

Media Release

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Commerce Commission secures \$60m for investors in failed Credit SaILS product

The Commerce Commission has reached a settlement with five companies that concludes its investigation into the failed investment product Credit SaILS. As part of the settlement, the companies have agreed to create a settlement fund of \$60 million to be distributed to investors who lost money when Credit SaILS failed in 2008.

The companies involved in establishing the fund were Forsyth Barr Limited, Forsyth Barr Group Limited, Credit Agricole Corporate and Investment Bank, Credit Sail Limited and Calyon Hong Kong Limited.

Credit SaILS were sophisticated debt securities marketed and sold to the New Zealand public in 2006 with the prospect of 8.5% interest income and capital protection. \$91.5 million was raised through the offer. Credit SaILS failed in 2008 and the notes are now virtually worthless. On the information available, the Commission estimates the total loss for those eligible for a share of the settlement fund is around \$70 million.

The Commission has reached the view that Credit SaILS was marketed and sold in a way that is likely to have breached the Fair Trading Act, in that:

- the representations that Credit SaILS were 'capital protected' were misleading and deceptive
- Credit SaILS were marketed to the average investor
- Credit SaILS were highly complex and unsuitable for the average investor
- and the companies who marketed and sold Credit SaILS ought to have known that the product was unsuitable for the average investor.

The companies have not admitted liability and do not accept the Commission's views on these matters.

“In our view there were sufficient grounds to file legal proceedings under the Fair Trading Act against the companies who promoted and sold Credit SaILS. While the Commission could have issued proceedings, those proceedings would likely have been lengthy, costly and with no absolute certainty of a successful outcome,” said Dr Mark Berry, Chair of the Commerce Commission.

“We believe that a settlement fund of \$60 million, available to investors from March next year, is an excellent outcome. We expect this settlement to restore eligible investors to around 85% of their original investment in Credit SaILS. We place high priority on seeking redress for businesses and consumers and we are pleased we are able to achieve this outcome for the investors,” said Dr Berry.

More than 3,000 investors bought Credit SaILS. Most of these were retail investors with a limited understanding of complex financial products like Credit SaILS. A significant number of investors are now over 70 years of age.

Under this settlement, investors will now receive about \$850 for every \$1,000 they invested in Credit SaILS. Without this settlement, investors could expect to get about \$20 from their \$1,000.

“It is crucial in relation to complex financial products that investors are provided with accurate information, particularly about the risks of a product. We believe these mostly elderly investors bought Credit SaILS because they were told that their capital was protected,” said Dr Berry.

“Consumers must be able to rely on representations made.”

Eligible investors are defined in the settlement agreement as including anyone who purchased Credit SaILS before 1 November 2008 and who still hold those notes, and anyone who purchased Credit SaILS before 1 November 2008 who has sold the notes at any time for less than 85 cents per note.

A trustee will be appointed to distribute the settlement fund to eligible investors. Investors do not need to contact the Commerce Commission or the companies – the trustee will write to all investors shortly.

The Commission's investigation has included liaison with the Financial Markets Authority, which is aware of the Commission's settlement and has agreed not to take action against the companies in light of this settlement.

The settlement deed and further information about the settlement, including more details about the settlement offer and the pay-out process, are available on the Commission's website at www.comcom.govt.nz/credit-sails/

Media interviews:

Dr Mark Berry, Chair of the Commerce Commission and Mary-Anne Borrowdale, General Counsel, Competition are both available for media interviews. Please contact through the Media Contacts at the end of this release.

Background

Credit SaILS were marketed as secured fixed interest New Zealand Dollar denominated debt securities on the following basis.

- Credit SaILS were issued on 15 June 2006 and are scheduled to mature on 22 December 2012.
- The issue price was \$1 per note.
- The minimum investment was \$5,000.
- The offer was available to members of the public.
- 91.5 million Credit SaILS were issued.

Credit SaILS were a complex debt security involving an investment in separate securities called Momentum Notes, which acted as the collateral for Credit SaILS. The performance of Credit SaILS was therefore contingent on the performance of the Momentum Notes.

Marketing of Credit SaILS

Between April and June 2006, the companies had various roles in marketing and selling Credit SaILS to New Zealand investors.

The companies participated in marketing Credit SaILS through:

- the Credit SaILS Investment Statement and Combined Investment Statement and Prospectus for Credit SaILS
- other documents prepared by the companies for the purpose of marketing Credit SaILS

- and representations made by investment advisors acting on behalf of Forsyth Barr and other New Zealand-based investment advisory firms.

More than 3,000 investors purchased Credit SaILS.

Failure of Credit SaILS

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 SaILS principal amount was dependent) experienced adverse credit events.

The total losses from these credit events resulted in the full amount of the Momentum Notes investment being lost, meaning that none of the principal amount of Credit SaILS would be returned to investors upon maturity. On 12 May 2009 Credit Sail Limited issued a public announcement that Credit SaILS 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 SaILS held.

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