

Settlement Agreement

Financial Markets Authority

Matthew Geoffrey Hill

Settlement Agreement dated 17 January 2024

Parties

Financial Markets Authority, a Crown entity established under section 6 of the Financial Markets Authority Act 2011 (FMA);

Matthew Geoffrey Hill of Kirribilli, Sydney (Mr Hill);

(together, the Parties).

1 Introduction

- 1.1 Mr Hill is the former CEO of New Talisman Gold Mines Limited (NTL), an issuer with ordinary shares listed on the New Zealand and Australian stock exchanges.
- 1.2 Between December 2012 and July 2020, Mr Hill anonymously published 136 posts about NTL to an online discussion forum, in a thread dedicated to that company. Those posts were published under two aliases, referred to aspects of NTL's business and/or market activity, and did not disclose Mr Hill's connection to NTL.
- 1.3 The FMA carried out an investigation into Mr Hill's conduct in July 2020 (Investigation).
- 1.4 Subsequently, the FMA filed proceedings in the High Court against Mr Hill alleging that Mr Hill's conduct disclosed breaches of the Financial Markets Conduct Act 2013 and the Securities Markets Act 1988.
- 1.5 The Parties have reached a settlement regarding the matters to be determined in the Proceeding, on the terms set out in this Agreement.
- 1.6 This Agreement may be made public by the FMA (including by publication of it on the FMA's website) following the public release of the Penalty Judgment.

2 Interpretation

- 2.1 For the purposes of this Agreement:
 - (a) **Act** means the Financial Markets Conduct Act 2013;
 - (b) **Admitted Cause of Action** means the cause of action contained in the Amended Statement of Claim;
 - (c) **Agreed Recommended Penalty** means the pecuniary penalty defined in clause 4.3(a);
 - (d) **Agreement** means this settlement agreement and the schedules attached to it;

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- (e) **Amended Statement of Claim** means the amended statement of claim annexed as **Schedule 2** to this Agreement;
- (f) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;
- (g) **Defaulting Party** has the meaning as set out in clause 8.1;
- (h) Dollar amounts stated are New Zealand dollars;
- (i) **Default Notice** means a written notice issued under clause 8.3 by one Party giving notice that the other Party is in breach of the Agreement;
- (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Investigation and the Proceeding;
- (k) **Investigation** has the meaning set out in paragraph 1.3;
- (l) **Joint Memorandum** means the joint memorandum of counsel attached as **Schedule 1** to this Agreement;
- (m) **Notice of Admissions** means the notice of admissions attached as **Schedule 3** to this Agreement;
- (n) **Notifying Party** has the meaning set out in clause 8.1;
- (o) **Party** means any party to this Agreement;
- (p) **Penalty Hearing** means any hearing or fixture in the Proceeding at which the FMA and Mr Hill will ask the Court to approve the order set out in clause 4.3;
- (q) **Penalty Judgment** means the judgment of the Court determining the pecuniary penalty payable by Mr Hill in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;
- (r) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;
- (s) **Proceeding** means the civil proceeding brought by the FMA in the High Court of New Zealand as CIV-2021-404-1266 as amended by the filing of the Amended Statement of Claim, and includes any appeals;
- (t) **Working Day** has the definition set out in r 1.3 of the High Court Rules 2016.

3 Resolution

- 3.1 The Parties have reached a full and final settlement of:
 - (a) the claims against Mr Hill arising out of the Investigation and which are set out in the Proceeding; and



- (b) any claims that could have been made by the FMA against Mr Hill in relation to the failures described in the Amended Statement of Claim.
- 3.2 The Parties agree to resolve the Proceeding and the Investigation by:
- (a) the FMA filing the Joint Memorandum, enclosing the Amended Statement of Claim within one Working Day of this Agreement;
 - (b) the FMA filing the Amended Statement of Claim within one Working Day of when leave to do so is granted;
 - (c) the next Working Day, Mr Hill filing the Notice of Admissions;
 - (d) Mr Hill paying any Penalty Judgment in accordance with clause 5; and
 - (e) otherwise on the basis set out in this Agreement.
- 3.3 The admissions made by Mr Hill are made only for the purposes, and in respect, of resolving the Proceeding, and are not made for the purposes, or in respect, of any other claims, actions, proceedings or investigations.
- 3.4 The FMA will not commence or continue further proceedings against Mr Hill in connection with matters that are subject of the Proceeding and Investigation.
- 3.5 For the avoidance of doubt, nothing in this Agreement shall be construed as:
- (a) resolving any past, continuing, or future contraventions of the Act about which the FMA does not have reasonable notice; or
 - (b) preventing the FMA from commencing or continuing any civil or criminal proceedings against Mr Hill in respect of the matters described in clause 3.5(a).

4 Imposition of the Agreed Recommended Penalty

Progression to Penalty Hearing

- 4.1 The FMA and Mr Hill will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date that the Court proposes that is convenient to counsel.

Consultation on penalty submissions

- 4.2 The FMA and Mr Hill will:
- (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least ten Working Days before that party is to file the submissions or memorandum with the Court;
 - (b) provide any comments on a submission or memorandum received in accordance with clause 4.2(a) not more than five Working Days after receiving those submissions or that memorandum; and



- (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

Agreed Recommended Penalty and content of penalty submissions

4.3 The FMA and Mr Hill agree and undertake that:

- (a) the Agreed Recommended Penalty for the Admitted Cause of Action is a final penalty of \$100,000;
- (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
- (c) in their respective written and oral submissions, they will indicate that it is appropriate for the maximum amount of the pecuniary penalty for to be set under s 490(1)(a) of the Act;
- (d) they will make written and oral submissions recommending to the Court that it adopt a starting point of \$120,000;
- (e) they will make written and oral submissions recommending to the Court that it apply a discount of one-sixth to the starting point for all mitigating factors; and
- (f) they will otherwise support the Agreed Recommended Penalty before the Court and that they will not seek in any way to suggest or argue to the Court that a different penalty should be imposed.

4.4 The Parties agree that all material facts for the purposes of the Proceeding are:

- (a) the matters relating to Mr Hill's conduct, as described in the Amended Statement of Claim;
- (b) the following matters, which are not included in the Amended Statement of Claim but which may properly be the subject of submissions by either Party:
 - (i) the fact that Mr Hill has not previously been found to have breached the Act; and
 - (ii) the extent to which Mr Hill cooperated with the Investigation and the Proceeding.

Court Costs

4.5 The FMA and Mr Hill:

- (a) acknowledge that the final penalty ordered by the Court will be first applied to paying the FMA's actual costs in bringing the Proceeding, given the effect of s 493 of the Act; and
- (b) agree to ask the Court that there be no further order for costs.

- 4.6 The Parties agree that no Party will seek any other costs award in the Proceeding, other than costs arising:
- (a) from any breach of this Agreement; and/or
 - (b) following the service of a Default Notice in accordance with clause 8.3.

5 Payment of Penalty

- 5.1 On the execution of this agreement, Mr Hill will:
- (a) pay an amount equal to the Agreed Recommended Penalty to his solicitors' trust account; and
 - (b) instruct his solicitors to confirm to the FMA's counsel when that amount has been received by them into that account.
- 5.2 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, within 5 Working Days of the Penalty Judgment Mr Hill will direct his solicitors to pay the amount of the Agreed Recommended Penalty from their trust account into the bank account nominated by the FMA.
- 5.3 If the High Court does not impose the Agreed Recommended Penalty in the Penalty Judgment, then Mr Hill will pay (including, in respect of the funds held on trust, by directing his solicitors to pay) into the bank account nominated by the FMA any pecuniary penalty ordered by the High Court within 15 Working Days of the date of the Penalty Judgment unless, prior to the expiration of that period, a stay of the Penalty Judgment pending determination of an appeal is granted.
- 5.4 If a Penalty Judgment is issued by an appellate Court, Mr Hill (on the one hand), or the FMA (on the other hand), as applicable, shall pay to the other any difference between any pecuniary penalty paid by Mr Hill in accordance with clause 5.3 and the amount ordered by the appellate Court, together with any costs awarded by the appellate Court, into the bank account nominated by the FMA or Mr Hill. For the avoidance of doubt, if no pecuniary penalty has been paid by Mr Hill when a Penalty Judgment is issued by an appellate Court, this difference will be the total amount ordered by the appellate Court. The payment will be made within 15 Working Days of the date of the appellate judgment or within any other time period specified by the appellate judgment, whichever is later.
- 5.5 If a stay of the Penalty Judgment is granted pending determination of an appeal, Mr Hill agrees to pay interest as prescribed by the Interest on Money Claims Act 2016 on any amount it has to pay to the FMA under clause 5.4. Interest will accrue from the date of the Penalty Judgment until payment is made in full.
- 5.6 For the avoidance of doubt, if the FMA is required to refund any amount under clause 5.4, the only interest to be paid is that actually earned, if any, on the amount to be refunded.



6 Confidentiality and comment

Comment prior to release of Penalty Judgment

- 6.1 Prior to the Penalty Hearing, the Parties:
- (a) may make public comments limited to the facts that:
 - (i) Mr Hill has admitted a breach of s 22(d) of the Act;
 - (ii) the Parties have asked the Court to convene a hearing for the purpose of imposing a pecuniary penalty on Mr Hill under s 489 of the Act in respect of that admitted breach; and
 - (iii) the FMA has discontinued its causes of action alleging breaches of s 262 of the Act and s 11 of the Securities Markets Act 1988; and
 - (b) may not otherwise make public comment in relation to this Agreement, the Proceeding and/or the Penalty Hearing.
- 6.2 Between the date of the Penalty Hearing and prior to the public release of the Penalty Judgment, the Parties may not issue a media release or make a public comment in relation to this Agreement, the Proceeding and/or the Penalty Hearing.

Comment after release of Penalty Judgment

- 6.3 Subject to clause 6.4, any Party may issue a media release or make a public comment in relation to this Agreement and/or the outcome of the Penalty Hearing after the public release of the Penalty Judgment.
- 6.4 Mr Hill will not issue any media release or make any public comment permitted by clause 6.3 until after the FMA has made a media release or public comment as permitted by clause 6.3.

Principles applying to comments

- 6.5 The Parties agree:
- (a) to make only media releases or public comments in good faith that are consistent with the Penalty Judgment and the content, spirit and intent of this Agreement including the schedules;
 - (b) in relation to any media release made under clause 6.3, that the Party issuing the media release will provide a copy of the media release to the other Party at least one hour in advance of the release being published to allow the other party the opportunity to comment. The Parties agree that the purpose of providing an advance copy of a media release is to allow the other Party to have the opportunity to comment and provide advanced notice so as to inform its own position (and not for approval). A party is not obligated to accept the comments of the other party.



7 Appeals from the Penalty Judgment

- 7.1 If the Court imposes the Agreed Recommended Penalty, no Party may appeal or apply to recall or set aside the Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 7.2 If, following submissions from the FMA and Mr Hill consistent with clause 4.3, the Court imposes any penalty that differs from the Agreed Recommended Penalty, either the FMA or Mr Hill may appeal the Penalty Judgment.
- 7.3 In the event that an appeal is brought under clause 7.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.3; and
 - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

8 Non-compliance with Agreement

Default Notice for breaches of the Agreement

- 8.1 If any Party (the **Notifying Party**) suspects or believes that the other Party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
 - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 8.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party a reasonable opportunity to:
 - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur; and
 - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
 - (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.
- 8.3 If the Notifying Party has followed the process in clauses 8.1 and 8.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).



Notifying Party may take steps or commence proceedings following a Default Notice

- 8.4 Following service of a Default Notice, the Notifying Party may:
- (a) take any further steps in or relating to the Proceeding, including (without limitation) applying to set aside the Penalty Judgment or to appeal the Penalty Judgment in accordance with clause 7.2;
 - (b) take any steps to enforce the obligations outlined in this Agreement;
 - (c) seek an award of costs in respect of the matter giving rise to the Default Notice; and/or
 - (d) terminate the Agreement.
- 8.5 Upon termination of the Agreement:
- (a) Mr Hill remains subject to the agreements and acknowledgements given in clause 8.6 below;
 - (b) the Parties shall otherwise be released from any further obligations in relation to it and the position of the Parties in the Proceedings shall be at large (including for the avoidance of doubt as to amendment of the pleadings inconsistent with the Amended Statement of Claim attached in Schedule 2, the withdrawal of the admissions set out in the Notice of Admissions set out in Schedule 3, or the imposition of a pecuniary penalty or other orders inconsistent with this Agreement).
- 8.6 If this Agreement is terminated following the service of a Default Notice on Mr Hill:
- (a) Mr Hill acknowledges that any amended pleading subsequently filed by the FMA may reintroduce (without limitation) any cause of action discontinued by the Amended Statement of Claim; and
 - (b) Mr Hill agrees not to assert that the FMA is precluded from doing so, or that it is precluded from seeking relief in those circumstances for any reason (including because of any limitation defence).
- 8.7 The Parties agree that it shall not constitute a breach of this Agreement for any of them to make submissions in any Court in any other proceedings with respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

Breach of obligation to pay pecuniary penalty

- 8.8 If Mr Hill or the FMA fails to make all or part of the payments referred to in clause 5 within the time specified, after first providing seven Working Days for the Party to rectify that breach, the other Party (the **Enforcing Party**) is:
- (a) entitled to enforce the Penalty Judgment;
 - (b) entitled to claim interest as prescribed by the Interest on Money Claims Act 2016 on the balance payable until the penalty, or difference owing or any costs awarded under clauses 5.4 are paid in full; and

- (c) entitled to its costs, including its legal costs on a solicitor-client basis, arising from the failure to comply with clause 5.
- 8.9 Nothing in clause 8.8 limits the ability of the Enforcing Party to also issue a Default Notice in accordance with clauses 8.1 to 8.3 above.

9 General

Entire agreement

- 9.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding. It fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.
- 9.2 The Parties represent and agree that:
- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
 - (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
 - (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

Use and disclosure of Information

- 9.3 The FMA may use Information provided by Mr Hill for the purpose of carrying out the FMA's functions or obligations under any enactment, but may not disclose such Information to any third party other than in accordance with clauses 9.4, 9.6 and 9.7 below.
- 9.4 Subject to legal professional privilege and privilege for without prejudice settlement negotiations, the FMA may disclose Information provided by the Mr Hill in the following circumstances:
- (a) with Mr Hill's prior written consent;
 - (b) to witnesses, solicitors, barristers and other advisers or consultants retained by the FMA in the Proceeding, or proceedings instituted in accordance with clauses 7.2 and 8.4;
 - (c) to any Court in the Proceeding, or proceedings instituted in accordance with clauses 7.2 and 8.4;
 - (d) pursuant to section 30 of the Financial Markets Authority Act 2011; or
 - (e) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 2020). For the avoidance of doubt, the FMA may use any Information provided by Mr Hill for such purposes as are reasonably necessary to give effect to the Agreement.

- 9.5 The FMA or Mr Hill may use Information provided by the other Party in proceedings instituted in accordance with clause 8.4 except Information that has been provided by a Party on a without prejudice basis.
- 9.6 The FMA agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of the Information that Mr Hill has provided to the FMA in relation to this Proceeding and Investigation, including voluntarily or under compulsion, it will notify Mr Hill of that request and consult as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982. The FMA will notify Mr Hill at least five Working Days before responding to the request, if notwithstanding such consideration, it determines no grounds exist on which it may refuse to comply with the request.
- 9.7 Subject to clauses 9.4 and 9.6, if the FMA wishes to disclose to a third party any Information provided to it by Mr Hill during the Investigation or in the Proceeding or if any third party requests from the FMA disclosure of such Information, the FMA will use its best endeavours to notify Mr Hill and provide him with a reasonable opportunity to oppose such a request, including by Court action.

Amendments in writing

- 9.8 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

Authorities

- 9.9 Each person executing this Agreement warrants that they have the full authority to enter into this Agreement and bind the Party for which they purport to enter into this Agreement.

Severance

- 9.10 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

Parties to bear their own costs

- 9.11 Each Party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

Governing law

- 9.12 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

Further assurances

- 9.13 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.



No waiver

- 9.14 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

Counterparts

- 9.15 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

10 Communications

- 10.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the FMA, by hand delivery or email to the following address:

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square, Britomart
Auckland

Attention: Margot Gatland, Head of Enforcement

Email: margot.gatland@fma.govt.nz

Copy to:

Meredith Connell
Level 7, 8 Hardinge Street
Auckland

Attention: Andy Luck

Email: Andy.Luck@mc.co.nz

- (b) If addressed to Mr Hill by hand delivery or email to the following address:

Unit 4, 10 Holbrook Avenue
Kirribilli
Sydney, New South Wales 2061

Copy to:

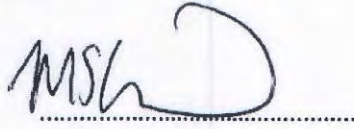
Wotton + Kearney
Level 18, 191 Queen Street
Auckland 1010

Attention: Michael Cavanaugh

Email: michael.cavanaugh@wottonkearney.com

Execution

**Signed by and on behalf of
Financial Markets Authority**

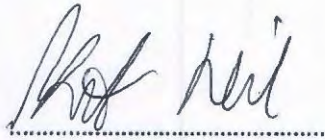


Authorised signatory

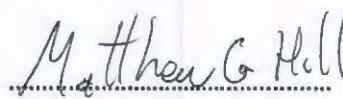
Margot Gatland, Head of Enforcement

Name

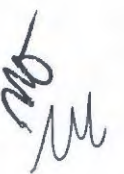
Signed by Matthew Geoffrey Hill



Signature



Name



Schedule 1: Joint Memorandum of Counsel

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**In the High Court of New Zealand
Auckland Registry**

**I te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe**

CIV-2021-404-1266

Between **Financial Markets Authority**
Plaintiff

And **Matthew Geoffrey Hill**
Defendant

Joint memorandum of counsel

[Dated]

MC.

Nick Flanagan | Andy Luck
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063
T: +64 9 336 7500
Nick.Flanagan@mc.co.nz | Andy.Luck@mc.co.nz



Joint memorandum of counsel

May it please the Court

1 This matter was scheduled for a trial commencing on 19 February 2024. The parties (the FMA and Mr Hill) have now entered into a settlement agreement for resolution of this matter, on the basis that:

- (a) the FMA will seek leave to file an amended statement of claim;
- (b) assuming leave is granted, Mr Hill will file a notice of admissions; and
- (c) the parties will jointly approach the Court seeking the imposition of a pecuniary penalty at an agreed level.

Leave to file amended statement of claim

2 The close of pleadings date in this matter was on 28 July 2023. Accordingly:

- (a) the FMA seeks the Court's leave under r 7.7 of the High Court Rules to file the amended statement of claim; and
- (b) Mr Hill supports that application for leave.

3 The parties submit that it is in the interests of justice for leave to be granted, given that the amended statement of claim has been prepared to give effect to the agreed resolution between the parties. A copy of the amended statement of claim sought to be filed is enclosed with this memorandum.

4 There are no issues between the parties as to the costs of the amended pleading.

Progression to a penalty hearing

5 If leave is granted, the parties also respectfully seek directions that:

- (a) a one and a half hour fixture is scheduled for determination of the appropriate pecuniary penalty (in consultation with counsel as to their availability);
- (b) the FMA's submissions are filed 10 working days prior to the hearing; and
- (c) Mr Hill's submissions are filed five working days prior to the hearing.

Date:

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N F Flanagan | A D Luck
Counsel for the FMA

.....
W A Holden | M A Cavanaugh
Counsel for Mr Hill

Schedule 2: Amended Statement of Claim

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**In the High Court of New Zealand
Auckland Registry**

**I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV-2021-404-1266

Under **The Financial Markets Conduct Act 2013**

Between **Financial Markets Authority**
Plaintiff

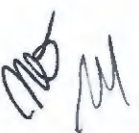
And **Matthew Geoffrey Hill**
Defendant

Amended statement of claim

[Date]

MC.

N F Flanagan | A D Luck
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063
T: +64 9 336 7500
Nick.Flanagan@mc.co.nz | Andy.Luck@mc.co.nz



Amended statement of claim

The plaintiff by its solicitor says:

The Parties

- 1 The plaintiff, the Financial Markets Authority (Te Mana Tatai Hokohoko) (**FMA**), is a Crown Entity established under s 6 of the Financial Markets Authority Act 2011. Its functions include enforcement of the Financial Markets Conduct Act 2013 (**FMCA**).
- 2 The defendant, Matthew Geoffrey Hill (**Mr Hill**) was at all relevant times a director, a shareholder, and the Chief Executive Officer of New Talisman Gold Mines Limited (**New Talisman**).
- 3 **Mr Hill**:
 - (a) holds a Master of Business Administration and a Graduate Diploma in Applied Finance; and
 - (b) was at all relevant times:
 - (i) a fellow of the Financial Services Institute of Australasia; and
 - (ii) a member of the Australian Institute of Company Directors.
- 4 At all relevant times, Mr Hill was responsible for overseeing New Talisman's day-to-day operations and capital raising initiatives.

Third parties

New Talisman

- 5 **New Talisman**:
 - (a) was incorporated on 23 August 1985;
 - (b) is, and at all relevant times was, a listed company with ordinary shares listed on the New Zealand stock exchange (**NZX**) and the Australian stock exchange (**ASX**) under the code "NTL";
 - (c) carries on business in gold mining and gold exploration; and
 - (d) holds:
 - (i) a mining permit for the Talisman goldmine project; and
 - (ii) an exploration permit for the Rahu exploration project.

Sharetrader

- 6 <http://www.sharetrader.co.nz> (**Sharetrader**) is a New Zealand-based internet bulletin board that hosts public discussions about investment opportunities, including investments in NZX and ASX-listed securities.

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- 7 Sharetrader:
- (a) is owned and operated by Tarawera Publishing Limited;
 - (b) describes itself as “NZ’s number one share market forum for investors”;
 - (c) is accessible by members of the public, including professional and non-professional investors; and
 - (d) contains discussion threads consisting of posts dedicated to NZX-listed securities.

Sharetrader registration and member profiles

- 8 Users of Sharetrader can either:
- (a) register to use the site as a “member”, which allows the user to create, and participate in, discussion threads; or otherwise
 - (b) view discussion threads as a “guest”.

- 9 The process of registering on Sharetrader includes the following steps:

- (a) users must first:
 - (i) select a username, which is the name appearing next to a user’s posts on Sharetrader;
 - (ii) provide a valid email address to Sharetrader;
 - (iii) select a box stating that they have read and agree to abide by Sharetrader’s “Forum Rules”; and
- (b) Sharetrader then:
 - (i) verifies the email address provided by the user, via an automated process; and if verified
 - (ii) reviews the user’s account, to determine whether the registrant is a legitimate user (ie. to determine whether the person is a spammer or if they have been banned previously); and then
 - (iii) activates the account, allowing the user to post on the forums.

- 10 At all relevant times, Sharetrader’s “Forum Rules” included a rule providing that “Users will not use Sharetrader to conduct any activity that is illegal (such as misleading and deceptive conduct)”.

- 11 Every activated user account has a profile page (**Profile**) which:

- (a) can be viewed by any other user with an activated user account;
- (b) can be accessed by clicking on a hyperlink accompanying any of the user’s posts;
- (c) contains statistical information about the user, including the number of posts they have published and the date their Profile was registered; and



- (d) includes space for a user to provide information about themselves, under a section entitled "About Me".

The New Talisman Sharetrader Thread

- 12 At all relevant times, Sharetrader had:
- (a) a forum dedicated to discussions of NZX-listed securities; and
 - (b) a discussion thread, situated within that forum, which was dedicated to discussion about New Talisman (**New Talisman Thread**).

- 13 The New Talisman Thread:
- (a) was established on 17 December 2012;
 - (b) was entitled, "NTL – New Talisman Gold Mines – Worth a look"; and
 - (c) is active, having been retitled several times.

Mr Hill published posts on the New Talisman Thread

- 14 On 30 January 2013, Mr Hill registered a Profile with the username "bullish" (**Bullish Profile**).
- 15 On 23 January 2014, Mr Hill registered a second Profile with the username "epithermal" (**Epithermal Profile**). Mr Hill did so during a period when he was unable to access the Bullish Profile.
- 16 The Bullish and Epithermal Profiles:
- (a) did not identify Mr Hill as the user of either profile; and
 - (b) did not disclose that the profiles were operated by a person affiliated with NTL.
- 17 At no stage did Mr Hill have or use any other registered Profile on Sharetrader.
- 18 Between January 2013 and July 2019, Mr Hill published 136 posts (collectively, the **Sharetrader Posts**) on the New Talisman Thread using either the Bullish Profile or the Epithermal Profile, the text of which are set out in full in **Schedule 1**.

Particulars for paragraph 18

- (a) Between 6 February 2013 and 20 December 2013:
 - (i) Mr Hill published 46 posts using the Bullish Profile. These are set out in Schedule 1 as posts: 1 - 46 (collectively, the **Pre-FMCA Posts**).
- (b) Between 30 April 2014 and 1 July 2020:
 - (i) Mr Hill published 63 posts using the Bullish Profile. These are set out in Schedule 1 as posts: 61, 62, 63, 66, 71, 72, 79, 80, 82 - 136.

- (ii) Mr Hill published 27 posts using the Epithermal Profile. These are set out in Schedule 1 as posts: 47 - 60, 64, 65, 67 - 70, 73 - 78, and 81.

(collectively, the **FMCA Posts**).

19 In the Sharetrader Posts, Mr Hill:

- (a) did not disclose:
 - (i) his identity; or
 - (ii) his affiliations with New Talisman;
- (b) conveyed the impression that the users of the Bullish and Epithermal Profiles were separate individuals who were not affiliated with New Talisman or its management;

Particulars of paragraph 19(b)

Pre-FMCA Posts: 4, 5, 9, 10, 12 - 14, 18, 20 - 26, 28, 29, 31, 33, 35, 37 - 42, 45.

FMCA Posts: 47, 55, 56, 61, 64, 68, 77, 81 - 86, 89, 91 - 95, 98 - 103, 105, 106, 108 - 110, 117, 119, 122 - 126, 128, 131 - 133.

- (c) provided technical information of a kind which conveyed that the users of the Bullish and Epithermal Profiles were familiar with:
 - (i) New Talisman's business; and/or
 - (ii) the gold prospecting and/or mining industry generally;

Particulars of paragraph 19(c)

Pre-FMCA Posts: 1, 2, 4, 5, 7, 9 - 15, 18 - 22, 26, 29, 31, 33 - 35, 37, 38, 41, 45 - 46.

FMCA Posts: 47, 49, 52 - 54, 56, 59, 61, 65, 68, 69, 71, 73, 78, 79 - 84, 86, 88, 89, 92 - 95, 98 - 102, 104, 105, 108 - 110, 118, 119, 122 - 125, 127, 129 - 132.

- (d) praised the performance of New Talisman and its management;

Particulars of paragraph 19(d)

Pre-FMCA Posts: 3 - 6, 10 - 14, 19, 20, 22, 24, 26, 28, 29, 31 - 34, 36 - 38, 41, 45 - 46

FMCA Posts: 47, 54, 59, 65, 69 - 71, 78, 79, 82, 83, 86, 89, 91, 93 - 95, 99, 102, 104, 105, 109, 117, 120 - 126.

- (e) encouraged others to invest in New Talisman;

Particulars of paragraph 19(e)

Pre-FMCA Posts: 10 - 12, 20, 22, 27, 28, 31 - 33, 36 - 38, 40, 45 - 46.

FMCA Posts: 47, 51, 54, 58, 79, 83, 86, 87, 89, 95, 96, 103, 104, 109, 123 - 125.

- (f) established, or attempted to establish, familiarity and/or rapport with other users who had posted in the New Talisman Thread, including by replying to their posts;

Particulars of paragraph 19(f)

Pre-FMCA Posts: 2, 3, 5, 6, 8 - 11, 13, 14, 17 - 20, 23, 26, 28, 30, 31, 34, 35, 37 - 46.

FMCA Posts: 47 - 50, 53, 55, 57 - 59, 64, 67, 68, 70, 71, 78, 79, 84 - 96, 98 - 101, 103, 104, 106, 108 - 110, 113, 115 - 117, 119, 121 - 129, 131 - 133, 135, 136.

- (g) disparaged particular users who had expressed negative or cautious views regarding investing in New Talisman; and

Particulars of paragraph 19(g)

Pre-FMCA Posts: 2, 3, 5, 6, 8, 10, 11, 13, 14, 16, 17, 19, 31, 34, 35, 39, 40.

FMCA Posts: 47, 49, 53, 59, 60, 63 - 65, 68, 75, 78, 80 - 86, 92, 93, 94, 101, 110, 112, 113, 118, 119, 123, 125, 126, 128 - 130, 133 - 136.

- (h) asserted that other users, who had expressed negative or cautious views regarding New Talisman, had engaged in conduct that would breach provisions of the Securities Markets Act 1988 and/or the FMCA (as applicable).

Particulars of paragraph 19(h)

Pre-FMCA Posts: 6, 8, 14.

FMCA Posts: 59, 60, 78, 81, 112, 113, 119, 129, 130 and 136.

Suspension from Sharetrader

- 20 On or before 2 July 2020, an administrator from Sharetrader discovered that Mr Hill was responsible for creating and operating the Bullish and Epithermal Profiles. The administrator then suspended both profiles and banned Mr Hill from Sharetrader.
- 21 The FMA became aware that Mr Hill operated the Bullish and Epithermal Profiles on 3 July 2020.

First cause of action: false or misleading representations

- 22 The plaintiff repeats paragraphs 1 to 21 above.
- 23 Mr Hill published the FMCA Posts:

- (a) in trade, him being the Chief Executive Officer of New Talisman at the relevant times; and

- (b) in connection with a dealing in financial products, namely the promotion of the acquisition of shares in New Talisman.
- 24 By publishing the FMCA Posts, Mr Hill made false and/or misleading representations that New Talisman had the endorsement of persons with knowledge of the industry but who were not affiliated with the company, in breach of s 22(d) of the FMCA.

Accordingly, the plaintiff seeks:

- A. a declaration under s 486 of the FMCA that Mr Hill contravened s 22(d) of the FMCA by publishing FMCA Posts; and
- B. an order under s 489 of the FMCA that Mr Hill pay a pecuniary penalty to the Crown.

