

**Financial Markets Authority**

**Credit Agricole Corporate and Investment Bank**

**Credit Sail Limited**

**Calyon Hong Kong Limited**

**Forsyth Barr Limited**

**Forsyth Barr Group Limited**

**SETTLEMENT AGREEMENT**

**REGARDING INQUIRIES INTO**

**CREDIT SALEABLE INDEX LINKED SECURITIES (CREDIT SAILS)**

December 2012

This agreement is dated 12<sup>th</sup> day of December 2012

## 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 (CHK)** a company incorporated in Hong Kong having its registered office in Hong Kong

**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 Companies)

**Financial Markets Authority (FMA)** both a body corporate established under the Financial Markets Authority Act 2011 and also its predecessor the Securities Commission (a body formerly constituted under the Securities Act 1978)

## Background

1. FMA and the Commerce Commission (**the Commission**) have inquired into alleged contraventions of New Zealand law by some of the Companies in relation to the marketing, promotion and sale of an investment product called Credit Saleable Index Linked Securities (**Credit SaILS**).
2. FMA and the Commission liaised with each other in conducting their respective inquiries.
3. The Companies and the Commission intend to enter into an agreement on the terms set out in the settlement agreement annexed to this agreement, under which the Companies undertake to establish a settlement fund for the purpose of making payments to eligible investors (**Commission Settlement and Settlement Fund**).
4. Undefined terms used in this agreement are defined by reference to the settlement agreement annexed to this agreement.

## **OPERATIVE PROVISIONS**

### **No further action by FMA**

5. FMA agrees that the Commission Settlement will resolve its inquiries into the conduct of the Companies in respect of Credit SaILS, in terms of FMA's enforcement policy.
6. In consideration of the Companies' agreement to enter into the Commission Settlement and establish the Settlement Fund, FMA:
  - (a) agrees that this agreement fully and finally settles all past present and future claims by FMA, including claims on behalf of investors, in relation to or connected with the offer or allotment of Credit SaILS, including:
    - (i) 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;
    - (ii) all claims against any other party, notwithstanding that that party is not a party to this agreement; and
    - (iii) all claims arising under or connected with the Securities Act 1978 and also all claims arising under or connected with any other enactment or rule of law.
  - (b) undertakes not to investigate, issue or encourage any civil or criminal legal proceeding against the Companies or their respective past, present or future directors, officers, parents, subsidiaries, members, affiliates, assigns, shareholders, employees, advisers, auditors, agents or insurers, or against any other party in relation to the offer or allotment of Credit SaILS.
7. Nothing in this agreement constitutes an admission of legal liability by the Companies.
8. FMA acknowledges that nothing in the Commission Settlement constitutes an admission of legal liability by the Companies.
9. For the avoidance of doubt, nothing in this agreement will limit or affect the ability of FMA to inquire into, investigate, take regulatory action of any kind, or issue proceedings against the Companies or any other person in respect of matters not related to Credit SaILS, or in respect of conduct engaged in by any of them after the date of this agreement.

### **Investor claims**

10. The Companies and FMA acknowledge that nothing in this agreement will affect, compromise or exclude any legal claim that an eligible investor who either does not

receive or does not accept a settlement offer made by the Companies pursuant to the Commission Settlement (**Settlement Offer**) might have in respect of Credit SaILS.

11. FMA acknowledges that, in agreeing to accept a payment as a result of the Commission Settlement, eligible investors will be required to waive any legal claim they may have in respect of Credit SaILS.

### **Conditional**

12. This agreement is conditional on the Companies and the Commission executing the Commission Settlement and that settlement becoming unconditional.

### **Giving effect to agreement**

13. All parties agree to take such steps as are necessary or desirable to give full effect to the terms of this agreement.

### **Applicable law and jurisdiction**

14. 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.

### **Miscellaneous**

15. Any party may release or publish this agreement, including to the public at large, after the Commission has issued its initial media statement relating to the Commission settlement.
16. 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, auditor, agent or insurer of the Companies, including any adviser who acted on behalf of all or any of the Companies or who provided advice to any investors in Credit SaILS, and by New Zealand Permanent Trustees Limited, and by FMA.
17. The parties may make public statements in relation to the Commission Settlement and this agreement. Any public statement must be consistent with the matters set out in this agreement. 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.
18. 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). Each of the parties shall promptly sign the original copies of this

agreement (such copies to be signed by all the parties) after execution of counterparts.

19. 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 FMA, by hand delivery or post to the following address:

Financial Markets Authority  
Level 2  
1 Grey Street  
Wellington

Attention: Liam Mason, Head of Legal & Board Secretary

(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

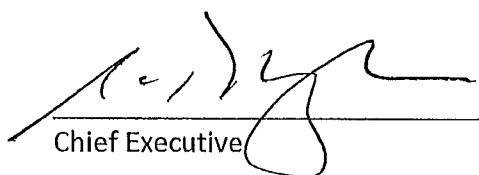
Attention: Hayden Wilson  
hayden.wilson@kensingtonswan.com

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

Bell Gully  
Vero Centre  
48 Shortland Street  
Auckland 1140

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

EXECUTED by and under the name of the **FINANCIAL MARKETS AUTHORITY** by:

  
Chief Executive

EXECUTED by FORSYTH BARR LIMITED by:

Neil PAVOUR

Director/ Authorised Signature

NEIL PAVOUR-SMITH

Director/ Authorised Name

Shane Edmond

Director/ Authorised Signature

Shane Edmond

Director/ Authorised Name

EXECUTED by FORSYTH BARR GROUP LIMITED by:

Neil PAVOUR

Director/ Authorised Signature

NEIL PAVOUR-SMITH

Director/ Authorised Name

Shane Edmond

Director/ Authorised Signature

Shane Edmond

Director/ Authorised Name

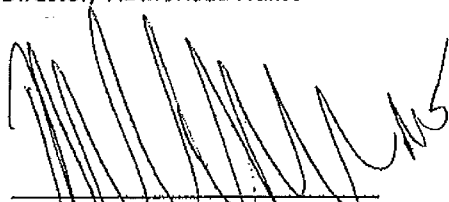
EXECUTED by CREDIT AGRICOLE CIB by:



Director/ Authorised Signature

Richard Graham Williams

Director/ Authorised Name



Director/ Authorised Signature

ANTHONY

Director/ Authorised Name

EXECUTED by Credit Sail Limited by:

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Director/ Authorised Signature

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Director/ Authorised Name

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Director/ Authorised Signature

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Director/ Authorised Name

EXECUTED by CREDIT AGRICOLE CIB by:

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Director/ Authorised Signature

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Director/ Authorised Name

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Director/ Authorised Signature

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Director/ Authorised Name

EXECUTED by Credit Sail Limited by:

  
\_\_\_\_\_  
Director/ Authorised Signature

**Marc Randall**  
\_\_\_\_\_  
Director/ Authorised Name

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Director/ Authorised Signature

\_\_\_\_\_  
Director/ Authorised Name



EXECUTED by Calyon Hong Kong Limited by:


Alain J. Martin  
Director/ Authorised Signature

HERVE MARTIN  
Director/ Authorised Name

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Director/ Authorised Signature

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Director/ Authorised Name

EXECUTED by Calyon Hong Kong Limited by:



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Director/ Authorised Signature

MARC ANDRE POIRIER

\_\_\_\_\_  
Director/ Authorised Name

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Director/ Authorised Signature

\_\_\_\_\_  
Director/ Authorised Name

**Annexure – draft of the Commission Settlement**