

Execution version

# Settlement Agreement

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Milford Asset Management Limited (**Milford**)  
Financial Markets Authority (**FMA**)

# Details

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Date

15 June 2015

## Parties

Name **Milford Asset Management Limited**, a duly incorporated company having its registered office at Level 17, 41 Shortland Street, Auckland, 1140, New Zealand

Short name **Milford**

Name **Financial Markets Authority**, an independent Crown entity established under s6 of the Financial Markets Authority Act 2011

Short name **FMA**

## Background

A Following a referral from NZX Market Surveillance, the FMA has conducted an investigation into potential breaches of the market manipulation prohibitions contained in s11B of the Securities Markets Act 1988 (the Act) in relation to certain trading activity between December 2013 and August 2014 by a trader (**Trader**) employed by Milford (**Investigation**).

B The FMA considers that the conduct had, or was likely to have had, the effect of causing the creation of a false or misleading appearance with respect to:

(a) The extent of active trading in the relevant securities; or

(b) The supply of, demand for, price for trading in, or value of those securities.

Given this, the FMA considers that the Trader and therefore Milford as the Trader's employer are liable for the Trader's alleged breaches of the Act.

C The FMA acknowledges that its conclusions have not been tested in Court. Milford denies that it is liable for any alleged breaches of the Act.

D Milford represents that no officer, employee or director of Milford (other than the Trader) was directly involved in or promoted the conduct of the Trader which is the subject of the Investigation. Milford acknowledges that the FMA has relied upon this representation in entering into this settlement agreement with Milford.

E The FMA has also concluded, and Milford acknowledges, that the Milford Board failed to ensure that there was the requisite degree of monitoring of the Trader and his trading activity (including use of the Direct Market Access system) so as to enable Milford to identify and intervene in the trading activity under investigation by the FMA. Milford accepts responsibility for the inadequacy of oversight and controls of that trading conduct and its failure to identify and adequately monitor the trading activity and to assess the appropriateness of that trading.

F Milford has carried out a thorough review of its systems and processes and has undertaken a programme of improvement for its trading systems and controls. Milford appointed PWC to review its governance, risk and compliance capability and to provide recommendations. That review has now been completed and provided to the FMA.

G Milford and the FMA have agreed to resolve the issues arising out of the Investigation in relation to Milford on the terms set out below.

# Agreed terms

## 1. Interpretation

- 1.1 In this agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) a reference to a party is also a reference to that party's successors and assigns.

## 2. Milford obligations and undertakings

- 2.1 Milford undertakes to complete the recommendations made by PWC and to engage an external review following the implementation of the recommendations, which will be reported to the FMA.
- 2.2 Milford undertakes to pay to the FMA \$1,100,000 in lieu of a pecuniary penalty pursuant to s46A of the Financial Markets Authority Act 2011 (the **FMA Act**) with respect to the alleged contravention referred to in the recitals above.
- 2.3 Milford undertakes to pay to the FMA \$400,000 as a contribution to the costs of the Investigation.
- 2.4 The payments referred to in clauses 2.2 and 2.3 above will be made within 10 working days of the execution of this agreement by all parties.
- 2.5 Milford agrees to continue to cooperate with the FMA's requests for information and/or documentation relating to the Investigation and to assist the FMA with respect to any proceedings that may be commenced as a result of the Investigation and to assist with the provision of evidence in any forthcoming proceedings including making all reasonable endeavours to procure availability and co-operation (for briefing purposes) from witnesses who are present or former employees of Milford.

## 3. No further action by the FMA against Milford

- 3.1 The FMA agrees that, unless otherwise required by law, it will not initiate, issue, encourage or support any further investigation or civil or criminal legal proceedings against Milford or its related entities, directors or employees (except the Trader) in respect of the matters that are subject or related to any ongoing Investigation.
- 3.2 This agreement is a full and final settlement of all claims and proceedings the FMA has, or may have, whether in its own right or on behalf of any other person, against Milford or its related entities, directors or employees (except the Trader) in respect of the matters the subject of the Investigation.
- 3.3 The FMA and Milford recognise that each is free to comment on this agreement. Each will, however, provide the other with an opportunity to comment on any proposed media release/public statement about this agreement not less than 1 working day in advance of publication and will consider any comments raised by the other in good faith. 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.
- 3.4 Milford recognises that the FMA and the NZX identified the trading in question and that the FMA has worked with Milford to establish a programme of improvement with respect to Milford's systems and controls.

- 3.5 The FMA recognises that, as a result of the programme of improvement undertaken by Milford, individual portfolio managers no longer execute trades for their portfolios.
- 3.6 The fact of and terms of this agreement are not confidential and may be disclosed by the parties. A copy of this agreement will be posted on the FMA's website and will constitute notice given pursuant to s46A of the FMA Act.
- 3.7 The FMA accepts that the Investigation did not relate to the security of Milford's client funds or assets.

## 4. General terms

- 4.1 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 the FMA, by hand delivery or email to the following address:  
The Financial Markets Authority  
Level 5, Ernst & Young Building, 2 Takutai Square, Auckland 1143  
Attention: Belinda Moffat  
Email: Belinda.Moffat@fma.govt.nz
- (b) If addressed to Milford, by hand delivery or email to the following address:  
Milford Asset Management Limited  
Level 17, 41 Shortland Street, Auckland, 1140,  
Attention: Anthony Quirk  
Email: AQuirk@milfordasset.com
- 4.2 This agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties (excluding the Trader) dealing with the subject matter of this agreement and supersedes and replaces any previous negotiation, representation, agreement, understanding and arrangement relating to the Investigation and this agreement whether written or oral.
- 4.3 This agreement may be amended only by another agreement executed by both parties.
- 4.4 This agreement is governed by and is to be construed in accordance with the laws of New Zealand. The parties irrevocably submit to the exclusive jurisdiction of the New Zealand courts in relation to all disputes arising out of or in connection with this agreement.
- 4.5 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. The Parties acknowledge that this agreement may be executed by an exchange of facsimile copies and execution of this agreement by that means is valid and sufficient execution.
- 4.6 Each person executing the agreement warrants that he or she has full authority to enter into this agreement on behalf of the party for which he purports to be executing this agreement, and to bind that party in accordance with the terms of this agreement.
- 4.7 Each party will bear their own costs of and incidental to the matters dealt with in this agreement.
- 4.8 This agreement confers no benefit or rights for or with respect to the Trader pursuant to the Contracts (Privity) Act 1982 or otherwise.

# Signing page

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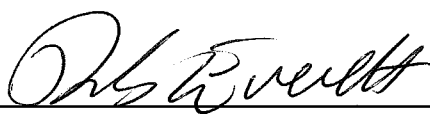
**EXECUTED** as an agreement

**Signed** by and on behalf of **MILFORD ASSET  
MANAGEMENT LIMITED:**

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Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

**Signed** by and on behalf of **FINANCIAL  
MARKETS AUTHORITY:**

  
\_\_\_\_\_  
Signature of authorised signatory

**ROB EVERETT**  
\_\_\_\_\_  
Name of authorised signatory

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# Signing page

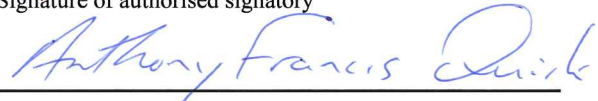
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**EXECUTED** as an agreement

**Signed** by and on behalf of **MILFORD ASSET  
MANAGEMENT LIMITED:**



\_\_\_\_\_  
Signature of authorised signatory



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Name of authorised signatory

**Signed** by and on behalf of **FINANCIAL  
MARKETS AUTHORITY:**

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Signature of authorised signatory

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Name of authorised signatory