

**RHYS ANTHONY GREENSILL, RODNEY SEYMOUR ROBERTS GREENSILL, BARRY NOEL LAMBERT, AND
CHRISTOPHER BRUCE SIMKIN**
(the Directors)

FINANCIAL MARKETS AUTHORITY
(FMA)

ENFORCEABLE UNDERTAKING

Date: 13th January 2011

PARTIES

RHYS ANTHONY GREENSILL, RODNEY SEYMOUR ROBERTS GREENSILL, BARRY NOEL LAMBERT AND CHRISTOPHER BRUCE SIMKIN (*the Directors*)

FINANCIAL MARKETS AUTHORITY (FMA)

INTRODUCTION

This undertaking is offered to FMA for acceptance under section 46 of the Financial Markets Authority Act 2011 by the Directors.

BACKGROUND

- A. Between June 2006 and April 2008, Kiwi Finance Limited (in receivership and voluntary administration) (*Kiwi Finance*) offered debt securities to the public under prospectuses dated 23 June 2006, 16 January 2007 and 29 June 2007.
- B. Kiwi Finance was put into receivership by its trustee, Perpetual Trust Limited, on 17 April 2008 owing depositors \$1,711,611. Its receivers have made payments to investors totaling 30 cents in the dollar and have reported that they do not expect to make any further payments.
- C. The Directors were each directors of Kiwi Finance for part or all of the period during which it offered debt securities to the public.
- D. FMA has investigated whether to prosecute the Directors for breaches of the Securities Act 1978 in relation to Kiwi Finance and Kiwi Capital Limited (*the Investigation*) and has also considered whether to bring civil proceedings seeking pecuniary penalties (*the Civil Claim*). FMA is in possession of prima facie evidence that breaches have occurred.
- E. The Directors have agreed to give enforceable undertakings to FMA under section 46 of the Financial Markets Authority Act 2011.
- F. FMA is committed to enforcement action that targets conduct which harms or presents the greatest likelihood of harm to the function of open, transparent, and efficient capital markets. This enforceable undertaking provides for investors to be repaid in full, including interest, through to the date of receivership and restricts the Directors from being involved in the management of an issuer of debt securities. Accordingly, the undertaking is consistent with FMA's enforcement policy.

Interpretation provision

- G. The words “promoter”, “debt security” and “issuer” have the meanings set out in section 2 of the Securities Act 1978.

THE PARTIES AGREE as follows:

ENFORCEABLE UNDERTAKINGS BY THE DIRECTORS

1. The Directors undertake that, within 14 days of the date of this undertaking, they will distribute to Kiwi Finance depositors correspondence offering to purchase their Kiwi Finance debenture stock in the form annexed in schedule 1 to this agreement (*the Offer*) and will use all reasonable endeavours over the 12 months following the date of this undertaking to make Kiwi Finance depositors aware of the Offer.
2. The Directors undertake that, after 30 days, 60 days and 12 months of the date of this undertaking, they will report to FMA regarding how many Kiwi Finance depositors have:
 - a. Accepted the Offer,
 - b. Rejected the Offer,
 - c. Not responded to the Offer.
3. The Directors undertake that, after 30 days from the date of this undertaking, they will distribute to the Kiwi Finance depositors who have not responded to this letter, a reminder letter in the form annexed in schedule 2 to this agreement.
4. Rodney Seymour Roberts Greensill undertakes that:
 - a. he will not act as the director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of an issuer of debt securities for five years from the date of this undertaking; and
 - b. he will perform his obligations under any agreements for sale and purchase concluded as a result of the Offer in accordance with the terms of the agreements.
5. Rhys Anthony Greensill undertakes that:
 - a. he will not act as the director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of an issuer of debt securities for three years from the date of this undertaking;
 - b. upon the execution of this undertaking by all parties, he will arrange to deposit sufficient funds with Ellis Gould Lawyers to meet the Directors’ obligations under the Offer (*Trust Funds*), on terms that the Trust Funds will be released only in payment of the purchase price under any agreements for sale and purchase concluded as a result of the Offer, or to Mr Rhys Greensill if a Kiwi Finance investor rejects the Offer; and

- c. he will perform his obligations under any agreements for sale and purchase concluded as a result of the Offer in accordance with the terms of the agreements; and
 - d. if a Kiwi Finance depositor has not responded to this offer within 12 months, and FMA is satisfied that the Directors have made all reasonable endeavours to make Kiwi Finance depositors aware of this offer, the remaining Trust Funds which had been set aside for those Kiwi Finance depositors will be returned to Mr Rhys Greensill.
6. Barry Noel Lambert undertakes that he will not act as the director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of an issuer of debt securities for five years from the date of this undertaking.
7. Christopher Bruce Simkin undertakes that he will not act as the director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of an issuer of debt securities for five years from the date of this undertaking.
8. The Directors agree that their undertakings set out in clauses 1 to 7 above (*the Directors' Undertakings*) are given to FMA under section 46 of the Financial Markets Authority Act 2011 and may be enforced by FMA under section 47 of that Act.

NO ADMISSION OF LIABILITY

9. The parties acknowledge that the Directors' Undertakings are given without any admission of liability.

SETTLEMENT OF CLAIM

10. FMA accepts the Directors' Undertakings in full and final settlement of the Civil Claim and of all claims that it has or may have against the Directors in any way arising out of or relating to the Civil Claim, Kiwi Finance or Kiwi Capital Limited.
11. In consideration of the Directors' undertakings, FMA confirms that the Investigation is now concluded.

UNAFFECTED RIGHTS

12. Nothing in this document shall limit or affect the ability of FMA to issue criminal proceedings against any person, other than the Directors, in relation to the Investigation.
13. Nothing in this document shall limit or affect the ability of FMA to issue proceedings against the Directors in respect of matters not related to the Investigation, or in respect of conduct engaged in by any of them after the date of this document.
14. Subject to clauses 10 and 11, the Directors acknowledge that FMA's acceptance of an enforceable undertaking under section 46 of the Financial Markets Authority Act 2011 does not affect FMA's power to investigate future conduct of any person, to take any action or to

exercise any power under the Securities Act 1978 or the Financial Markets Authority Act 2011, or any other legislation, or to refer any matter for criminal prosecution or seek civil penalty.

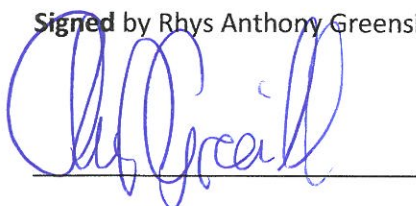
ACKNOWLEDGEMENTS

15. The Directors acknowledge that, subject to clauses 16 and 17 below, FMA:
- a. may issue a media release/public statement referring to the Directors' Undertakings and to the circumstances which led to the Directors' Undertakings being executed;
 - b. may from time to time publicly refer to the Directors' Undertakings; and
 - c. will make the Directors' Undertakings available for public inspection.
16. FMA agrees to provide the Directors with a copy of any media release or other formal statement that FMA issues referring to the Directors' Undertakings not less than 1 working day in advance of publication and will provide the Directors with an opportunity to comment on the proposed media release/public statement, and will consider in good faith any matters raised by the Directors in their comments. This requirement applies only to the initial media release/public statement and not to subsequent media releases/public statements or to responses to questions from media, Government officials or Members of Parliament.
17. The Directors agree to provide FMA with a copy of any media release or other formal statement that the Directors issue referring to the Directors' Undertakings not less than 1 working day in advance of publication, and will provide FMA with an opportunity to comment on the proposed media release/public statement, and will consider in good faith any matters raised by FMA in its comments. This requirement applies only to the initial release/public statement and not to subsequent media releases/public statements or to responses to questions from media, investors or analysts.

COSTS

18. The parties will meet their own costs in relation to the Investigation, the Civil Claim and this document.

Signed by Rhys Anthony Greensill:



In the presence of:



Name:

Occupation:

Address:

Martin Smith
Solicitor
Auckland

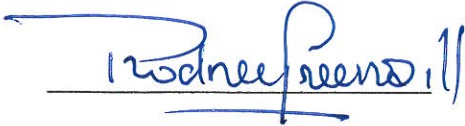




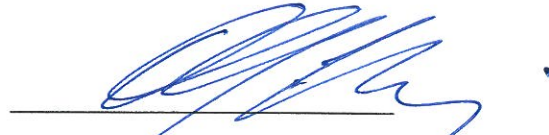
FINANCIAL MARKETS AUTHORITY

TE MANA TATAI HOKOHOKO - NEW ZEALAND

Signed by Rodney Seymour Greensill:




In the presence of:


Name: Dennis John King
Occupation: Solicitor
Address: Dennis King Law
New Plymouth

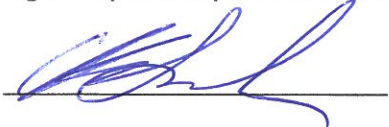
Signed by Barry Noel Lambert:




In the presence of:


Name: Dennis John King
Occupation: Solicitor
Address: Dennis King Law
New Plymouth

Signed by Christopher Bruce Simkin:

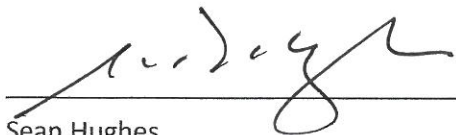


In the presence of:


Name: Dennis John King
Occupation: Solicitor
Address: Dennis King Law
New Plymouth



Accepted by FMA pursuant to section 46 of the Financial Markets Authority Act 2011 by its authorised delegate



Sean Hughes

Chief Executive, Financial Markets Authority

In the presence of:



Name: Susan Brown

Occupation: Solicitor

Address: Wellington



SCHEDULE 1 – CORRESPONDENCE TO KFL DEPOSITORS

