i) any person or entity who, at the date of this Agreement, holds Credit Salls that were purchased by that person or entity at any time before 1 November 2008;
 - (ii) any person or entity who purchased Credit Salls at any time before 1 November 2008 and who has sold those Credit Salls for less than \$0.85 per note; and
 - (iii) unless eligible under (i) or (ii) above, any person or entity who is a successor in title, whether by way of bequest, gift, or operation of law, of any other person or entity who would otherwise be eligible under (i) or (ii) above.
- (d) Eligible investor does not include:
 - (i) the Companies except insofar as they hold Credit Salls in a custodial capacity for the beneficial holders of those notes (excluding where the beneficial holder is any of the Companies); and
 - (ii) any person or entity who purchased Credit Salls on or after 1 November 2008. For the avoidance of doubt, such a person is only

ineligible in relation to any Credit SALLS purchased on or after 1 November 2008.

- (e) **Investor** means any person or entity who acquired Credit SALLS at any time between the date of the initial public offering and the date of this Agreement and includes eligible investors.
- (f) **Trust Deed** means the deed of trust entered into between the Companies and the Trustee or any subsequent deed of trust entered into between the Companies and any new trustee under clauses 35 to 37.
- (g) **Trustee** means the Public Trust or any other Trustee agreed between the Companies and the Commission or any new trustee appointed under clauses 35 to 37.
- (h) **Working day** has the meaning set out in section 29 of the Interpretation Act 1999.
- (i) All amounts are denominated in New Zealand currency.

Background

- 12. Forsyth Barr is a company incorporated in New Zealand and has its registered office at Forsyth Barr House, The Octagon, Dunedin, and carries on business as a provider of financial services. Forsyth Barr is a wholly-owned subsidiary of FB Group.
- 13. CACIB is a company incorporated in France, having its registered address at 9 quai du President Paul Doumer, 92920 Paris La Defense cedex, France and is a subsidiary of Crédit Agricole SA, a retail banking group. Between May 2004 and February 2010 CACIB was known as CALYON.
- 14. CSL is a company incorporated in the Cayman Islands, having its registered address at PO Box 1093, Queensgate House, Grand Cayman, KYI-1102, Cayman Islands. CSL was incorporated on 29 March 2006 and was, at all material times, a special purpose vehicle established to act as the Issuer of Credit SALLS.
- 15. CACHK is a company incorporated in Hong Kong, having its registered address as 27F Two Pacific Place, 88 Queensway, Hong Kong and is a subsidiary of Crédit Agricole SA.

Credit SALLS

- 16. Credit SALLS were marketed as secured fixed interest New Zealand Dollar denominated debt securities on the following basis:
 - (a) Credit SALLS were issued on 15 June 2006 and are scheduled to mature on 22 December 2012;
 - (b) the issue price was \$1 per note;

- (c) the minimum investment was \$5,000;
- (d) the offer was available to members of the public; and
- (e) 91.5 million Credit Salls were issued.

Marketing of Credit Salls

- 17. Between April and June 2006, the Companies had various roles in marketing and selling Credit Salls to New Zealand investors.
- 18. The Companies participated in marketing Credit Salls through:
 - (a) the Credit Salls Investment Statement and Combined Investment Statement and Prospectus for Credit Salls;
 - (b) other documents prepared by the Companies for the purpose of marketing Credit Salls; and
 - (c) representations made by investment advisors acting on behalf of Forsyth Barr and other New Zealand-based investment advisory firms.
- 19. More than 3,000 investors purchased Credit Salls.

Failure of Credit Salls

- 20. Between 15 September 2008 and 31 March 2009 six individual reference entities named in the Momentum Reference Portfolio (a portfolio upon which repayment of the Credit Salls principal amount was dependent), experienced adverse credit events.
- 21. The total losses from these credit events exceeded the specified Protection Amount and resulted in the full amount of the Momentum investment being lost, meaning that none of the principal amount of Credit Salls would be returned to investors upon maturity. On 12 May 2009 CSL issued a public announcement that Credit Salls would be redeemed at zero, plus the holder's pro rata share of the residual monies, amounting at the date of the announcement to \$11.66 plus interest for every 1,000 Credit Salls held.

Commission investigation

- 22. The Commission has investigated alleged contraventions of the Act by the Companies in relation to the marketing, promotion and sale of Credit Salls.
- 23. The Commission has completed its investigation and concluded that, in its view, there is a sufficient foundation for it to commence legal proceedings against the Companies alleging breaches of the Act. In particular, the Commission considers that:
 - (a) Representations that Credit Salls were "capital protected" and that any investor risk related to interest payments and not capital were both misleading and deceptive;

- (b) Credit SALLS were marketed to the average investor;
 - (c) Credit SALLS were highly complex and unsuitable for the average investor; and
 - (d) The Companies knew or ought to have known that Credit SALLS were unsuitable for the average investor.
24. The Companies deny that they have breached the Act and do not agree with the Commission's views listed at paragraph 23 above.
25. The Commission acknowledges that:
- (a) the Companies have not had the opportunity to challenge or test the Commission's views in Court;
 - (b) the Companies do not accept the Commission's views;
 - (c) the Companies do not admit liability for any act or omission or conduct engaged in, or any representation made in connection with the marketing and sale of Credit SALLS; and
 - (d) the Companies do not accept that proceedings against them would succeed, or that any compensation would be payable at law.

Settlement fund

26. Subject to the terms of this agreement, the CACIB parties and Forsyth Barr parties agree to establish a settlement fund of \$60 million to be used to make payments to eligible investors who accept the terms on which the payments are offered (the settlement fund).
27. The CACIB parties and FB Group will transfer their respective contributions to the settlement fund to their New Zealand solicitors' trust accounts within 4 working days of the date of this agreement.
28. Within 10 working days of the date of this agreement, the Companies will jointly enter into a deed of trust with the Trustee.
29. The Companies will ensure that the Trust Deed:
- (a) requires the Trustee to hold the settlement fund on trust for the purposes of this agreement;
 - (b) requires the Trustee to communicate with investors in accordance with the Companies' commitments under this agreement;
 - (c) requires the Trustee to make individualised settlement offers on behalf of the Companies to eligible investors;

- (d) requires the Trustee to make payments to those eligible investors who accept the offer, according to the process outlined in clauses 38 to 64 below;
 - (e) requires the Trustee to apply the settlement fund solely on the basis set out in this settlement agreement; and
 - (f) includes a provision giving the Commission privity to enforce the deed.
30. The Companies acknowledge that a failure by them to take reasonable steps to ensure that the Trustee complies with its material obligations under the Trust Deed in relation to the process outlined in clauses 38 to 64 or to enforce those obligations is a material breach of this agreement.
 31. The Companies will transfer the settlement fund, together with any earned interest, from their solicitors' trust accounts to the Trustee within 6 working days of the date of signing the Trust Deed. The Companies will ensure that the Trust Deed provides that, promptly on receipt of the settlement fund, the Trustee will hold the settlement fund in one or more interest bearing accounts with one or more of ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand, Kiwibank Limited and Westpac New Zealand Limited with interest payable on a monthly basis.
 32. The Companies, acting through the Trustee, will offer to make a payment from the settlement fund to each eligible investor in full and final settlement of all claims by the eligible investor in respect of Credit SALLS (the **settlement offer**), and each eligible investor will make his, her or its own decision whether or not to accept the settlement offer.
 33. Subject to clauses 37 and 53, the settlement offer will be open for acceptance until 31 October 2013 (the **offer period**). For the avoidance of doubt, any investor who has not accepted the settlement offer during the offer period will not be eligible for a payment from the settlement fund.
 34. The payments to eligible investors will be calculated and made in accordance with the settlement process set out in clauses 38 to 64 of this agreement.
 35. If the Trust Deed is terminated for any reason other than this agreement becoming void under clause 84, the Companies will direct the Trustee to transfer the settlement fund and any interest earned to their solicitors' trust accounts within 5 working days of the termination of the Trust Deed. The Companies will provide their solicitors with irrevocable instructions to hold the settlement fund and earned interest on trust until further directed as to the distribution of the funds by the Companies.
 36. The Companies must within 15 working days of any such termination of the Trust Deed as referred to in clause 35 enter into a deed of trust with a different trustee, to be approved by the Commission (the **new trustee**). The Companies will ensure that this deed of trust contains the requirements and provisions set out in clauses 29 and 38 to 64 of this agreement.

37. Any delay to the settlement process set out in clauses 38 to 64 of this agreement caused by any such termination of the Trust Deed as referred to in clause 35 and the subsequent appointment of the new trustee will extend the time for complying with any of the steps in the settlement process by the period of time between termination of the Trust Deed and 5 working days after the transfer of the settlement fund and earned interest to the new trustee.

Settlement process

Initial mailout

38. The Companies will ensure that the Trust Deed provides that, as soon as reasonably possible, but within a maximum of 30 working days of the date of this agreement, the Trustee will write to each investor in Credit SaLS at the contact address recorded in the register of Credit SaLS noteholders, or the contact address provided by the Commission from its records or such other address as is reasonably able to be identified within that time period as being the correct address using the sources listed at clause 56 (a) to (d) below (the initial mailout).
39. The initial mailout will inform each investor of the:
- (a) details of this settlement;
 - (b) entitlement of eligible investors to a payment; and
 - (c) future steps to be taken by or on behalf of the Companies under this agreement.
40. The initial mailout must be posted to each investor, and the text of the mailout and of all other investor communications required by this agreement must be approved in advance by the Commission.

Calculation of payments

41. The amount to be offered to each eligible investor will be calculated using the method set out in schedule A to this agreement.
42. The Commission will, with all necessary assistance from the Companies, prepare a spreadsheet identifying which investors are eligible investors, which investors are not eligible investors, the basis on which this has been determined, and the amount to be offered to each eligible investor (the offer spreadsheet).
43. The Companies will, within 10 working days of the date of this agreement, instruct an independent accounting firm or other suitably qualified third party (the independent reviewer) to be approved by the Commission, to:
- (a) liaise with the Commission during the preparation of the offer spreadsheet (as required by the Commission); and

- (b) review the offer spreadsheet to ensure that it complies with the agreed calculation method.
44. The independent reviewer's comments on the offer spreadsheet must be provided to the Companies and to the Commission before the offer spreadsheet is finalised and any amendments to the spreadsheet proposed by the independent reviewer must be adopted unless all parties agree otherwise or the proposed amendment is inconsistent with the terms of this agreement.
45. The Commission and the Companies will each use reasonable endeavours to ensure that the offer spreadsheet is finalised and provided to the trustee by 15 February 2013.
46. The offer spreadsheet will not contain confidential information that is not otherwise in the possession of the Companies, most particularly it will not contain details of investors who invested in Credit Salls through a custodial service or nominee company provider (custodian) not associated with the Companies. The offer spreadsheet will record the aggregate amount payable to each custodian on behalf of its client investors. The Commission will provide information separately to each custodian, specifying the payment to be made to each of the custodian investors.
47. Subject to clause 48 below, where Credit Salls are held by a custodian on behalf of any other person, all communications in relation to the settlement offer that are required under this agreement to be sent to investors or to eligible investors will be sent to the custodian and the Companies will not be required to ensure that communications are also sent to the person or persons on whose behalf the Credit Salls are held.
48. Where Forsyth Barr holds Credit Salls as the custodian for any other person (except any of the Companies) then Forsyth Barr will use reasonable endeavours to locate that person and forward copies of all communications in relation to the settlement offer which are required under this agreement to be sent to investors or to eligible investors to that person and seek their instructions in relation to the settlement offer, notwithstanding the terms of any legal authority which Forsyth Barr may otherwise have to act on that person's behalf.

Individualised settlement offers to eligible investors

49. The Companies will ensure that the Trust Deed provides that, following the initial mailout and receipt by the Trustee of the final offer spreadsheet:
- (a) the Trustee will send a further letter to each eligible investor (the individualised offer);
 - (b) the Trustee will also send a letter to each investor who is not an eligible investor (the non-eligible investor letter);

- (c) if the final offer spreadsheet is received by the Trustee by 15 February 2013, the individualised offer and the non-eligible investor letters will be sent by no later than 8 March 2013; and
- (d) if there is a delay beyond 15 February 2013 in the final offer spreadsheet being received by the Trustee, then the date by which the individualised offer and the non-eligible investor letters must be sent shall be extended by the same period.

50. The individualised offer will contain:

- (a) the terms of the settlement offer to the eligible investor;
- (b) the amount the eligible investor will receive if he or she or it accepts the settlement offer;
- (c) the date by which the settlement offer must be accepted;
- (d) the steps the eligible investor must take to accept the settlement offer, including the method of communicating acceptance of the settlement offer;
- (e) the terms of any release from liability that the Companies seek from the eligible investor, which will include requirements that in accepting the settlement offer the eligible investor must waive any legal claim that he or she or it may have in respect of Credit SallS (including, without limitation, in respect of the marketing of Credit SallS); and
- (f) advice that the eligible investor should consider taking independent legal and/or financial advice before deciding whether to accept the settlement offer.

51. The non-eligible investor letter will contain:

- (a) confirmation of the fact that the investor is not an eligible investor;
- (b) details of the basis on which the investor has been determined to not be an eligible investor; and
- (c) a statement that any legal rights and remedies that the investor may have in respect of Credit SallS are not affected by the settlement offer.

52. The text of the individualised offer and the non-eligible investor letter must be approved in advance by the Commission, with such approval to be given within a reasonable time and not to be unreasonably withheld.

53. If there is a delay beyond 8 March 2013 in sending an individualised offer, the offer period (as described in clause 33) will extend by the same amount of time.

Locating eligible investors

54. The Companies must, between the date of this agreement and 1 October 2013, ensure that all reasonable endeavours are undertaken (either by the Trustee or another party engaged by the Companies) to locate and establish contact details for eligible investors.
55. Where the Companies (or the Trustee) become aware that the contact details recorded on the Credit SALLS register for any eligible investor are incorrect or out of date the Companies must ensure that all reasonable endeavours are undertaken (either by the Trustee or another party engaged by the Companies) to locate and establish contact details for eligible investors.
56. Reasonable endeavours for the purposes of clauses 48, 54 and 55 are:
- (a) using the register of Credit SALLS noteholders;
 - (b) using any information provided to the Companies by the Commission;
 - (c) using publicly available information from the Electoral Roll, the Companies Office Register, the White Pages telephone directory, and Google search under the name of the investor;
 - (d) using information in the possession of the Companies;
 - (e) engaging an independent third party tracing agent (the tracing agent), to be approved by the Commission, to undertake reasonable efforts to locate any eligible investor who is unable to be located by (a)-(d) above before 1 June 2013.
57. The Companies will ensure that the Trust Deed provides that, where any eligible investor is not located or their contact details are not established until after the initial mailout, the Trustee will, within 10 working days of the eligible investor being located by the Trustee or the Trustee being advised of the contact details of the eligible investor, provide that eligible investor with a complete set of the correspondence and information already sent to eligible investors, including, where relevant, the initial mailout, an individualised offer and any subsequent correspondence to eligible investors.

Payments to eligible investors

58. The Companies will ensure that the Trust Deed provides that the Trustee will make a payment from the settlement fund in accordance with the offer spreadsheet to every eligible investor who accepts the settlement offer and agrees to the terms on which the offer is made.
59. The Companies will ensure that the Trust Deed provides that payments to eligible investors who accept the settlement offer will commence on 20 March 2013, in respect of any eligible investors whose acceptances are received by the Trustee before 15 March 2013. For eligible investors whose acceptances are received by the Trustee after 15 March 2013, payments will be batched for monthly payment so that every eligible investor who has accepted a settlement offer will be paid by the 20th

day of the month following the date on which the Trustee received notice that the eligible investor has accepted the settlement offer.

Interim report from trustee

60. The Companies will by 1 June 2013 provide an interim report to the Commission, to be prepared by the Trustee, that sets out:
- (a) the amount of payments made to eligible investors;
 - (b) the details of any eligible investors who have declined the settlement offer;
and
 - (c) the details of eligible investors who have not responded to the settlement offer and the steps taken to trace and make the settlement offer to them.

Completion of payment process

61. All payments to eligible investors who have accepted the settlement offer before the end of the offer period (31 October 2013) must be completed by 21 November 2013 (the completion date).
62. The parties acknowledge that at the completion of the payments process there may remain a residual balance of the settlement fund, representing undistributed offer monies and any interest earned on the settlement fund (the residue). The parties agree that the residue (less any costs payable to the Commission, the Trustee, the tracing agent and the independent reviewer under this agreement) will be refunded by the Trustee to the Companies, on such terms as the Companies may agree between themselves, but not before the Commission has had an opportunity to raise any issues with the final independent report as provided by clause 64.

Final independent report

63. The Companies will instruct the independent reviewer, or another suitably qualified third party to be approved by the Commission, to provide the Commission with a report (the final independent report) verifying completion of the payment process, which will include the following details:
- (a) the total value of all payments made;
 - (b) details of all eligible investors who received a payment and the amount of each payment;
 - (c) confirmation that payments made to eligible investors were made in accordance with the amounts specified in the spreadsheet;
 - (d) the details of eligible investors (if any) who have declined to accept the settlement offer;
 - (e) the details of eligible investors (if any) who have not responded to the individualised offer, and the steps taken to trace and make the offer to them;

- (f) a reconciliation of the settlement fund including interest earned, payments made, expenses paid and the balance of the residue that reverts to the Companies; and
 - (g) an opinion as to whether the payment process has been completed in conformity with the terms of this agreement.
64. The final independent report must be provided to the Commission on or before 10 December 2013. The Commission may raise any issues or concerns in respect of or arising out of the final independent report within 10 working days of its receipt of the report. Any issue or concerns raised must be reasonably considered by the Companies.

Investigation and settlement administration costs

65. The costs of the Trustee, the tracing agent, the independent reviewer and the independent report (administration costs) will be paid from interest earned on the settlement fund. Interest earned may be applied for the purpose of paying administration costs as soon as they become due and payable and interest income is available.
66. If there is insufficient interest earned, the balance of the administration costs will be met from the residue of the settlement fund once all payments to eligible investors are made. If there is insufficient residue the remaining balance of the administration costs will be met by the Companies.
67. The Companies agree that they will pay a contribution towards the Commission's costs in relation to this investigation and settlement in the amount of \$500,000.
68. The contribution towards the Commission's costs will be paid from interest earned on the settlement fund after payment of the administration costs.
69. If there is insufficient interest earned, the balance of the contribution towards the Commission's costs will be met from the residue of the settlement fund once all payments to eligible investors are made and administration costs have been paid. If there is insufficient residue the remaining balance of the Commission's costs will be borne by the Commission and the Companies shall not have any liability in this regard.

Communications

70. The Companies agree that:
- (a) an electronic copy of the initial mailout will also be posted in a prominent position on the Commission's website;
 - (b) they will provide to the Commission, for its comment, advance drafts of all further written communications to investors regarding this agreement or the payment process (until completion of the payment process, as advised by the

Commission). The Companies will consider in good faith any matters raised by the Commission in its comments; and

- (c) all communications with eligible investors (whether written, oral or otherwise) will be expressed in clear, easily understandable and accurate language and terms.

Handling of settlement enquiries

- 71. The Companies agree that they will provide (either through the Trustee or otherwise) easily accessible points of contact for persons with questions about the offer, and that they will make the methods of contacting them publicly known.
- 72. The Companies agree that as soon as possible following the signing of this agreement they will arrange for the operation (either by the Trustee or otherwise) of a dedicated email enquiry service and an 0800 telephone enquiry service to answer questions from investors, and will additionally post relevant information about the offer on their websites (if applicable) and arrange for relevant information to be posted either on the Trustee's website or on a dedicated website to be established by the Trustee.
- 73. The Companies agree that upon the signing of the agreement their New Zealand customer service and call centre staff (if applicable) will promptly be properly informed of the offer and will be given appropriate instructions with respect to the handling of resulting enquiries.

No further action by Commission

- 74. This agreement is in full and final settlement of all past present and future claims by the Commission in relation to or connected with Credit SaLS, including:
 - (a) All claims against the Companies and their respective past present and future directors, officers, parents, subsidiaries, members, affiliates, assigns, shareholders, employees, advisers, auditors, agents and insurers, and
 - (b) All claims against any other party, notwithstanding that that party is not a party to this agreement.
- 75. The Commission will close its investigation upon this agreement becoming unconditional. The Companies acknowledge that, pursuant to clause 85, the Commission may reopen its investigation if this agreement becomes void.
- 76. The Commission undertakes not to issue or encourage any civil or criminal legal proceeding in relation to Credit SaLS unless this agreement becomes void.

Unaffected rights

- 77. Subject to clause 85, if there is any material breach by the Companies in fulfilment of this agreement (such breach to be determined solely by the Commission in its reasonable opinion), the Commission may in its complete discretion bring

proceedings jointly or severally against the Companies for breach of the terms of this agreement, after giving the companies 20 working days' notice to remedy the breach (the breach notice). Any breach notice must be issued no later than 60 working days after the date on which the final independent report is provided to the Commission.

78. The Commission acknowledges that the CACIB parties, and the Forsyth Barr parties, are separately liable for their respective contributions to the settlement fund and that none of the CACIB parties are liable in respect of the contributions of the Forsyth Barr parties and the Forsyth Barr parties are not liable in respect of the contributions of the CACIB parties.
79. Nothing in this agreement constitutes an admission of legal liability by the Companies.
80. Nothing in this agreement will limit or affect the ability of any eligible investor who has not accepted the offer from pursuing any rights available to him, her or it under the Act or under any other law.
81. Nothing in this agreement will limit or affect the ability of any investor who has not received an offer from pursuing any rights available to him, her or it under the Act or under any other law. This clause refers to both eligible investors to whom an offer is not made and investors who do not fall within the definition of eligible investor.
82. For the avoidance of doubt, nothing in this agreement will limit or affect the ability of the Commission to issue proceedings against the Companies in respect of matters not related to Credit SALLS, or in respect of conduct engaged in by any of them after the date of this agreement.

Agreement conditional

83. This agreement is conditional on;
 - (a) undertakings being provided to the Commission on behalf of the CACIB Parties and Forsyth Barr Group that the full amount of their respective contributions to the settlement fund have been irrevocably placed on trust in their respective New Zealand solicitors' trust accounts, and that these funds will not be transferred other than for the purpose of giving effect to this agreement; and
 - (b) confirmation from the parties' solicitors that their respective contributions to the settlement fund has been received by them.
84. If the undertakings and confirmations required under clause 83 above are not provided within 3 working days after the signing of this agreement, or by such later date as may be agreed by the Commission, then this agreement will be voidable at the election of the Commission, such election to be communicated to the Companies within 10 working days of the non-performance of the condition.

85. In the event of this agreement becoming void under clause 84 above, no party shall have any right or obligation under it, except that the Commission shall have the right to reopen its investigation and to commence proceedings against the Companies in relation to Credit Salls and the Companies shall not be entitled to raise any limitation issue or defence arising from the Commission not issuing proceedings between 15 September 2011 and the date which is 10 working days after the agreement becoming void. For the avoidance of doubt, the Companies will be free to raise any limitation defence that may have accrued before 15 September 2011 or after the date which is 10 working days after this agreement becoming void.

Giving effect to agreement

86. All parties agree to take such steps as are necessary or desirable to give full effect to the terms of this agreement.
87. If necessary or desirable, the payment processes required to give full effect to the terms of this agreement may be amended by the agreement of the parties.

Applicable law and jurisdiction

88. This agreement is governed by the laws of New Zealand. The parties agree that the New Zealand courts will have exclusive jurisdiction to adjudicate any dispute arising out of or in connection with this agreement.

Public statements about settlement

89. Subject to paragraphs 90 to 92, the parties may make public statements in relation to the settlement after this agreement has become unconditional. Any public statement must be consistent with the matters set out in this settlement agreement.
90. Upon this agreement becoming unconditional, the Commission will issue its initial media statement no earlier than 9 am on 13 December 2012. In the event the agreement has not become unconditional by that time, the Commission will issue its initial media statement no earlier than 9am on 17 December 2012. The Companies acknowledge that the Commission may notify the NZX of this settlement no earlier than 8.30am on the day it issues the initial media statement.
91. The Companies agree that they will not make any public comment in relation to this settlement until after the Commission has issued a media release notifying the public of this settlement.
92. The parties agree to provide written copies of their initial written media statements to the other parties at least 24 hours in advance of their release to allow the other parties the opportunity to comment. The parties will not be obliged to accept the comments of the other parties. For the avoidance of doubt, this advance notification may be made during the period after this agreement is signed and before it is unconditional.
93. Any party may release or publish this agreement, including to the public at large, at any time after the Commission has made its initial written media statement.

Miscellaneous

94. The Commission acknowledges that some of the information provided by the Companies to the Commission may be privileged, confidential and/or commercially sensitive (the Companies' information). In this context, the Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 (OIA) which covers or might cover and/ or record or reveal all or some of the Companies' information (an information request), it will notify the affected Company (the affected company), as required, of that request and will consult with the affected company as to whether there are grounds for the requested material to be withheld under Part 1 of the OIA. The Commission will:
- (a) Take full and proper account of the privileged, confidential and/or commercially sensitive nature of the Companies' information, and of any views expressed by the affected company in accordance with the provisions of the OIA when considering any information request; and
 - (b) Notify the affected company at least 5 working days prior to complying with the request if, notwithstanding such consideration, it determines that no grounds exist on which it may refuse to comply with the request for information.
95. For the purposes of the Contracts (Privity) Act 1982, this agreement is intended to confer a benefit on, and is enforceable by any past, present or future director, officer, parent, subsidiary, member, affiliate, assign, shareholder, employee, adviser, agent or insurer of the Companies, including any adviser who acted on behalf all or any of the Companies or who provided advice to any investors in Credit SALLS, and by New Zealand Permanent Trustees Limited, and by the Commission on behalf of any eligible investor.
96. This agreement may be executed in multiple counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this agreement by signing one or more counterpart copies and sending them to any other party (including by email or facsimile).
97. Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:
- (a) If addressed to the Commission, by hand delivery or post to the following address:

Commerce Commission
Level 6,
44 The Terrace
WELLINGTON
Attention: General Counsel
Competition Branch

Commerce Commission

- (b) If addressed to Forsyth Barr or FB Group, by hand delivery or email to the following address:

Kensington Swan
Level 9
89 The Terrace
Wellington 6143

Attention: Hayden Wilson
Email: hayden.wilson@kensingtonswan.com

- (c) If addressed to CACIB, CACHK or CSL by hand delivery or email to the following address:

Bell Gully
Level 21
Vero Centre
48 Shortland Street
Auckland 1140

Attention: Ian Gault
Email: ian.gault@bellgully.com

EXECUTED by and under the name of the COMMERCE COMMISSION by:



Dr Mark Berry, Chair

EXECUTED by FORSYTH BARR LIMITED by:

Director/ Authorised Signature

Kensington Swan
Level 9
89 The Terrace
Wellington 6143

Attention: Hayden Wilson
Email: hayden.wilson@kensingtonswan.com

- (c) If addressed to CACIB, CACHK or CSL by hand delivery or email to the following address:

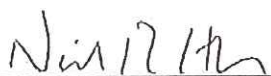
Bell Gully
Level 21
Vero Centre
48 Shortland Street
Auckland 1140

Attention: Ian Gault
Email: ian.gault@bellgully.com

EXECUTED by and under the name of the **COMMERCE COMMISSION** by:

Dr Mark Berry, Chair


EXECUTED by **FORSYTH BARR LIMITED** by:



Director/ Authorised Signature.

NEIL PAVIOUR-SMITH
Director/ Authorised Name

NEIL PAVOUR-SMITH
Director/ Authorised Name



Director/ Authorised Signature

SHANE EDMOND
Director/ Authorised Name

EXECUTED by FORSYTH BARR GROUP LIMITED by:


Director/ Authorised Signature

NEIL PAVOUR-SMITH
Director/ Authorised Name


Director/ Authorised Signature

SHANE EDMOND
Director/ Authorised Name

EXECUTED by CREDIT AGRICOLE CIB by:

Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by CREDIT SAIL LIMITED by:

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by CALYON HONG KONG LIMITED by:

Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by FORSYTH BARR GROUP LIMITED by:

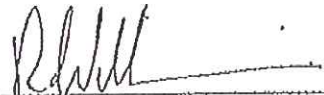
Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Signature

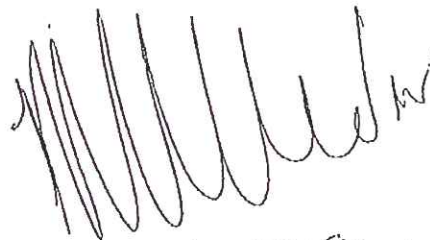
Director/ Authorised Name

EXECUTED by CREDIT AGRICOLE CIB by:



Director/ Authorised Signature

RICHARD GRAHAM WILLIAMS
Director/ Authorised Name



ANTHONY O'SULLIVAN

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by CREDIT SAIL LIMITED by:



Director/ Authorised Signature

Marc Randall

Director/ Authorised Name

EXECUTED by CALYON HONG KONG LIMITED by:

Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Signature

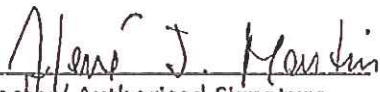
Director/ Authorised Name

EXECUTED by CREDIT SAIL LIMITED by:

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by CALYON HONG KONG LIMITED by:



Director/ Authorised Signature

HERVE MARTIN

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by CREDIT SAIL LIMITED by:

Director/ Authorised Signature

Director/ Authorised Name

EXECUTED by CALYON HONG KONG LIMITED by:



Director/ Authorised Signature

MARC ANDRE POIRIER

Director/ Authorised Name

Director/ Authorised Signature

Director/ Authorised Name

SCHEDULE A – CALCULATION OF PAYMENTS

1. The amount to be offered to each eligible investor will be calculated using the method set out below.
2. This method of calculation is intended to provide that all eligible investors who accept the settlement offer receive the same percentage capital return on their investment in Credit SaLLS (percentage return).
3. The percentage return will be calculated using the following formula (the percentage return formula):

$$(SF + CR)/CI = PR$$

Key:

SF = Amount of Settlement fund (\$60 million).

CR = Any capital returned to eligible investors from sales proceeds and maturity payments but excluding any payment made under this settlement.

CI = Total capital invested in Credit SaLLS by eligible investors.

PR = Percentage of capital to be returned to eligible investors (adjusted to a percentage figure and rounded to one decimal place).

4. Under this method, it is intended that all eligible investors who accept the settlement offer will receive a payment sufficient to return them to a minimum capital position (the payment to each eligible investor).
5. The payment to each eligible investor will be calculated using the following formula (the individual payment formula):

$$(ICI \times PR) - ICR = IR$$

Key:

ICI = Total capital invested by the eligible investor (or in the case of successor(s) in title under clause 11(c)(iii) of the settlement agreement, the total capital invested by the person or entity they succeeded, divided between each successor of that person or entity in proportion to the aggregate Credit SaLLS held by all successors).

PR = Percentage of capital to be returned to eligible investors (expressed as a percentage)

ICR = Any capital returned to the eligible investor from sales proceeds and maturity payments (including, in the case of successor(s) in title under clause 11(c)(iii) of the settlement agreement, any capital returned to the person or entity they succeeded divided between each successor of that person or entity in proportion to the aggregate Credit SaLLS held by all successors) but excluding any payment made under this settlement.

IR = Amount of the payment to each eligible investor

6. To divide the settlement fund among eligible investors, the Excel Goal Seek computer function will be used to calculate the final payment to eligible investors.
7. For the avoidance of doubt:
 - i. any Credit Salls purchased on or after 1 November 2008 are excluded from this settlement and are accordingly not taken into account in calculating the percentage return and the payment to each eligible investor;
 - ii. any Credit Salls sold for \$0.85 per note or more by an investor who qualifies as an eligible investor under clause 11(c) of the settlement agreement will be taken into account in calculating the percentage return and the payment to each eligible investor; and
 - iii. where a custodian is an eligible investor in relation to Credit Salls held on behalf of another person or persons, the amount payable to the custodian will be calculated as if each person or persons on whose behalf the Credit Salls are held is the eligible investor. The amount then payable to the custodian will be the total of those payments.