

**ANZ BANK NEW ZEALAND LIMITED**  
**THE FINANCIAL MARKETS AUTHORITY**

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**SETTLEMENT AGREEMENT REGARDING INTEREST RATE  
SWAPS SALES TO CERTAIN RURAL CUSTOMERS**

DATED 3 DECEMBER 2014

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## AGREEMENT DATED 3RD DAY OF DECEMBER 2014

### PARTIES

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This deed is entered into:

BETWEEN        **ANZ BANK NEW ZEALAND LIMITED** (ANZ)

AND              the **FINANCIAL MARKETS AUTHORITY**, an independent Crown entity established under section 6 of the Financial Markets Authority Act 2011 (the *FMA*)

(together, *the parties*)

### 1        **RECITALS**

- 1.1        The New Zealand Commerce Commission has investigated alleged contraventions of the Fair Trading Act 1986 by ANZ in relation to the marketing, promotion and sale of interest rate swaps to rural customers from 2005 to 2009 (the *Commerce Commission Investigation*).
- 1.2        The FMA commenced its own investigation into potential contraventions of the Legislation (defined below) in relation to ANZ's marketing, promotion and sale of interest rate swaps to rural customers from 2005 to 2009 (the *FMA Investigation*).
- 1.3        ANZ and the Commerce Commission have now agreed the means by which the Commerce Commission Investigation is to be resolved and recorded those terms in a settlement agreement to be executed on or about the date of this agreement (the *Commission Settlement Agreement*).
- 1.4        In light of the Commission Settlement Agreement, the FMA and ANZ have agreed the means by which the FMA Investigation is to be resolved as recorded in this agreement (the *Agreement*).
- 1.5        Under the terms of the Commission Settlement Agreement ANZ will, within 5 working days of the date of the Commission Settlement Agreement, deposit the sum of \$18.5 million into an interest bearing account (*Payment Fund*). ANZ has agreed that it will pay out monies from the Payment Fund in accordance with the terms of the Commission Settlement Agreement.

## 2 **INTERPRETATION**

2.1 For the purposes of this Agreement:

2.1.1 "*ETA*" means the Early Termination Amount which is the cost (or in some cases a benefit) to a party to terminate an Interest Rate Swap prior to its maturity date.

2.1.2 "*Interest Rate Swaps*" comprise, in the case of interest rate swaps sold to rural customers, contracts under which one party agrees to make payments based on a fixed interest rate on a notional principal amount, in exchange for receiving payments from the other party based on a floating interest rate on the notional principal amount. The principal amount is not exchanged.

2.1.3 "*Legislation*" means, as applicable, the Securities Markets Act 1988 and the Securities Act 1978.

2.1.4 "*Loan*" means the loan made by ANZ to the Named Customer – usually at a floating interest rate – that corresponds to the Interest Rate Swap.

2.1.5 "*Named Customer*" means a Named Customer as defined in the Commission Settlement Agreement.

2.1.6 "*Related Parties*" of ANZ include:

- (a) its past and present directors, officers, employees and agents; and
- (b) its related companies and each related company's past and present directors, officers, employees and agents, where "related company" has the same meaning as in the Companies Act 1993; and
- (c) Australia and New Zealand Banking Group Limited (*ANZBGL*) and its past and present directors, officers, employees and agents; and
- (d) ANZBGL's past and present related companies and each related company's past and present directors, officers, employees and agents, where "related company" has the same meaning as in the Companies Act 1993.

## 3 **BACKGROUND FACTS**

3.1 Between mid-2005 and approximately 2009, ANZ marketed and transacted Interest Rate Swaps to existing and potential rural customers, primarily through

private meetings conducted with those customers by members of ANZ's interest rate risk management team. This marketing often included documents and PowerPoint presentations provided to the customers.

### **3.2 THE FMA INVESTIGATION**

3.2.1 In 2012, media reports emerged indicating that certain rural customers were dissatisfied with Interest Rate Swaps.

3.2.2 The Commerce Commission received complaints about the manner in which ANZ staff sold and marketed Interest Rate Swaps to rural customers. In August 2012 the Commerce Commission commenced the Commerce Commission Investigation.

3.2.3 In November 2013, the Commerce Commission contacted the FMA in relation to the Commerce Commission Investigation and to ANZ's potential liability under the Legislation.

3.2.4 In December 2013, the FMA commenced the FMA Investigation into ANZ's sales and marketing of Interest Rate Swaps to rural customers.

### **3.3 THE FMA CONCLUSION**

3.3.1 The FMA has concerns that ANZ's conduct relating to the marketing and sales of Interest Rate Swaps to certain rural customers was misleading as ANZ's marketing conveyed to rural customers that margins on the underlying loan would not change for the term of the original Interest Rate Swap and for any restructure, extension, or shortening of the term of the Swap; that the ETA would be the same or materially similar to the cost of terminating a fixed rate term loan of equivalent amount, interest rate, and duration; and that Interest Rate Swaps were a suitable alternative and good substitute for a fixed rate term loan for the circumstances of the customer or potential customer. The FMA has concluded that the marketing and sales of Interest Rate Swaps to certain rural customers breached the Legislation.

3.3.2 However, the FMA acknowledges that its conclusions have not been tested in court.

## **4 ANZ'S POSITION**

4.1 ANZ disagrees with the FMA's conclusions. In particular ANZ says that loan agreements provided for margin changes and that it did not give assurances that

margins would not change; ANZ held a reasonable opinion that ETAs would be similar to the cost of breaking a fixed term loan, based on the experience of ANZ at the dates that the Named Customers entered Interest Rate Swaps - the fact some ETAs differed from fixed term loan break costs was attributable to the unique effect of the Global Financial Crisis. Furthermore, Interest Rate Swaps were (and still are) a suitable alternative to a fixed rate loan.

4.2 ANZ also repeats the statements in the statement of defence contained in the Commission Settlement Agreement and states further that it has other relevant defences available to it.

4.3 ANZ does not accept that proceedings (criminal or civil) would necessarily succeed, or that fines, penalties, refunds or damages would be payable at law, whether under the Legislation or any other legislation, regulation or rule of law.

## 5 **TERMS OF SETTLEMENT**

5.1 Notwithstanding the parties' differing views, ANZ and the FMA have agreed to resolve the issues arising out of the FMA Investigation on the terms set out below.

### 5.2 **ANZ OBLIGATIONS AND UNDERTAKINGS**

5.2.1 ANZ gives enforceable undertakings under s46 Financial Markets Authority Act 2011 to the FMA, as set out in the **Schedule** (the *Undertakings*).

5.2.2 ANZ will, within five working days from the execution of this agreement, pay the FMA \$50,000 towards the FMA's costs by electronic payment to an account, the details of which are to be provided by the FMA.

5.2.3 ANZ will comply with all material terms of the Commission Settlement Agreement.

5.2.4 This settlement agreement becomes effective upon ANZ and the Commerce Commission entering into the Commission Settlement Agreement.

### 5.3 **NO FURTHER ACTION BY THE FMA**

5.3.1 Upon the execution of this agreement, the FMA will close the FMA Investigation.

5.3.2 The FMA undertakes not to issue, encourage or support any civil or criminal legal proceedings against ANZ and/or each of its Related Parties in respect of the matters that are the subject of the FMA Investigation.

- 5.3.3 The parties agree that this agreement is in full and final settlement of all claims and proceedings that the FMA has, or may have, whether in its own right or on behalf of any other person, in respect of the matters the subject of the FMA Investigation.

## 6 **MISCELLANEOUS**

- 6.1 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: Chief Executive Officer  
Email: rob.everett@fma.govt.nz

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

ANZ Bank New Zealand Limited  
Ground Floor, ANZ Centre 23-29 Albert Street Auckland 1010  
Attention: Company Secretary  
Email: craig.mulholland@anz.com

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



Authorised signatory

ROB EVERETT

Name

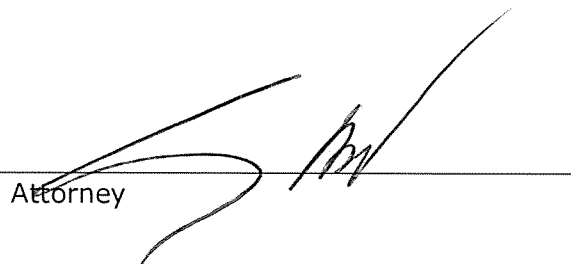
*In the presence of:*

Witness Name: Jane Pellard

Witness Address: Level 2, 1 Grey Street, Wellington

Witness Occupation: PA Jane Pellard

**Signed by and on behalf of ANZ Bank  
New Zealand Limited**



Attorney

CRAG ANDREW MULHOLLAND

Name of Attorney

*In the presence of:*

Witness Name: Jane Pellard

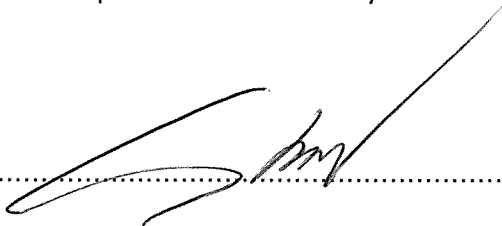
Witness Address: Level 2, 1 Grey St, Wellington

Witness Occupation: PA Jane Pellard

**CERTIFICATE OF NON-REVOCATION OF  
POWER OF ATTORNEY**

I, **Craig Andrew Mulholland of Auckland**, New Zealand, currently holding the position of General Counsel and Company Secretary, of ANZ Bank New Zealand Limited, certify –

1. That on 29 October 2012, ANZ National Bank Limited changed its name to 'ANZ Bank New Zealand Limited'.
2. That by deed dated 1 October 2011, ANZ Bank New Zealand Limited of Wellington, New Zealand appointed me its attorney.
3. That I have not received notice of any event revoking the power of attorney.

  
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Signed this *3rd* day of *December* 20*14*.



## **SCHEDULE**

### *ANZ enforceable undertakings under s 46 Financial Markets Authority Act 2011*

- 1 ANZ Bank New Zealand Limited (ANZ) undertakes to engage an external party reasonably acceptable to the Financial Markets Authority (the FMA) to complete, by 31 March 2015 (or a later date agreed between ANZ and the FMA), for the Agreed Products set out below, a review of ANZ's current processes and procedures in relation to origination, marketing and sales of the Agreed Products, which are designed to meet compliance with the Securities Act 1978, the Securities Markets Act 1988 and the fair dealing provisions of the Financial Markets Conduct Act 2013 to the extent that they relate to ANZ's offer of the Agreed Products to members of the public under the Securities Act 1978 or regulated offers under the Financial Markets Conduct Act 2013. The review will take a sample of ANZ's actual practices and provide conclusions as to whether those practices are in line with current approved processes and procedures.
- 2 If ANZ applies for and is granted a markets service licence as derivatives issuer under the FMCA, ANZ undertakes to engage an external party reasonably acceptable to the FMA to complete, within six months following the granting of such markets service licence to ANZ, a review of the processes and procedures in relation to origination, marketing and sales of regulated offers of the Agreed Products.
- 3 On or before 30 April 2015 (or a later date agreed between ANZ and the FMA), ANZ undertakes to provide to the FMA on a confidential basis, the report relating to the review referred to in paragraph 1 above.
- 4 Within seven months following the granting of the markets services licence as derivatives issuer to ANZ, ANZ undertakes to provide to the FMA on a confidential basis, the report on the review referred to in paragraph 2 above.
- 5 ANZ undertakes to implement any recommendations made in the reports of the reviews referred to in paragraphs 1 and 2 above provided that in the case of the review in paragraph 1, any such recommendations will only be implemented by ANZ where ANZ and the FMA agree that the Securities Act and Securities Markets Act obligations apply to ANZ at the time such recommendations are to be implemented.
- 6 Agreed Products:
  - 6.1 Interest Rate Swaps; and
  - 6.2 FX Forwards.