

**THE COMMONWEALTH OF THE BAHAMAS  
THE SECURITIES COMMISSION OF THE BAHAMAS**

**IN THE MATTER of the Administration of the Securities Industry Act, 2011 and  
the Securities Industry Regulations, 2012**

**BETWEEN**

**THE SECURITIES COMMISSION OF THE BAHAMAS**

**Plaintiff**

**AND**

**SWISS AMERICA SECURITIES LTD.**

**Defendant**

**SETTLEMENT AGREEMENT**

**1. RECITALS**

**WHEREAS** the above-named Defendant has on the **25<sup>th</sup> day of July 2018** agreed to settle, pursuant to section 133(1) of the Securities Industry Act 2011 (hereafter, “the Act”), with the Plaintiff, Securities Commission of The Bahamas (hereafter “the Commission”), this Settlement Agreement (hereafter “Settlement”) is accordingly executed concerning the breaches and allegations outlined in the Commission’s for-cause examination report dated 19 February 2018 (“the report”);

**AND WHEREAS** the Commission has approved the Settlement on the terms in Clause 3 below;

**2. FACTS AGREED**

Solely for securities regulatory purposes and as the basis for this Settlement concerning the Commission’s disciplinary action against Swiss America Securities Ltd. (hereafter “SASL” or “the Defendant”), the facts and conclusions set out herein are agreed as follows —

(1) At all material times, the Defendant was and remains a securities firm duly licensed by the Commission on September 26, 2011. During May 2016, the Commission conducted an examination for cause and discovered breaches further outlined in the report, aforesaid.

(2) The issues revealed in the report primarily concerned SASL’s operations and the failure to ensure full



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compliance with provisions of the Act, including KYC issues, maintenance of books and records and failing to notify the Commission of material changes.

- (3) The Commission notes that the report is based on evidence obtained directly from SASL's files and from interviews with SASL's employees.

**The Defendants Position**

- (4) The Defendant responded primarily via letter dated 22 March 2018, indicating that contrary to the report the breaches were unfounded, and further proposed reductions in the penalties proposed by the Commission. However, SASL did not indicate the basis for its assertion, which the Commission pointed out in its letter to SASL, dated 4 May 2018.
- (5) The Defendant met with the Commission on 25 July 2018 and agreed to accept sanctions imposed by the Commission who, in imposing sanctions, took into consideration facts and information discussed in the aforementioned meeting. SASL has since indicated, via letter dated 30 July 2018, its efforts to address the mentioned compliance issues.

**Breaches**

- (6) The Commission considered the gravity of the mentioned breaches, as outlined in the report aforesaid, and addressed what was deemed to be the most serious of those breaches, more specifically outlined in **Appendix A**, appended hereto.

**Mitigating Factors**

- (7) The Defendant acknowledges and accepts responsibility for its non-compliance, which is the subject matter of the report and this ensuing Settlement.

**Conduct contrary to Public Interest**

- (8) In summary, during the material times and notwithstanding the Defendant's explanation outlined above, the Defendant's actions did not comply with securities laws, contrary to the public interest.

**3. TERMS OF SETTLEMENT**

**IT IS HEREBY AGREED THAT THE FOLLOWING CONSTITUTE THE TERMS OF THIS SETTLEMENT:**

- (1) The Defendant understands and agrees that notwithstanding anything to the contrary, and solely for purposes of this Settlement, the Commission here agrees to the Defendant neither admitting nor denying breaches, allegations and/or liability per the report, aforesaid. However, the Defendant accepts the above Facts Agreed as stated herein and further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the Facts Agreed, any of the breaches in the report or creating the impression that any of the foregoing is without legal or factual basis. If the Defendant breaches this Settlement, the Commission may then commence administrative and/or court proceedings in the usual manner and pursue a full hearing of the breaches in the report and any other matter emanating therefrom.


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- (2) Orders and/or sanctions will be imposed by the Commission in the public interest, pursuant to section 133 of the Act, and accepted by the Defendant as follows:
  - a. **A Penalty**, pursuant to section 135(1) of the Act, for the sums outlined in **Appendix A** aforesaid, to be paid by the Defendant for each breach outlined therein (**totalling \$120,000.00 for 10 breaches**).
  - b. **Directive**, pursuant to section 132 of the Act, that SASL immediately proceed to rectify all breaches outlined in the report **by or before 31<sup>st</sup> August 2018**.
- (3) Provided the Defendant fully satisfies Terms 3(1) and 3(2) above, the Commission will not pursue further disciplinary action relative to this matter.
- (4) The effective date for the sanctions in Term 3(2), including the prohibition period, will commence from the date of execution of this settlement agreement. **The payment of monetary sanctions is expected by no later than 31 August 2018, failing which further disciplinary action may ensue to address such failure.**


**4. WAIVERS, UNDERTAKINGS AND ACKNOWLEDGEMENTS**

- (1) This Settlement Agreement and its terms will be treated as confidential by all parties to it until approved by the Commission, and forever if, for any reason whatsoever, this Settlement is not approved by the Commission.
- (2) If this Settlement is approved by the Commission, the parties to this Settlement will not make any statement that is inconsistent with this Settlement.
- (3) The parties waive any rights to a hearing, judicial review or appeal of this Settlement and/or any of its provisions, or any document outlining the breaches and/or allegations giving rise to this Settlement.
- (4) The parties acknowledge that the terms set out in Clause 3 above shall be deemed to be and treated as a final decision of the Commission.

Signed  .....

(print name) Guy Gentile, CEO .....

(for Defendant)

Signed  .....

(print name) R.V. LOTMORE .....

Chairman  
Securities Commission of The Bahamas (Plaintiff)

Made this 30<sup>th</sup> day of August 2018

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No.	Breaches	Penalty
1.	Maintain documents and/or records.	<b>\$13,500.00</b>
2.	Verify client accounts.	<b>\$13,500.00</b>
3.	Conduct KYC on all of its clients.	<b>\$26,500.00</b>
4.	Conduct risk monitoring of clients (penalty takes into consideration the Rules coming into effect in 2016)	<b>\$3,500.00</b>
5.	Conduct reconciliation of client accounts.	<b>\$10,000.00</b>
6.	Deliver current details of insurance coverage.	<b>\$3,500.00</b>
7.	Obtain prior written consent for transaction affecting financial resources.	<b>\$6,500.00</b>
8.	Notify the Commission of outsourcing agreement.	<b>\$10,000.00</b>
9.	Notify the Commission of material change (i.e. name change for Swiss and an aggravating factor being the failure to notify of the name change at the 15 Feb. 2017 meeting).	<b>\$16,500.00</b>
10.	Notify the Commission of material change (i.e. Mr. Gentile having been a defendant in a criminal matter).	<b>\$16,500.00</b>
	<b>TOTAL</b>	<b>\$120,000.00</b>