

Media Release

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Lessons for finance sector from Commerce Commission investigation into Credit SaILS

The Commerce Commission is advising the finance sector to take note of the lessons to be learned from its investigation into the marketing and sale of the failed investment product Credit SaILS.

The Commission has today released its Investigation Closure Report in accordance with section 6 of the Fair Trading Act 1986 regarding publishing information that affects the interests of consumers. The release of the report also answers a number of Official Information Act 1982 requests to the Commission by members of the media.

The report summarises the evidence uncovered in the Commission's investigation of five companies associated with the marketing and sale of the product to investors.

Investors in Credit SaILS have the opportunity of being returned around 85% of the capital they lost, as a result of a \$60 million settlement reached between the Commission and the five companies; Forsyth Barr Limited, Forsyth Barr Group Limited, Credit Agricole Corporate and Investment Bank, Credit Sail Limited and Calyon Hong Kong Limited.

"This investigation has some important lessons for the industry. There are actions the industry can take to ensure they don't mislead investors," said Dr Mark Berry, Chairman of the Commerce Commission.

The Commission offers the following guidance, in line with the Financial Market Authority's guidance, to those involved in the marketing and sale of financial products.

- **All information conveyed to investors must be accurate.** This applies to information in a prospectus, offer documents, marketing materials and things said verbally by financial advisers.

- **All key terms must be disclosed up-front.** Anything significant about the offer – its upside, downside, costs, term etc – needs to be highlighted early on.
- **It is possible to mislead by silence.** What you leave out or obscure can mislead, as well as what you choose to say. Ensure that all relevant information is provided.
- **Give prominence to representations that investors will care about.** In the Credit Sails case, we thought that there was a disproportionate and misleading prominence given to the potential benefits of an investment in Credit Sails. The risks were found on pg 42 of the offer; we say that is so unbalanced and lacking in prominence as to be misleading.
- **Claims of capital protection and capital guarantee should be avoided unless they are perfectly true.** Investors in this case thought that ‘capital protection’ meant that the capital was guaranteed against loss. This is what ‘protection’ means to the average non-expert investor.
- **Use plain English, not technical jargon.** Investors will take different meanings from the language than financial institutions and brokers. For example, investors in Credit Sails understood the phrase “Capital protected by AA Rated collateral” to mean that their capital was effectively guaranteed against loss.
- **Financial advisors are a critical source of information for investors.** Whatever the documents say, advisors can mislead investors by what they say. Where products are new or highly complex, promoters must ensure that all intermediaries who sell the product are given genuine grounding in the products and thorough information. Otherwise selling agents can be put in a position where they mislead investors.
- **Sellers of investment products should ensure that investments are suitable for the investors to whom they are offered.** Complex and difficult to understand products should not be targeted at unsophisticated retail investors. Marketing and sales should be tailored to appropriate buyers and buyers given accurate information in an even-handed way.
- **Investments made on behalf of others must be consistent with the risk appetite of the investor.** Where financial advisers are in the position to make investments on behalf of others, they must be absolutely confident that they are investing consistently with the express risk profile of the customer. This necessarily means being fully familiar with what they are selling and all its attendant risks.
- **Creators and promoters of investment products may have liability even where they are not named as an ‘issuer’ or ‘promoter’.** Liability is determined by the substance of what companies do and say, not by their roles as they choose to designate them.

You can read the Commission’s Credit Sails Investigation Closure Report at www.comcom.govt.nz/credit-sails/

FMA has published Effective Disclosure Guidance to help issuers and promoters of investment products to ensure that they give investors meaningful and easy-to-read information about the risks, rewards, and costs of investments
http://www.fma.govt.nz/media/1105126/guidance_note_-_effective_disclosure_june_2012.pdf

Background

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.

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