

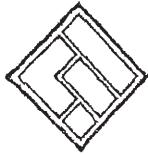
5101 page 1/1 15 July 2001

ASIC registered agent number _____
lodging party or agent name LM Investment Management Ltd
office, level, building name or PO Box no. PO Box 425
street number and name _____
suburb / city Surfers Paradise state/territory QLD postcode 4217
telephone (07) 5584 4500
facsimile (07) 5592 2505
DX number _____ suburb / city _____



020938294

ASS ☐ RED-A ☐
CASH ☐ RED-P ☐
PROC ☐



Australian Securities & Investments Commission

form 5101

Notification of
**change to registered scheme's
constitution**

Corporations Act 2001
6016C

name of registered scheme LM FIRST MORTGAGE INCOME FUNDARSN 089 343 288name of responsible entity LM INVESTMENT MANAGEMENT LTDACN 077 208 461**Details of change**

- ☐ Modification of constitution authorised by special resolution of members
date of resolution (d/m/y) / /
- ☐ Replacement of constitution authorised by special resolution of members
date of resolution (d/m/y) / /
- ☐ Modification of constitution authorised by responsible entity
date authorised (d/m/y) / /
- ☒ Replacement of constitution authorised by responsible entity
date of replacement (d/m/y) 10 / 4 / 08



** A copy of the modification / new constitution is attached to this form.

NB: The modification, or repeal and replacement, of the constitution does not take effect until the copy has been lodged.

Signature

I certify that the information in this form is true and complete.

print name CAROLYN HODGE capacity SECRETARY

sign here [Signature] date 10 / 4 / 08

Small Business (less than 20 employees), please provide an estimate of the time taken to complete this form

include

- The time actually spent reading the instructions, working on the question and obtaining the information
- The time spent by all employees in collecting and providing this information

hrs mins

LM INVESTMENT MANAGEMENT LIMITED

ABN 68 077 208 461

Australian Financial Services Licensee 220281

AND

THE MEMBERS AS THEY ARE CONSTITUTED

FROM TIME TO TIME OF THE

LM FIRST MORTGAGE INCOME FUND

ARSN 089 343 288

REPLACEMENT
CONSTITUTION

DEED made this 10 day of April 2008

BETWEEN: LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 9 Beach Road, Surfers Paradise in the State of Queensland (the Responsible Entity hereinafter referred to as the "RE")

AND: All those persons who from time to time apply for Units and are accepted as Unitholders of the Scheme ("the Members")

WHEREAS:

- A. The RE holds a responsible entity's licence from the ASIC.
- B. The RE established a pooled mortgage unit trust called the LM Mortgage Income Fund on 28 September 1999. From 31 May 2007 the LM Mortgage Income Fund will be known as the LM First Mortgage Income Fund.
- C. By applying to invest in this Scheme through a PDS a person will become a Member and be bound by this Constitution.
- D. Clause 26.1(b) and section 601GC(1)(b) of the Law allow the RE to modify or repeal and replace the Constitution where the RE reasonably considers the change will not adversely affect Members' rights. The RE is satisfied the amendments contemplated by this replacement Constitution will not adversely affect Members' rights.
- E. Accordingly with effect from the date of this deed poll, the existing constitution of the Scheme is repealed and replaced with this Constitution.
- F. This Constitution is made with the intent that the benefits and obligations hereof will enure not only to the RE but also to the extent provided herein to every person who is or becomes a Member.

IT IS AGREED:

1. DICTIONARY AND INTERPRETATION

1.1 Dictionary of Terms

In this Constitution:

"Accounting Standards" means the accounting standards and practices determined under clause 1.3;

"Adviser" means the financial adviser who has offered Unit/s in this Scheme to a Member;

"Applicant" anyone who submits an application for Unit/s in the Scheme in accordance with the PDS;

"Application" means a request from a Member to the RE to issue Units in a managed investment scheme pursuant to an Arrangement;

"Application Form" an application in writing for Unit/s in the Scheme attached to the PDS.

"Application Money" the amount received from an Applicant when lodging the

Application in respect of the Unit/s applied for in accordance with the PDS;

"Arrangement" means a written arrangement between the RE and a Member that sets out the circumstances in which Applications for Units in registered schemes operated by the RE, may be accepted;

"ASIC" the Australian Securities and Investments Commission;

"ASIC Instrument" means:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Law; or
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the RE or the Scheme.

"Auditor" means the auditor of the Scheme appointed by the RE under clause 27.1 and shall be qualified to act as a registered scheme auditor pursuant to the Law;

"Authorised Investments" means

- (a) monies deposited (whether secured or unsecured) with a Bank, or any corporation related to a Bank or other corporation or monies deposited with any trustee company, fund, bills of exchange, certificates of deposit and negotiable certificates of deposit issued by a Bank or similar instrument accepted and endorsed by a Bank;
- (b) any investments the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (c) monies deposited with an authorised short term money market dealer as such expression is used in section 65 of the Law;
- (d) any investment in or acquisition of cash, stocks, bonds, notes or other securities or derivatives issued by the Government of Australia, any other country, any company, corporation, body corporate, association, firm, mutual fund or unit trust;
- (e) any investment in or acquisition of options, entitlements or rights to any of the securities or derivatives referred to in clause (d) of this provision;
- (f) real property or interests in real property whether by acquisition of units in unit trusts or otherwise;
- (g) interests in any registered managed investment scheme (as defined in the Law) including but not limited to any scheme of which the RE acts as RE;

- (h) making loans to any person or company with or without interest, whether secured or unsecured, and for any period whatsoever; and
- (i) the acquisition of foreign currencies, hedging contracts, commodity contracts of any kind which are quoted on a financial market (as defined in the Law).

"Bank" has the meaning given to an ADI in section 5 of the Banking Act 1959 (Cth) and also includes an ADI constituted by or under a law of the State or Territory and a foreign ADI as that term is defined in section 5 of the Banking Act 1959 (Cth).

"Borrower" any person who applies to the Scheme to borrow Scheme Property and who is approved by the RE;

"Business Day" any day on which trading Banks are generally open for business on the Gold Coast, Queensland;

"Class" means a class of Units, being Units which have the same rights.

"Commencement Date" means the date of registration of the Scheme;

"Compliance Committee" the Compliance Committee of the RE.

"Compliance Plan" means the Compliance Plan for the Scheme lodged at the ASIC on Scheme registration;

"Constitution" this document including any Schedule, Annexure or Amendments to it and which also means the Unit Trust Deed;

"Custodian" Permanent Trustee Australia Limited ACN 008 412 913;

"Custody Agreement" an agreement dated the 4th day of February, 1999 and any further amendments entered into between the Custodian and the RE;

"Development Loan" a loan to fund the construction of a building on mortgaged property which is to be drawn down before completion of the building;

"Differential Fee Arrangement" means an arrangement pursuant to Class Order [CO 03/217] which provides an exemption from S601FC(1)(d) of the Law in relation to differential fee arrangements offered to investors investing in the Fund as a Wholesale Investor, within the meaning of Wholesale Client in Section 761G of the Corporations Act;

"Distributable Income" has the meaning given in clause 11.3;

"Distribution Period" is the relevant period referred to in clause 12.1;

"Dollars", "A\$" and "\$" mean the lawful currency of the Commonwealth of Australia;

"Extraordinary Resolution" means a resolution of which notice has been given in accordance with this Constitution and the Law and that has been passed by

at least 50% of the total votes that may be cast by Members entitled to vote on the resolution (including Members who are not present in person or by proxy);
"Financial Year" means the period of 12 months ending on the 30th day of June in each year during the continuance of this Constitution and includes the period commencing on the date the trust was established and expiring on the next succeeding 30th day of June and any period between the 30th day of June last occurring before the termination of the trust and the termination of the trust;

"FICS" means the Financial Industry Complaints Service Limited;

"GST" means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution;

"Income" means all amounts which are, or would be recognised as, income by the application of the Accounting Standards;

"Issue Price" means the price at which a Unit is issued calculated in accordance with clause 6.

"Investment Term" means the initial fixed investment term selected by the Member when they invest in the Scheme for a fixed term, and any subsequent fixed term for the investment where the investment is rolled over for that subsequent term, but does not include any fixed term under a Savings Plan Investment (and the initial fixed investment term and each subsequent fixed term will each be a separate Investment Term, and not a longer combined Investment Term);

"Law" means the Corporations Act 2001 and the Corporations Regulations.

"Lender" means the RE on behalf of the Members lending Scheme Property through the Scheme;

"Lending Rules" means the rules detailed in clauses 13.2 and 13.3;

"Liabilities" means at any time the aggregate of the following at that time as calculated by the RE in accordance with the Accounting Standards:

- (a) Each liability, excluding Unit Holder Liability, of the RE in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.
- (b) Each other amount payable out of the Scheme, excluding Unit Holder Liability or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.
- (c) Other appropriate provisions in accordance with the applicable Accounting Standards.

"Liquid Scheme" means a registered scheme that has liquid assets which

account for at least 80% of the value of scheme property.

"**LM**" means Law Mortgage Management Pty Ltd ACN 055 691 426;

"**LVR**" means loan to valuation ratio and is the ratio of the amount of a loan to the valuation of the property offered as security for a loan in the Scheme;

"**Member**" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders).

"**Minimum Investment**" means the minimum investment disclosed in the PDS from time to time unless the RE, in its sole discretion, agrees to accept a lesser amount as an investment;

"**Minimum Subscription**" means any minimum amount of Application Money of a particular currency required by the RE to be received in respect of one or more Applicants, before the Application(s) will be accepted by the RE;

"**Mortgagee**" in all mortgages held by the Scheme the Mortgagee will be the Custodian as agent for the RE;

"**Mortgage Lending Valuation Policy**" means the RE's mortgage lending valuation policy as detailed in the Compliance Plan;

"**Net Fund Value**" at any time, means the value of the Scheme Property less the Liabilities at that time.

"**Power**" means any right, power, authority, discretion or remedy conferred on the RE by this Constitution or any applicable law;

"**Promoter**" for the purpose of the Law the promoter of this Scheme is the RE;

"**PDS**" means a Product Disclosure Statement or any Supplementary Product Disclosure Statement for the Scheme;

"**Register**" means the register of Members maintained by the RE under clause 22;

"**Responsible Entity**" or "**RE**" means the company named in the ASIC's records as the responsible entity of the Scheme and referred to in this document as the RE and who is also the Trustee of the Scheme;

"**Savings Plan Investment**" means an Australian dollar investment described as the "LM Savings Plan" in the PDS, with terms and conditions as disclosed in the PDS;

"**Scheme**" means a managed investment scheme to be known as the "LM First Mortgage Income Fund" that is to be registered under s601EB of the Law and also means the Trust;

"**Scheme Property**" means assets of the Scheme including but not limited to:

- (a) contributions of money or money's worth to the Scheme; and
- (b) money that forms part of the Scheme assets under the provisions of the Law; and

- (c) money borrowed or raised by the RE for the purposes of the Scheme;
and
- (d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and
- (e) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b), (c) or (d);

"Scheme Valuation Policy" means the scheme valuation policy as detailed in the Compliance Plan;

"Security Property" means any property offered by a Borrower as security for a Mortgage in the Scheme;

"Special Resolution" means a resolution of which notice has been given in accordance with this Constitution and the Law and that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;

"Subscription Account" an account opened and maintained by the RE into which is deposited all Application Moneys;

"Tax" includes, but is not limited to:

- (a) stamp duty, excise and penalties relating to these amounts which are imposed on the RE in respect of any assets in the Scheme;
- (b) taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the RE under this Constitution;
- (c) taxes imposed or assessed upon:
 - (i) any Application Money;
 - (ii) distributions of Income to Members, capital gains, profits or any other amounts in respect of the Scheme; or
 - (iii) the RE in respect of its capacity as responsible entity of the Scheme;
- (d) imposts, financial institutions duties, debts tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Scheme, and every kind of tax, duty, rate, levy, deduction and charge including any GST;

"Tax Act" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"Trustee" means the RE;

"Uncontrolled Event" means an act of God, strike, lock out or other interference with work, war (declared or undeclared), blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition, intervention, direction,

embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the party relying on the Uncontrolled Event; "Unit" means an undivided interest in the Scheme Property created and issued under this Constitution;

"Unit Holder Liability" means the liability of the Scheme to the Members for their undivided interest in the Scheme Property;

"Unit Holding" means the number of Units in the Scheme held by a Member as evidenced in the Register of Unit holders;

"Unit Holding Statement" means a statement issued by the RE to a Member pursuant to clause 5.9;

"Valuation Date" means the date which is the last day of each month or any date during each month at the RE's discretion or the date on which the RE determines there has been a material change in the value of the Scheme Property;

"Withdrawal Notice" means:

- (a) for a Savings Plan Investment, a notice in writing given by a Member and received by the RE on or after the start of the relevant Withdrawal Notice Period stating the Member's name, the number of Units the Member wishes to have redeemed, and any other information reasonably required by the RE, provided that only 4 such notices may be given within any 12 month period, and any notices in excess of this number will not be valid unless otherwise determined by the RE in its discretion;
- (b) for any investment that is not a Savings Plan Investment nor for an Investment Term, a notice in writing given by a Member and received by the RE on or after the start of the relevant Withdrawal Notice Period stating the Member's name, the number of Units the Member wishes to have redeemed, and any other information reasonably required by the RE;
- (c) for all investments for an Investment Term, a notice in writing given by a Member and received by the RE before the start of the relevant Withdrawal Notice Period stating the Member's name, the number of Units the Member wishes to have redeemed, and any other information reasonably required by the RE,

and provided that if a notice in writing as referred to above is not received before 12 noon on a Business Day, the notice will be deemed to be received on

the next Business Day;

"Withdrawal Notice Period" means:

- (a) for a Savings Plan Investment by a Member, the period commencing 1 Business Day after the first 12 month period of the Savings Plan Investment has expired, and continuing throughout the term of the Savings Plan Investment;
- (b) for any investment that is not a Savings Plan Investment nor for an Investment Term, any period when the Member owns Units; or
- (c) for all investments for an Investment Term, the period commencing 5 Business Days before the expiry of the relevant Investment Term (and where an Investment Term is created by the rollover of an existing investment, means the period commencing 5 Business Days before the expiry of that subsequent Investment Term); or
- (d) any other time period as determined by the RE.

"Withdrawal Price" means the price at which a Unit is redeemed calculated in accordance with Clause 8.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) headings and underlining are for convenience only and do not affect the interpretation of this Constitution;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (f) a reference to any thing includes a part of that thing;
- (g) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure exhibit and schedule to, this Constitution;
- (h) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (i) a reference to a document includes all amendments or supplements to,

or replacements or novations of, that document;

- (j) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day except that any amount payable on demand where the demand is made on a day which is not a Business Day must be paid on the next succeeding Business Day;
- (k) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a document includes any agreement in writing, or any statement, notice, deed, instrument or other document of any kind;
- (m) a reference to a body (including, without limitation, an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body;
is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to any date means any time up to 5.00 pm (Queensland time) on that date; and
- (o) a reference to dealing with a Unit includes any subscription, withdrawal, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 Accounting Standards

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company in accordance with:

- (a) the accounting standards required under the Law; and
- (b) If no accounting standard applies under clause 1.3(a), the accounting practice determined by the RE.

2. ESTABLISHMENT OF TRUST

2.1 Trustee

The RE continues to act as trustee of the Scheme.

s601FC(2) 2.2 Role of Trustee

The RE recognises that it continues to hold the Scheme Property on trust for the Members.

s601FB(2) 2.3 Appointment of Custodian

- (a) The RE has appointed the Custodian as agent to hold the Scheme Property on behalf of the RE.

- (b) The Custodian holds the Scheme Property as agent of the RE for the term of the Scheme on terms and conditions as detailed in the Custody Agreement.

2.4 Name of Trust

The name of the trust and Scheme is the LM First Mortgage Income Fund or any other name that the RE may determine from time to time.

2.5 Initial Issue

The Scheme commenced at such time after the Commencement Date when LMM or its nominee paid \$100.00 to the RE to establish the Scheme Property. The RE issued to LMM or its nominee 100 Units in return for that payment.

3. UNITS AND MEMBERS

3.1 Units

The beneficial interest in Scheme Property is divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 Classes

Different Classes (and sub Classes) with such rights and obligations as determined by the RE from time to time may be created and issued by the RE at its complete discretion. Such rights and obligations may, but need not be, referred to in the PDS. If the RE determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units. Without limitation, the RE may distribute the Distributable Income for any period between different Classes on a basis other than proportionately, provided that the RE treats the different Classes fairly.

3.3 Fractions

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 Equal value

At any time, all the Units in a Class are of equal value unless the units are issued under a Differential Fee Arrangement.

3.5 Interest

A Unit confers an interest in the Scheme Property as a whole. No Unit confers any interest in any particular asset of the Scheme Property.

3.6 Consolidation and re-division

- (a) Subject to clause 3.6(b) the RE may at any time divide the Scheme Property into any number of Units other than the number into which the Scheme Property is for the time being divided.
- (b) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on issue in the Class.

3.7 Rights attaching to Units

- (a) A Member holds a Unit subject to the rights and obligations attaching to that Unit and (if applicable) pursuant to any Differential Fee Arrangement.
- (b) Each Member agrees not to:
 - (i) interfere with any rights or powers of the RE under this Constitution;
 - (ii) purport to exercise a right in respect of the Scheme Property or claim any interest in an asset of the Scheme Property (for example, by lodging a caveat affecting an asset of the Scheme Property); or
 - (iii) require an asset of the Scheme Property to be transferred to the Member.

3.8 Conditions

The RE may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the RE.

3.9 Rollover of Investments

If the Member has invested for an Investment Term, and fails to complete and return a Withdrawal Notice before the start of the relevant Withdrawal Notice period that applies to the Investment Term, the Member will be deemed to have elected to renew their investment in the Scheme as specified in the PDS. Units issued in respect of such reinvestment must be issued at an Issue Price equal to the Current Unit Value.

4. BINDING ON ALL PARTIES

s601GB

- 4.1 This Constitution is binding on the RE and on all Members of the Scheme as they are constituted from time to time.
- 4.2 By executing the Application Form attached to the PDS the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. ISSUE OF UNITS

s601GA(a)

5.1 Offer and minimum investment

- (a) The RE may at any time offer Units for subscription or sale.

- (b) The Minimum Investment must be lodged with an Application for Units.
- (c) The RE may invite persons to make offers to subscribe for or buy Units.

5.2 Minimum subscription

- (a) The RE may set a Minimum Subscription for the pool of funds of any one currency for the Scheme at its discretion.
- (b) The RE will hold Application Money in a Subscription Account until the Minimum Subscription for the pool of funds is received, subject to clause 5.3.

5.3 Insufficient Application Money received

The RE will return or cause to be returned all Application Money to the persons who paid such Application Money, less any taxes and bank charges payable if:

- (a) insufficient Application Money to meet the Minimum Subscription stipulated in Clause 5.2 is received within a period reasonably determined by the RE, or
- (b) the RE withdraws a PDS (which the RE is entitled to do) before sufficient Application Money is received, or
- (c) the RE does not believe there will be sufficient funds available to achieve the aims of the Scheme contemplated in this Constitution or the PDS.

5.4 Form of Application

- (a) Subject to clause 5.10, each Application for Units must be:
 - (i) made by Application Form attached to a PDS (or as otherwise permitted by the Law); and
 - (ii) be accompanied by Application Moneys as required by any relevant PDS.
- (b) If the Application Form is signed pursuant to a power of attorney, then if requested by the RE, a certified copy of the relevant power of attorney and a declaration that the power of attorney has not been revoked as at the date the Application Form is signed must be provided.

5.5 Acceptance or rejection

The RE may, without giving any reason:

- (a) accept an Application;
- (b) reject an Application; or

- (c) reject part of the Application.

5.6 Uncleared funds

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.7 Issue of Units

Units are taken to be issued when:

- (a) the Application Money for the Issue Price is received by the RE; and
- (b) the RE accepts the Application and the Units are entered in the Register, or at such other time as the RE determines.

5.8 Number of Units issued

Subject to Minimum Investment, the number of Units issued at any time in respect of an Application for Units will be calculated as follows:

- (a) by dividing the Application Moneys paid by the applicable Issue Price at that time;
- (b) by rounding down to two decimal places.

5.9 Unit Holding Statement

The evidence of a Member's holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the RE in a Unit Holding Statement.

5.10 Additional Applications

Additional Applications for investment in the Scheme by existing Members, not made on an Application Form may be accepted in an Australian dollar investment:

- (a) from a Member;
- (b) as a result of an Application;
- (c) in accordance with an Arrangement for as long as and on condition that it complies with the requirements of the RE and the law or ASIC's policy including any relief granted to the RE from time to time; and
- (d) are in multiples of \$500 each unless the RE, in its sole discretion, agrees to accept a lesser amount as an investment or agrees to accept an amount that is not a multiple of \$500.

5.11 Holding Application Money

All Application Money must be held by the RE (or its agent, the Custodian) on trust for the relevant Applicant in the Subscription Account.

5.12 Interest on Application Money

The RE is not required to account to any Member for any interest earned on Application Money held in the Subscription Account.

5.13 Responsible Entity to return Application Money

Where the RE has rejected (in full or in part) an Application, the relevant Application Money (without interest) must be returned to the Applicant within 14 days.

5.14 Incomplete Application Form

The RE will, on receipt of any Application Money which is not accompanied by a completed Application Form, as soon as practicable return the Application Money to the relevant Applicant, or:

- (a) attempt to obtain the Application Form from the Applicant; and
- (b) bank the Application Money.

5.15 No Application Form received

- (a) If the RE gives any Application Money to the Custodian pursuant to clause 5.11, then the Custodian will hold such Application Money in an account, as custodian for the Applicant in accordance with the Law until the Application Form is received.
- (b) If the RE has not received the Application Form by the time the offer is closed, then the RE must use its best endeavours to return the Application Money, less any taxes and bank charges payable, to the Applicant as soon as practicable.

6. ISSUE PRICE

The issue price of a Unit shall be calculated as follows:

$$\frac{(\text{Net Fund Value})}{(\text{number of Units on issue})}$$

calculated on the last Valuation Date prior to the date of issue.

7. WITHDRAWAL OF UNITS - WHILE THE SCHEME IS LIQUID

7.1 Withdrawal request - while the Scheme is liquid

- (a) While the Scheme is liquid as defined in S601KA (4) of the Law, any Member may request that some or all of their Units be redeemed by giving the RE a Withdrawal Notice by the start of or within the relevant Withdrawal Notice Period (as required by the relevant definition of Withdrawal Notice).

7.2 Withdrawal

- (a) (i) Within 365 days after the end of the Member's Investment Term (where the Member's investment is held for an Investment Term and the Member has given a valid Withdrawal Notice in respect of the Units) or within 365 days after receiving a valid Withdrawal

Notice from the Member (if the Member's investment is not held for an Investment Term or is a Savings Plan Investment), the RE must redeem the relevant Units out of the Scheme Property for the Withdrawal Price.

- (ii) However, the RE must redeem the Units within 180 days after the relevant date (instead of 365 days) where it determines that none of the circumstances referred to in Clause 7.2(b)(i) to (iv) below exist at the time of withdrawal. This Clause 7.2(a) does not limit the independent operation of Clause 7.2(b).
 - (iii) To the extent that the Law does not allow more than one period to be specified in this Constitution for satisfying withdrawal requests while the Scheme is liquid, that one period will be 365 days after the RE receives a valid Withdrawal Notice. Paragraph (ii) above will also apply to the extent permitted by the Law.
 - (iv) The RE may allow redemption of Units within a shorter period than the 365 (or 180) days referred to above, in its absolute discretion, subject to its obligations under the Law.
- (b) The RE may suspend the withdrawal offer as detailed in clause 7.2(a) above for such periods as it determines where:
- (i) the Scheme's cash reserves fall and remain below 5% for ten (10) consecutive Business Days; or
 - (ii) if in any period of (90) days, the RE receives valid net Withdrawal Notices equal to 10% or more of the Scheme's issued Units and, during the period of (10) consecutive days falling within the 90 day period, the Scheme's cash reserves are less than 10% of the total assets; or
 - (iii) it is not satisfied that sufficient cash reserves are available to pay the Withdrawal Price on the appropriate date and to pay all actual and contingent liabilities of the Scheme; or
 - (iv) any other event or circumstance arises which the RE considers in its absolute discretion may be detrimental to the interests of the Members of the Scheme.
- (c) The RE is not required to process Withdrawal Notices where:
- (i) the person seeking to redeem the Units cannot provide satisfactory evidence of the Member's title or authority to deal with the Units; or
 - (ii) the withdrawal would cause the Member's Unit Holding to fall below the Minimum Investment.

- (d) If the RE allows a Member to withdraw an investment from the Scheme before the end of an Investment Term, the RE is also entitled to require the Member to pay an early withdrawal charge equal to the last three months interest distributions paid or payable on the amount being withdrawn (or if the investment has been for less than three months, the RE's estimate of what that amount would have been if the investment had been in place for the last three months), and where an Adviser has been paid an upfront commission in respect of the investment being withdrawn, the RE will also be entitled to require the Member to pay a further early withdrawal charge equal to the upfront commission paid, calculated on a pro-rata basis for the length of time remaining to the end of the Investment Term. The RE will also be entitled to require the Member to pay an amount equal to any other fees or charges arising from the early withdrawal (including fees and charges that may be payable to the financial institution which has organised the investment in the relevant currency). These early withdrawal charges will be deducted from the investment being withdrawn, and paid at the time of withdrawal. Such charges will become part of the Scheme Property.
- (e) If the RE allows a Member to withdraw an investment, and that investment has been held for a period in respect of which no Distributable Income has been calculated in respect of that investment, the RE may pay to the Member the amount of Distributable Income that the RE estimates is payable to the member for that period, rather than delay payment to the member until the actual Distributable Income has been calculated.

7.3 Cancellation

- (a) The RE must cancel the number of Units which have been redeemed under clause 7.2 and must not reissue them. Upon cancellation, the RE must immediately:
 - (i) remove the name of the Member from the Register in respect of the redeemed Units; and
 - (ii) provide the Member with a new Unit Holding Statement for any unredeemed Units.
- (b) A Unit is cancelled when the Member holding the Unit is paid the Withdrawal Price by the RE.

8. WITHDRAWAL PRICE

The Withdrawal Price of each Unit pursuant to clause 7 shall be calculated as follows:

(Net Fund Value)

(number of Units issued)

calculated on the last Valuation Date prior to the date of withdrawal.

9. **TRANSFER OF UNITS**

9.1 **Transferability of Units**

- (a) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by the Law or in any other form that the RE approves.
- (b) A transferor of Units remains the holder of the Units transferred until the transfer is recorded on the Register.

9.2 **Registration of Transfers**

- (a) The following documents must be lodged for registration on the Register at the registered office of the RE or the location of this Register:
 - (i) the instrument of transfer; and
 - (ii) any other information that the RE may require to establish the transferor's right to transfer the Units.
- (b) On compliance with clause 9.2(a), the RE will, subject to the powers of the RE to refuse registration, record on the Register the transferee as a Member.

9.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the RE may refuse to register any transfer of Units.

9.4 **Where registration must be refused**

- (a) Registration must be refused if:
 - (i) the RE has notice that the transferor of Units has entered into any borrowing or other form of financial accommodation to provide all or part of the funds to subscribe for or acquire a Unit and has not received confirmation from the financier that the financier consents to the transfer of those Units; or
 - (ii) the transferor has given a power of attorney in favour of the RE and the Custodian in the form set out in an application form accompanying a PDS and the transferee has not executed and provided to the RE a similar form of power of attorney (with such adaptations as are necessary) in favour of the RE and the Custodian;
- (b) In the case of (i) or (ii) above, the RE must refuse to register same and must continue to treat the seller or transferor as the case may be

as the registered holder for all purposes and the purported sale, purchase, disposal or transfer shall be of no effect.

- (c) If the transferee is not a Member the RE must not consent to the registration until the RE is satisfied that the transferee has agreed to be bound by the Constitution.

9.5 Notice of non-registration

If the RE declines to register any transfer of Units, the RE must within 5 Business Days after the transfer was lodged with the RE give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration of the transfer.

9.6 Suspension of transfers

The registration of transfers of Units may be suspended at any time and for any period as the RE from time to time decide. However, the aggregate of those periods must not exceed 30 days in any calendar year.

10. TRANSMISSION OF UNITS

10.1 Entitlement to Units on death

- (a) If a Member dies:
 - (i) the survivor or survivors, where the Member was a joint holder; and
 - (ii) the legal personal representatives of the deceased, where the Member was a sole holder,will be the only persons recognised by the RE as having any title to the Member's interest in the Units.
- (b) The RE may require evidence of a Member's death as it thinks fit.
- (c) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

10.2 Registration of persons entitled

- (a) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the RE, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:
 - (i) be registered personally as a Member; or
 - (ii) have another person registered as the Member.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
 - (i) the right to transfer; and
 - (ii) the registration of a transfer;

for Units apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

10.3 Distributions and other rights

- (a) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the RE, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.
- (b) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

11. DISTRIBUTABLE INCOME

11.1 Income of the Scheme

The Income of the Scheme for each Financial Year will be determined in accordance with applicable Accounting Standards.

11.2 Expenses and provisions of the Scheme

For each Financial Year:

- (a) the expenses of the Scheme will be determined in accordance with the applicable Accounting Standards; and
- (b) provisions or other transfers to or from reserves may be made in relation to such items as the RE considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation and capital losses.

11.3 Distributable Income

The Distributable Income of the Scheme for a month, a Financial Year or any other period will be such amount as the RE determines. Distributable Income is paid to Members after taking into account any Adviser fees or costs associated with individual Members' investments, to the extent those fees or costs have not otherwise been taken into account.

12. DISTRIBUTIONS

12.1 Distribution Period

- (a) The Distribution Period is one calendar month for Australian dollar investments or as otherwise determined by the RE in its absolute

discretion.

- (b) The Distribution Period is the Investment Term of the investment for non-Australian dollar investments or as otherwise determined by the RE in its absolute discretion.

12.2 Distributions

The RE must distribute the Distributable Income relating to each Distribution Period within 21 days of the end of each Distribution Period.

12.3 Present entitlement

Unless otherwise agreed by the RE and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme on the last day of each Distribution Period.

12.4 Capital distributions

The RE may distribute capital of the Scheme to the Members. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the RE divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

12.5 Grossed up Tax amounts

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

12.6 Reinvestment of Distributable Income

- (a) The RE may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.
- (b) The terms of any such offer of reinvestment will be determined by the RE in its discretion and may be withdrawn or varied by the RE at any time.
- (c) The RE may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.
- (d) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

13. NATURE OF RE POWERS

- s601GA(1)(b) 13.1 The RE has all the powers:
- (a) of a natural person to invest and borrow on security of the Scheme Property;
 - (b) in respect of the Scheme and the Scheme Property that it is possible under the Law to confer on a RE and on a Trustee;
 - (c) as though it were the absolute owner of the Scheme Property and acting in its personal capacity; or
 - (d) necessary for fulfilling its obligations under this Constitution and under the Law.
- s601GA(3) 13.2 The RE must only invest Members' funds in:
- (a) subject to clause 13.3 and 13.3A, mortgage investments provided that:
 - (i) all mortgages are secured over property and the amount which may be advanced to a Borrower does not exceed an LVR of 75% of the value of the security property on initial settlement.
 - (ii) the type of real estate offered for security is acceptable to the RE;
 - (iii) the value of the property offered as security has been established in accordance with the Mortgage Lending Valuation Policy of the RE ;
 - (b) other mortgage backed schemes in accordance with this clause and the RE's compliance standards;
 - (c) a range of interest bearing investments backed by Australian Banks, building societies, State or Federal governments, or foreign banks as approved by the RE.
 - (d) Authorised Investments.
- s601GA(3) 13.3 Notwithstanding the provisions of clause 13.2(a), after a loan has settled and where the RE considers it is in the best interests of the Members of the Scheme, the RE may approve an LVR not to exceed 85% of the value of the security property.
- 13.3A Notwithstanding any other provision of this Constitution, the LVR of a loan that is in default may exceed 85%
- s601GA(3) 13.4 Whenever a loan of Scheme funds involves a Development Loan, the RE shall ensure it has included amongst its officers or employees persons with relevant project management experience who are competent to manage loans of this kind.
- s601GA(3) 13.5 To the extent allowed by law:

- (a) any restriction or prohibition imposed upon the RE in relation to the investment from time to time of the Scheme Property or any part thereof is hereby excluded from the obligations imposed.
- (b) without derogating from the generality of the foregoing this exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

s601GA(3) 13.6 To the extent allowed by law:

- (a) the RE may borrow or raise money with or without security over the Scheme Property or any part of it on any terms, including any rate of interest and any fees and expenses as the RE thinks fit;
- (b) the RE may deal with any property to exercise all the powers of a mortgagee pursuant to the mortgage terms and conditions.

s601GA(3) 13.7 The RE must direct the Custodian to deal with the Scheme Property in accordance with this Constitution.

14. COMPLAINTS PROCEDURES

s601GA(1)(c) 14.1 If a Member has a complaint they should generally first contact their Adviser. If the Adviser is unavailable, unwilling, or unable to assist, or if the Member wishes to directly contact the RE, and the complaint relates to the Fund or the RE, then the Member should contact the RE at the registered office of the RE. Complaints may be made in writing or by telephone.

14.2 The RE may (if applicable) contact the Adviser for further background information and attempt to mediate a satisfactory resolution of the complaint or escalate as necessary. The RE has 30 days to respond to the complaint once it is received. The RE must attempt to resolve the complaint within a satisfactory time period as determined by the nature of the complaint and the Member's response.

14.3 The Complaints Officer of the RE will take responsibility for formal complaints and record them in the Complaints Register. In acknowledging or resolving formal complaints, the RE must make or cause to be made, a written response including:-

- (a) the name, title and contact details of the person actually handling the complaint;
- (b) a summary of the RE's understanding of the complaint;
- (c) details of the RE's offer for resolution of the complaint and relevant time frame;
- (d) where the complaint is not fully dealt with in the letter an estimate of time required for the RE to resolve the complaint.

14.4 Full details of each formal complaint and resolution thereof must be recorded in

the Complaints Register including:-

- (a) the person responsible for resolving the complaint;
- (b) the name of the Member making the complaint;
- (c) the nature of the complaint;
- (d) the product service or department in respect of which the complaint was made;
- (e) the actual time required to resolve the complaint;
- (f) the actual resolution of the complaint;
- (g) recommendations, if any, for changes to products disclosures systems or processes to ensure similar complaints do not arise in the future.

14.5 The Complaints Register should be reviewed by the Complaints Manager of the RE as part of an ongoing review process to determine whether recommendations for change arising from resolved complaints have been effectively incorporated in the compliance program.

14.6 Where the RE believes it has either resolved the complaint, or it has not resolved the complaint but believes it can do nothing more to satisfy the complainant, and the Member feels their complaint has still not been satisfactorily resolved, the complainant must be referred to the FICS for mediation. The FICS adopts a three stage approach in resolving complaints as follows:-

- (a) stage 1: initial opportunity for Member to resolve complaints;
- (b) stage 2: complaints review, investigation and conciliation;
- (c) stage 3: independent determination of complaints by adjudicator.

The full terms of reference for the FICS are held by the RE.

14.7 If a complaint cannot be resolved to the satisfaction of the Member by the RE or the FICS then the complainant Member may:-

- (a) refer the matter to arbitration or the courts; or
- (b) take whatever other action is open to the complainant Member under the general law.

14.8 The RE must disclose the details of its complaints procedure to all investors.

15. TERM OF TRUST

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

- (a) the date which is eighty years from the Commencement Date; and
- (b) any earlier date which the RE, in its absolute discretion may appoint as the Vesting Date.

16. WINDING UP THE SCHEME

s601GA(1)(d) 16.1 The Scheme shall only be wound up in accordance with the Law and this

Constitution.

- 16.2 The RE must wind up the Scheme in the following circumstances:-
- s601NE(1)(a) (a) if the term of the Scheme as detailed in this Constitution has expired;
 - s601NE(1)(b) (b) the Members pass an extraordinary resolution directing the RE to wind up the Scheme;
 - s601NE(1)(c) (c) the Court makes an order directing the RE to wind up the Scheme pursuant to the Law and in particular pursuant to section 601FQ(5) and section 601ND;
 - s601NE(1)(d) (d) the Members pass an extraordinary resolution to remove the RE but do not at the same time pass an extraordinary resolution choosing a company to be the new RE that consents to becoming the Scheme's RE;
- s601NC(1) 16.3 (a) If the RE considers that the purpose of the Scheme:
- (i) has been accomplished; or
 - (ii) cannot be accomplished,
- it may take steps to wind up the Scheme.
- (b) If the RE wishes to wind up the Scheme pursuant to clause 16.3(a), the RE must give to the Members of the Scheme and to the ASIC a notice in writing;
- (i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished; and
 - (ii) informing the Members of their rights to take action under Division 1 of Part 2G.4 of the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on a special resolution Members propose about the winding up of the Scheme; and
 - (iii) informing the Members that the RE is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the RE giving the notice to the Members;
- (c) if no meeting is called within that 28 days to consider the proposed winding up, the RE may wind up the Scheme.
- s601NE(2) 16.4 (a) The RE may wind up the Scheme in accordance with this Constitution and any orders under S601NF(2) of the Law if the RE is permitted by S601NC(3) of the Law to wind up the Scheme.
- s601NF(3) (b) An order to wind up the Scheme pursuant to s601ND (1) or s601NF (1) or (2) of the Law may be made on the application of:

- (i) the RE; or
- (ii) a director of the RE; or
- (iii) a Member of the Scheme; or
- (iv) the ASIC.

- s601NE(3) 16.5 The RE shall not accept any further Applications for Units in the Scheme or make any further loans from the Scheme Property at a time after the RE has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.
- 16.6 The RE shall manage the Scheme until such time as all winding up procedures have been completed.
- 16.7 Subject to the provisions of this clause 16 upon winding up of the Scheme the RE must:
- (a) realise the assets of the Scheme Property;
 - (b) pay all liabilities of the RE in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme except where such liability is a Unit Holder Liability;
 - (c) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 12.4;
 - (d) The Members must pay the costs and expenses of a distribution of assets under clause 16.7(c) in the same proportion specified in clause 12.4.
 - (e) The RE may postpone the realisation of the Scheme Property for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
 - (f) The RE may retain for as long as it thinks fit any part of the Scheme Property which in its opinion may be required to meet any actual or contingent liability of the Scheme.
 - (g) The RE must distribute among the Members in accordance with clause 16.7 anything retained under clause 16.7(f) which is subsequently not required.
- s601NG 16.8 If on completion of the winding up of a registered Scheme, the RE or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the RE or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the

ASIC to be dealt with pursuant to Part 9.7 of the Law.

s601EE 16.9 If at any time the Scheme is operated while it is unregistered the following may apply to the Court to have the Scheme wound up:

- (a) The ASIC
- (b) The RE
- (c) A Member of the Scheme

16.10 The RE shall arrange for an Auditor to audit the final accounts of the Scheme after the Scheme is wound up.

17. VALUE OF THE SCHEME FUND

17.1 Valuation of the Scheme Property

The RE may cause the Scheme Property to be valued at any time in accordance with the Scheme Valuation Policy of the RE.

17.2 Valuation if required

The RE must cause the Scheme Property or any asset of the Scheme Property to be valued if required by ASIC or under the Law and the valuation must be undertaken in accordance with those requirements.

17.3 Determination of Net Fund Value

The RE may determine the Net Fund Value at any time in its discretion, including more than once on each day.

18. FEES, TAXES, COSTS AND EXPENSES

s601GA(2) 18.1 Taxes:

The RE may use the Scheme Property to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

- (a) this Constitution;
- (b) any amount incurred or payable by the RE;
- (c) a gift or settlement effected by this Constitution;
- (d) the exercise by the RE of any Power; or
- (e) money or investments held by or on behalf of the RE under this Constitution.

s601GA(2) 18.2 Payment of Debts:

The RE may set aside any money from the Scheme Property which, in the RE's opinion, is sufficient to meet any present or future obligation of the Scheme.

s601GA(2) 18.3 Fees:

The RE is entitled to receive out of the Scheme Property, a management fee of up to 5.5 % per annum (inclusive of GST) of the Net Fund Value in relation to the performance of its duties as detailed in this Constitution, the Compliance Plan and the Law. This fee is to be calculated monthly and paid at such times as the RE determines.

- s601GA(2) 18.4 The RE shall be entitled to fees in relation to the following duties:
- (a) the subscription and withdrawal of units;
 - (b) the transfer or transmission of Units;
 - (c) the establishment/loan application fees;
 - (d) the structuring or packaging of loan proposals;
 - (e) loan management;
 - (f) the rollover of a loan facility;
 - (g) due diligence enquiries generally;
 - (h) the sale of real estate or assets of the Scheme Property;
 - (i) the promotion and management of the Scheme;
 - (j) the appointment of the Custodian pursuant to the Custody Agreement;
 - (k) the winding-up of the Scheme;
 - (l) the performance of its duties and obligations pursuant to the Law and this Constitution.

s601GA(2) 18.5 **Costs and Expenses**

The RE shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

- (a) Auditor's fees;
- (b) legal fees and outgoings in relation to settlement, rollover, default or recovery of loans
- (c) barrister/QC - legal counsel fees;
- (d) search fees including property searches, company, bankruptcy, CRAA searches and any other searches which may be necessary to enable location, identification and/or investigation of borrowers/guarantors/mortgagors;
- (e) valuation fees;
- (f) independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;
- (g) property report/property consultant fees;
- (h) process servers' fees;
- (i) private investigator fees;
- (j) fees in relation to the marketing and packaging of security properties for sale;
- (k) real estate agent's sales commissions;
- (l) costs of maintenance of mortgage securities;
- (m) outstanding accounts relating to mortgage securities such as council rates;

- (n) locksmith for changing locks of mortgage securities as appropriate;
- (o) insurance (property and contents);
- (p) removalists for removal of borrower's property as appropriate;
- (q) security guards to attend mortgage securities as appropriate;
- (r) building and/or property inspection report fees - i.e. building, town planning experts and the like;
- (s) all ASIC charges;
- (t) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;
- (u) all costs and expenses incurred in producing PDS' and Supplementary PDS' or any other disclosure document required by the Law;
- (v) reasonable costs incurred in protecting or preserving all assets offered as security;
- s601FB(2) (w) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the RE or by any agent appointed pursuant to s601FB(2) of the Law;
- (x) any liability, loss, cost, expense or damage arising from the lawful exercise by the RE and the Custodian of their rights under the Power of Attorney contained in clause 20;
- (y) fees and expenses of any agent or delegate appointed by the RE;
- (z) bank and government duties and charges on the operation of bank accounts;
- (aa) costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;
- (bb) insurances directly or indirectly protecting the Scheme Property;
- (cc) fees and charges of any regulatory or statutory authority;
- (dd) taxes in respect of the Scheme but not Taxes of the RE [save and except any goods and services or similar tax ("GST")] which are payable by the RE on its own account;
- (ee) costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the Scheme;
- (ff) expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditor;
- (gg) costs and disbursements incurred in the preparation and lodgement of returns under the Law, Tax Act or any other laws for the Scheme;
- (hh) costs of convening and holding meetings of Members;
- (ii) costs and disbursements incurred by or on behalf of the RE in connection with its retirement and the appointment of a substitute;

- (jj) costs and disbursements incurred by the RE in the initiation, conduct and settlement of any court proceedings;
- (kk) costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not) including legal proceedings against Compliance Committee Members not arising out of a wilful breach of a duty referred to in S601JD of the Law;
- (ll) costs of advertising the availability of funds for lending;
- (mm) brokerage and underwriting fees;
- (nn) if and when the RE becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the RE in respect of the Scheme or under the terms of this Constitution then the RE shall be entitled to be indemnified in respect of such GST from the Scheme Property;
- (oo) If there is any change to the Law or ASIC policy whereby the RE is required to alter the structure of the Scheme or amend this Constitution, then the costs of the RE in complying with these changes will be recoverable out of the Scheme Property.

- s601GA(2) 18.6 In the event that the RE has not performed its duties, the lack of entitlement to payment of fees pursuant to 18.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the RE is not entitled to be paid fees and expenses for work properly performed.
- s601GA(2) 18.7 In the event of any dispute regarding the payment of fees and expenses, the RE shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the RE shall be repaid forthwith upon the identification of the overpayment.
- 18.8 The RE is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.
- 18.9 The RE may waive the whole or any part of the remuneration to which it would otherwise be entitled under this clause.
- 18.10 Despite any other provision of this Constitution, the RE may pay a Member's Adviser a fee or fees as directed by the Adviser from time to time. These fees are to be paid out of Scheme Property, as an expense of the Scheme. Where income of the Scheme is not sufficient to pay in full an Adviser's fee and the relevant Member's expected income distribution, the RE may reduce the Adviser's fee and/or the expected income distribution on a pro rata basis, or on any other basis agreed with the Adviser.

19. **INDEMNITY AND LIABILITY**

s601GA(2) 19.1 The following clauses apply to the extent permitted by law:

- (a) The RE is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Constitution and its duties; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the RE in relation to the Scheme is limited to the Scheme Property, from which the RE is entitled to be, and is in fact, indemnified.

- (b) In particular, the RE is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
 - (i) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the RE;
 - (ii) it acted as required by Law; or
 - (iii) it relied in good faith upon any signature, marking or documents.
- (c) In addition to any indemnity under any Law, the RE has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust.
- (d) The RE is not liable to account to any Member for any payments made by the RE in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

20. **POWERS OF ATTORNEY**

20.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the RE and the Custodian and any director officer attorney or substitute nominated by either the RE or the Custodian severally for this purpose as its attorney and agent with the right:

- (a) at any time to:
 - (i) sign any document in relation to any subscription and withdrawal agreement;
 - (ii) sign any document in relation to the transfer or transmission of Units;
 - (iii) sign any variation of this Constitution;

- (iv) sign any document required by ASIC to be executed by a Member in respect of the Scheme.
 - (b) at the request in writing of either the RE or the Custodian the Member must execute separate Powers of Attorney in a form reasonably required by the RE or the Custodian appointing the RE and/or the Custodian as its attorney for the purpose of this clause.
 - (c) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;
- 20.2 each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.
- 21. **TITLE TO SCHEME FUND**
 - 21.1 **Custodian to hold as agent of RE**

The Scheme Property will be held in the name of the Custodian as agent for the RE on the terms and conditions as detailed in the Custody Agreement.
- 22. **THE REGISTER**
 - 22.1 **Keeping registers**

The RE must establish and keep a register of Members, and if applicable, the other registers required by the Law.
 - 22.2 **Information in registers**

To the extent applicable, the Register must be kept in accordance with, and contain the information required by the Law. Otherwise, the RE may decide what information is included in the Register. If the Law applies, the RE has the powers conferred under the Law in relation to the Register.
 - 22.3 **Changes**

Every Member must promptly notify the RE of any change of name or address and the RE must alter the Register accordingly.
- 23. **NOTICES**
 - 23.1 A notice or other communication connected with this Constitution has no legal effect unless it is in writing.
 - 23.2 In addition to any other method of service provided by law, the notice must be:
 - (a) sent by post, postage prepaid, to the address for the Member in the RE's register of interests;
 - (b) sent by facsimile to the facsimile number of the Member; or
 - (c) otherwise delivered including via email, at the address of the addressee of the Member as is subsequently notified.
 - 23.3 A notice must be treated as given and received:
 - (a) if sent by post, on the 2nd Business Day (at the address to which it is

posted) after posting;

- (b) if sent by facsimile or electronically before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery.

23.4 Despite clause 23.3(ii) a facsimile is not treated as given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the notice have been sent.

23.5 A notice sent or delivered in a manner provided by clause 23.2 must be treated as validly given to and received by the party to which it is addressed even if:

- (a) the addressee has been liquidated or deregistered or is absent from the place at which the notice is delivered or to which it is sent; or
- (b) the notice is returned unclaimed.

23.6 Any notice by a party may be given and may be signed by the solicitor for the party.

23.7 Any notice to a party may be given to the solicitor for the party by any of the means listed in clause 23.2 to the solicitor's business address or facsimile number as the case may be.

24. LIABILITY OF MEMBERS

- (a) The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the RE and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.
- (b) A creditor or other person claiming against the RE as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the RE, any creditor of the RE or any person claiming against the RE in respect of any actual, contingent, prospective or other liability of the RE in relation to the Scheme.

25. RETIREMENT AND APPOINTMENT OF RE

- s601FL 25.1 The RE may retire as RE as permitted by s601FM of the Law.
- s601FM 25.2 The RE must retire when required by s601FM of the Law.
- s601FR 25.3 If the RE changes the former RE must comply with s601FR of the Law.
- s601FS 25.4 The rights, obligations and liabilities of a former RE are as detailed in s601FS of the Law.

26. CHANGING THE CONSTITUTION

- s601GC(1) 26.1 This Constitution may be modified or repealed or replaced with a new Constitution:
 - (a) by special resolution of the Members of the Scheme;

or

- (b) by the RE if the RE reasonably considers the change will not adversely affect Members' rights.

26.2 In the event the RE wishes to change the Constitution the RE must:

- s601GC(2) (a) lodge with the ASIC a copy of the modification or the new Constitution;
- (b) the modification, or repeal and replacement, cannot take effect until the copy has been lodged;

- s601GC(3) (c) the RE must lodge with the ASIC a consolidated copy of the Scheme's Constitution if the ASIC directs it to do so;

s601GC(4) 26.3 The RE must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

- (a) asks the RE in writing for the copy; and
- (b) pays any fee (up to the prescribed amount) required by the RE.

27. STATEMENTS, ACCOUNTS AND AUDIT

27.1 Appointment of auditors

- (a) The RE must appoint an Auditor to regularly audit the accounts in relation to the Scheme and perform the other duties required of the Scheme's auditors under this Constitution and the Law.
- (b) The RE must appoint an Auditor of the Compliance Plan (as defined in section 601HG of the Law).

27.2 Retirement of auditors

The Scheme Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Law.

27.3 Remuneration of Auditor

The remuneration of the Scheme Auditor and Compliance Plan Auditor will each be fixed by the RE.

27.4 Accounts and reports

- (a) The accounts of the Scheme must be kept and prepared by the RE in accordance with applicable Accounting Standards and the Law.
- (b) The RE must report to Members concerning the affairs of the Scheme and their holdings as required by the Law. Subject to the Law, the person preparing a report may determine the form, content and timing of it.

27.5 Audit

The RE will cause:

- (a) the Scheme Auditor to audit and report on the Scheme's accounts;
- (b) the Compliance Plan Auditor to audit and report on the Compliance Plan,

each in the manner required by the Law.

28. MEETINGS OF MEMBERS

28.1 Convening Meetings

The RE may at any time call and convene a meeting of Members and must call and convene a meeting of Members when required to do so by the Law.

28.2 Calling and holding meetings

- s252G(4) (a) A notice of meeting sent by post is taken to be given the day after it is delivered.
- s252R(2) (b) If, at any time, there is only 1 Member of the Scheme, the quorum for a meeting is 1 in all other cases the quorum for a meeting is 2.
- s252R(3) (c) If an individual is attending a meeting as a Member and as a body corporate representative, the RE may in determining whether a quorum is present, count the individual more than once.
- s252W(2) (d) A proxy is not entitled to vote on a show of hands.
- s252W(3) (e) A proxy is entitled to speak and vote for a Member (to the extent allowed by the appointment) even if the Member is present (but only so long as the Member does not speak or vote, as the case may be).
- s252Y(2) (f) An appointment of proxy:
 - (i) is valid even if it does not specify the Member's address; and
 - (ii) may be a standing one.
- s252Z(5) (g) The RE may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting.
- s253K(2) (h) A poll cannot be demanded on any resolution concerning:
 - (i) the election of the chair of a meeting; or
 - (ii) the adjournment of a meeting.

29. OTHER ACTIVITIES AND OBLIGATIONS OF THE RE

29.1 Subject to the Law, nothing in this Constitution restricts the RE (or its associates) from:

- (a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);
- (b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

29.2 All obligations of the RE which might otherwise be implied by law are expressly excluded to the extent permitted by law.

30. **GOVERNING LAW**

This Deed is governed by the laws of the State of Queensland. The RE and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

31. **ASIC INSTRUMENT**

If relief from the provisions of the Law granted by an ASIC Instrument requires that this Constitution contain certain provisions, then those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the relief is granted by Class Order (rather than specifically in relation to the Scheme) then the ASIC Instrument (and the provisions it requires) will only be taken to be incorporated if the RE declares in writing that this is the case.

32. **UNCONTROLLED EVENTS**

To the extent permitted by law, if the RE is prevented from performing its duties under this Constitution or the law due to the occurrence of an Uncontrolled Event then the RE is not liable to the Members and nor is the RE liable for any loss or decrease in value of the Scheme Property.

EXECUTED AS A DEED at the Gold Coast, Queensland:

GIVEN under the Common Seal of LM)

INVESTMENT MANAGEMENT LIMITED ACN 077).....

208 461 by authority of a resolution of the Board of) Director

Directors under the hands of two Directors who)

certify that they are the proper officers to affix this)

seal and in the presence of:)

) Director

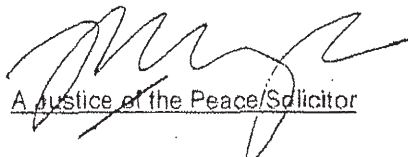

A Justice of the Peace/Solicitor

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Australian Securities & Investments Commission



Form 5101
Corporations Act 2001
601GC

Notification of change to managed investment scheme's constitution

If there is insufficient space in any section of the form, print additional copies of the relevant page(s) and submit as part of this lodgement

Scheme details

Managed investment scheme name

LM First Mortgage Income Fund

ARSN

089 343 288

Responsible entity name

LM Investment Management Limited

ACN

077 208 461

Lodgement details

Who should ASIC contact if there is a query about this form?

Firm/organisation

Norton Rose Australia

Contact name/position description

Peter Schmidt - Partner

ASIC registered agent number (if applicable)

27628 (Brisbane)

Telephone number

(07) 3414 2888

Postal address or DX address

GPO Box 407, Brisbane, QLD 4001

1 Details of change

ASIC form code

☐ Modification of constitution authorised by special resolution of members

Date of resolution

/ /
(D) (D) (M) (M) (Y) (Y)

B

☐ Replacement of constitution authorised by special resolution of members

Date of resolution

/ /
(D) (D) (M) (M) (Y) (Y)

C

☒ Modification of constitution authorised by responsible entity

Date authorised

/ /
(D) (D) (M) (M) (Y) (Y)

B

☐ Replacement of constitution authorised by responsible entity

Date of replacement

/ /
(D) (D) (M) (M) (Y) (Y)

C

☐ Consolidated constitution

Date of consolidation

/ /
(D) (D) (M) (M) (Y) (Y)

D

2 Documents to be attached

- A copy of the modification or the new constitution.
The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

OR

- A consolidated copy of the scheme's constitution if directed to do so by ASIC.

Signature

This form must be signed by a director or secretary of the responsible entity

I certify that the information in this form is true and complete.

Name

Francene Mulder

Capacity

- ☒ Director of responsible entity
☐ Secretary of responsible entity

Signature

Francene Mulder

Date signed

2 6 / 1 0 / 1 2
[D] [D] [M] [M] [Y] [Y]

Lodgement

Send completed and signed forms to:
Australian Securities and Investments Commission,
GPO Box 9827 in your capital city.

For more information

Web www.asic.gov.au
Need help? www.asic.gov.au/question
Telephone 1300 300 630

 **NORTON ROSE**

Dated

26 OCTOBER 2012

Supplemental Deed

LM First Mortgage Income Fund

ARSN 089 343 288

LM Investment Management Limited

ACN 077 208 461

John Moutsopoulos
Norton Rose Australia
Level 18, Grosvenor Place, 225 George Street
Sydney NSW 2000
Telephone: +61 2 9330 8166
www.nortonrose.com
Our ref: 2789191

Supplemental Deed dated

26 OCTOBER 2012

Parties LM Investment Management Limited ACN 077 208 461
of Level 4, RSL Centre, 9 Beach Road, Surfers Paradise, Queensland 4217
(Responsible Entity)

Introduction

- A By a replacement constitution lodged with the Australian Securities & Investments Commission dated 10 April 2008, as amended (**Constitution**), the scheme currently known as LM First Mortgage Income Fund ARSN 089 343 288 (**Scheme**) is registered as a managed investment scheme and the Responsible Entity is appointed as the responsible entity of the Scheme.
- B Pursuant to clause 26.1(b) of the Constitution and section 601GC(1)(b) of the Law, the Constitution may be modified by the Responsible Entity if it reasonably considers the change will not adversely affect Members' rights.
- C At the request of the responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875, the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 and the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868, the Constitution of the Scheme is to be amended to recognise and acknowledge the intent of See Through Voting provisions which have been inserted into their respective constitutions.
- D The Responsible Entity reasonably considers that the modifications to the Constitution proposed to be made by this supplemental deed will not adversely affect Members' rights.

Operative provisions

1 Interpretation

Except to the extent that it is given a special meaning in this supplemental deed, any word or expression which has a particular meaning in the Constitution must, when used in this supplemental deed, be given the same meaning as it has in the Constitution.

2 Operation of this deed

This deed takes effect as a supplemental deed to the Constitution on the day it is lodged with ASIC pursuant to section 601GC(2) of the Law.

3 Amendments to the Constitution

- 3.1 Subject to clause 2, the Constitution is modified by including the following:

(a) Insert new definition into the Directory of Terms at clause 1.1:

"**Feeder Funds**" means the LM Currency Protected Australian Income Fund ARSN 110 247 875, the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 and the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (each a "**Feeder Fund**")."

(b) Insert new clause 33 into the Constitution:

"33. See Through Voting Covenants

The Scheme's RE recognises and acknowledges the intent and effect of the See Through Voting provisions contained within Schedule 1 of the respective Feeder Funds' constitution."

3.2 The provisions of the Constitution are not otherwise affected.

4 Binding provisions

The provisions of this supplemental deed are binding on the Responsible Entity, each Member and all persons claiming through them as if each were a party to this deed.

5 No resettlement

Nothing in this deed constitutes a resettlement or redeclaration of the Scheme.

6 Governing law

This deed is governed by and is to be construed according to the laws of Queensland.


Executed as a deed and delivered on the date shown on the first page

Executed by **LM Investment Management Limited** ACN 077 208 461
in accordance with section 127 of the
Corporations Act 2001:



Director/company secretary

Franene Maree Mulder
Name of director/company secretary
(BLOCK LETTERS)



Director

PETER CHARLES DRAKE
Name of director
(BLOCK LETTERS)

Australian Securities &
Investments Commission



Form 5101
Corporations Act 2001
601GC

Notification of change to managed investment scheme's constitution

If there is insufficient space in any section of the form, print additional copies of the relevant page(s) and submit as part of this lodgement

Scheme details	Managed investment scheme name	LM FIRST MORTGAGE INCOME FUND
	ARSN	089 343 288
	Responsible entity name	LM INVESTMENT MANAGEMENT LTD
	ACN	071 208 461
Lodgement details	Who should ASIC contact if there is a query about this form?	
	Firm/organisation	LM INVESTMENT MANAGEMENT LTD
	Contact name/position description	BRUCE MACKENZIE - COMPLIANCE
	ASIC registered agent number (if applicable)	220281 - (02583)
	Telephone number	07 5584 4500
	Postal address or DX address	PO BOX 485
		SURFERS PARADISE QLD 4217

1 Details of change

<input checked="" type="checkbox"/> Modification of constitution authorised by special resolution of members	Date of resolution 16/05/12 [D] [D] [M] [M] [Y] [Y]	ASIC form code B
<input type="checkbox"/> Replacement of constitution authorised by special resolution of members	Date of resolution [D] [D] [M] [M] [Y] [Y]	C
<input type="checkbox"/> Modification of constitution authorised by responsible entity	Date authorised [D] [D] [M] [M] [Y] [Y]	B
<input type="checkbox"/> Replacement of constitution authorised by responsible entity	Date of replacement [D] [D] [M] [M] [Y] [Y]	C
<input type="checkbox"/> Consolidated constitution	Date of consolidation [D] [D] [M] [M] [Y] [Y]	D

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SUPPLEMENTAL DEED POLL

DATE 16 MAY 2012

PARTIES

LM Investment Management Limited ACN 077 208 461 of Level 4, RSL Centre, 9 Beach Road, Surfers Paradise, Queensland 4217 (**Responsible Entity**)

BACKGROUND

- (A) The LM First Mortgage Income Fund ARSN 089 343 288 (**Trust**) was established under a constitution dated 24 August 1999 made by the Responsible Entity, as amended.
- (B) The Responsible Entity is the responsible entity of the Trust.
- (C) Clause 26 of the constitution of the Trust (**Constitution**) provides that the Responsible Entity may modify the Constitution by special resolution of the Members of the Trust, subject to law (including the *Corporations Act 2001* (Cth) (**Corporations Act**)).
- (D) On 16 May 2012 the Members of the Trust resolved by special resolution to modify the Constitution in accordance with the provisions of this deed.
- (E) The Responsible Entity may give effect to the amendments by executing a supplemental deed. Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution do not take effect until a copy of this deed is lodged with ASIC.

OPERATIVE PROVISIONS

1. INTERPRETATION

A term defined in the Constitution has the same meaning in this deed unless it is defined differently in this deed.

2. AMENDMENTS TO THE CONSTITUTION

The Constitution is modified in the manner set out in Schedule 1 to this deed.

3. EFFECTIVE DATE

The amendments to the Constitution set out in Schedule 1 to this deed will take effect on the later of:

- (a) the date that a copy of this deed is lodged with ASIC, and
- (b) the date that the Members of the Trust resolve by special resolution to confirm the special resolution passed on 16 May 2012 to modify the Constitution in accordance with the provisions of this deed

(such date being the **Effective Date**).

4. BINDING PROVISIONS

The provisions of this deed are binding on the Responsible Entity, each Member and all persons claiming through them as if each were a party to this deed.

5. **NO RESETTLEMENT**

Other than as expressly amended by this document, the Constitution is unchanged and the amendments to the Constitution made under this deed do not constitute a resettlement of the trust which has been established under the Constitution.

6. **GENERAL**

6.1 **Governing law and jurisdiction**

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

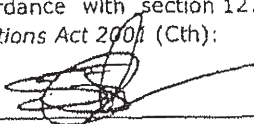
6.2 **Further actions**

The Responsible Entity must do all things and execute all further documents necessary to give full effect to this deed.

EXECUTED as a deed poll.

EXECUTED by LM Investment
Management Limited ACN 077 208 461

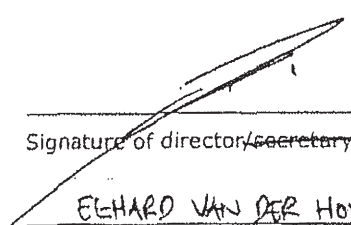
in accordance with section 127(1) of the
Corporations Act 2001 (Cth):



Signature of director

SIMON TICKNER

Name



Signature of director/secretary

ELHARD VAN DER HOVEN

Name

SCHEDULE 1

Amendments to the Constitution

1. NEW CLAUSE 9A

With effect on and from the Effective Date, the Constitution is amended by inserting a new clause 9A (Transfer Facility) as follows:

"9A TRANSFER FACILITY

Definitions

9A.1 In this clause 9A, unless the context indicates otherwise:

Actual Unit Sale Price means, as at any Trigger Date for a Unit Sale Program, the price per Unit calculated in accordance with the following formula:

$$\frac{(NP \times BP) + NID - SD}{(BV)}$$

where:

NP means the amount in the Net Proceeds Account as at that Trigger Date,
BV means the Book Value of the Sale Assets whose sale contributed to the Net Proceeds held in the Net Proceeds Account as at the Invitation Date of that Unit Sale Program,

BP means the Book Price of a Unit as at the Invitation Date of that Unit Sale Program,

NID means the Net Income Distributions as at that Trigger Date divided by the number of Sale Units (where that number is as adjusted under clauses 9A.4, 9A.21, 9A.22 and 9A.23),

SD means the duty (if any) payable to any Office of State Revenue on the transfer of a Unit under the Transfer Facility as at the Liquidity Date for that Trigger Date;

Asset Sale Program means the program for sales of Assets of the Scheme determined by the RE from time to time;

Assets of the Scheme means all assets of the Scheme including the properties over which the RE holds a mortgage or other security for the loans that are assets of the Scheme but (for the avoidance of doubt) excluding all Held Cash and all amounts held on trust for Buying Members under clause 9A.18(a);

Available Hold Income Reserve has the meaning given to that expression in clause 9A.14;

Available Sale Income Reserve has the meaning given to that expression in clause 9A.13;

Base Unit Sale Price means, for any Unit Sale Program, the price per Unit calculated in accordance with the following formula:

$$\frac{(NP \times BP)}{(BV)}$$

where:

NP means the Expected Net Proceeds from the Sale Assets as at the Invitation Date of that Unit Sale Program,

BV means the Book Value of those Sale Assets as at the Invitation Date of that Unit Sale Program,

BP means the Book Price of a Unit as at the Invitation Date of that Unit Sale Program;

Book Price of a Unit means, as at any date ("Calculation Date"), the price calculated in accordance with the following formula as at the last Valuation Date prior to that Calculation Date:

$$\frac{NFV}{NOU}$$

where:

NFV means the Net Fund Value as at that Valuation Date,

NOU means the number of Units on Issue as at that Calculation Date;

Book Value means, for any Sale Assets as at any date ("Calculation Date"), the value of those Sale Assets as recorded in the books of the Scheme as at the date of the most recent audited accounts of the Scheme issued before that Calculation Date, taking into account any provision made in relation to those assets;

Buying Member has the meaning given to that expression in clause 9A.7;

Buying Member's Proportion of the Sale Units has the meaning, for any Buying Member, given to that expression in clause 9A.24;

Deutsche Bank Facility Agreement means the facility agreement dated 1 July 2010 made between LM Investment Management Limited in its capacity as responsible entity for the Scheme and Deutsche Bank AG, Sydney Branch;

Disposal Units has the meaning, for any Unit Sale Program, given to that expression in clause 9A.20;

Distributable Net Proceeds has the meaning, given to that expression in clause 9A.11;

Distribution Date means, for any Trigger Date in a Unit Sale Program, the Business Day immediately following the Liquidity Date for that Trigger Date;

Expected Net Proceeds means the net cash proceeds that the RE expects to receive from the sale of the Sale Assets under the Asset Sale Program, after deducting all costs of sale (including all brokerage, marketing expenses and transaction taxes);

Expected Sale Discount means, for any Investment Allocation Request, the fraction (expressed as a percentage) calculated in accordance with the following formula:

$$\frac{BV - NP}{BV}$$

where:

NP means the Expected Net Proceeds from the Sale Assets as at the Invitation Date of that Investment Allocation Request,

BV means the Book Value of those Sale Assets as at the Invitation Date of that Investment Allocation Request;

Facility Accounts means the Net Proceeds Account, Sale Asset Income Account and Hold Asset Income Account;

Final Completion Date means, in relation to any Unit Sale Program, the date on which the sale of all of the Sale Assets relating to that Unit Sale Program has been completed;

Held Cash has the meaning, as at any Trigger Date, given to that expression in clause 9A.26(d);

Hold Assets means all Assets of the Scheme that are not Sale Assets;

Hold Asset Income means, for any Unit Sale Program, the net income received by the RE from the Hold Assets after the Invitation Date for that Unit Sale Program;

Hold Asset Income Account means the account into which the Hold Asset Income is credited under clause 9A.10;

Invitation Date means, in relation to any Unit Sale Program and any Investment Allocation Request, the date of the Investment Allocation Request that initiated that Unit Sale Program;

Investment Allocation Request has the meaning given to that expression in clause 9A.2;

Liquidity Date means, for any Trigger Date in a Unit Sale Program, the 5th Business Day after that Trigger Date;

Member Election has the meaning given to that expression in clause 9A.3;

Net Income Distributions means, as at any date, the amount held as at that date in the Available Sale Income Reserve *plus* the amount held by the RE as at that date in accordance with the directions under clauses 9A.17 and 9A.18 in respect of distributions out of the Available Sale Income Reserve to Members;

Net Proceeds means the net cash proceeds received by the RE from the sale of the Sale Assets, after deducting all costs of sale (including all brokerage, marketing expenses and transaction taxes);

Net Proceeds Account means the account into which the Net Proceeds are credited under clause 9A.10;

Offer Closing Date has the meaning, in relation to any Investment Allocation Request, given to that expression in clause 9A.3;

Office of State Revenue means the Office of State Revenue of Queensland and any similar office in any other State or Territory of Australia;

Pro Rata Buyer Proportion has the meaning given to that expression in clause 9A.20;

Pro Rata Seller Proportion has the meaning given to that expression in clause 9A.20;

Release Date means the third anniversary of the date on which this clause 9A comes into effect or such earlier date (if any) as the RE determines;

Sale and Purchase Notice has the meaning given to that expression in clause 9A.20;

Sale Assets means, for any Unit Sale Program and any Investment Allocation Request, the assets identified in that Investment Allocation Request as the Assets of the Scheme that will be sold for the purposes of that Unit Sale Program under the Asset Sale Program (as adjusted under clause 9A.9);

Sale Asset Income means, for any Unit Sale Program, the net income received by the RE from the Sale Assets after the Invitation Date for that Unit Sale Program;

Sale Asset Income Account means the account into which the Sale Asset Income is credited under clause 9A.10;

Selling Member has the meaning given to that expression in clause 9A.6;

Selling Member's Disposal Units means, for any Selling Member and any Unit Sale Program, the Disposal Units for that Unit Sale Program that are held by that Selling Member;

Selling Member's Sale Units has the meaning, for any Selling Member and any Unit Sale Program, given to that expression in clause 9A.22;

Transfer Facility means the process for the sale and purchase of Units set out in this Clause 9A;

Trigger Date has the meaning, for any Units Sale Program, given to that expression in clause 9A.20;

Unit Sale Program means a program for the sale and purchase of Units under the Transfer Facility that is initiated by the issue by the RE of an Investment Allocation Request under this clause 9A.

Member Election

9A.2 At any time the RE may give a notice to the Members (**Investment Allocation Request**) inviting each Member to notify the RE:

- (a) whether it wishes to sell its Units under the Transfer Facility or to continue to hold them, and
- (b) If it wishes to sell its Units, the percentage of its Unit Holding that it wishes to sell (which may be 100% or such lesser percentage as the Member notifies the RE).

9A.3 The RE must specify in the Investment Allocation Request:

- (a) the date (**Offer Closing Date**) by which the Member's notice (**Member Election**) must be received, which must not be less than [20] Business Days after the Invitation Date;
- (b) the Sale Assets;
- (c) the Base Unit Sale Price; and
- (d) the Expected Sale Discount.

9A.4 Notwithstanding any other provision of this clause 9A:

- (a) a Member is not entitled to indicate in its Member Election that it wishes to sell less than 1,000 Units or an integral multiple of 1,000 Units, except that it may indicate that it wishes to sell all of its Unit Holding even where its total Unit Holding is less than 1,000 Units or is not an integral multiple of 1,000 Units; and
- (b) the RE may at any time reject a Member Election in which the Member notifies the RE it wishes to sell all or some of its Units, and deem the Member Election to be a notice that the Member wishes to hold all of its Units and deem the Member to be a

Buying Member, if the Member cannot provide satisfactory evidence of the Member's title or authority to deal with the Units which it wishes to sell.

- 9A.5 If a Member does not give the RE a Member Election by the Offer Closing Date it will be deemed to wish to hold all of its Units for the purposes of the Transfer Facility.
- 9A.6 A Member which notifies the RE in its Member Election that it wishes to dispose of all or any of its Units is a **Selling Member** in respect of those of its Units which it has elected to dispose of (as adjusted under clauses 9A.4, 9A.21, 9A.22 and 9A.23).
- 9A.7 A Member which notifies the RE in its Member Election that it wishes to hold all or any of its Units (or which is otherwise deemed under this clause 9A to wish to hold its Units) is a **Buying Member** in respect of those of its Units:
- (a) which it wishes to hold (or is deemed under clause 9A.4 to wish to hold), or
 - (b) which are otherwise not transferred under this clause 9A due to any adjustments under clauses 9A.21, 9A.22 and 9A.23.
- 9A.8 A Member Election:
- (a) will be taken to be an offer by that Member to the other Members to sell the Units confirmed for sale in its Member Election on the terms and in accordance with the procedures (including adjustments) of this clause 9A,
 - (b) will be taken to have been accepted by the Buying Members on the terms and in accordance with the procedures (including adjustments) of this clause 9A (and in the case of each Buying Member in respect of the Sale Units which the RE determines under clause 9A.23 are to be transferred to it) when the RE issues a Sale and Purchase Notice in respect of that Member's Sale Units, and
 - (c) will be binding on that Member in relation to the number of its Units that it elects to sell in its Member Election (as adjusted under clauses 9A.4, 9A.21, 9A.22, 9A.23 and 9A.43).
- 9A.9 After the Offer Closing Date specified in an Investment Allocation Request the RE may exclude one or more assets from the Sale Assets identified in that Investment Allocation Request if the RE considers that the net sale proceeds from the remaining Sale Assets are likely to be sufficient to fund the payment in full of the Base Unit Sale Price for the Units that are confirmed for sale in the Member Elections (taking into account the adjustments noted in this clause 9A).

Net Proceeds and Income Accounts

- 9A.10 The RE will:
- (a) establish a separate account in its books for each Unit Sale Program for each of (1) the Net Proceeds, (2) the Sale Asset Income, and (3) the Hold Asset Income relating to that Unit Sale Program;
 - (b) credit amounts received in respect of the Net Proceeds, the Sale Asset Income, and the Hold Asset Income for a Unit Sale Program to their respective accounts for that Unit Sale Program as and when those amounts are received; and
 - (c) apply the amounts held in those accounts consistently with the requirements of this clause 9A.

Allocation of Net Proceeds

9A.11 The RE may at any time and from time to time as it considers fit allocate the balance at that time in the Net Proceeds Account to the following reserves:

- (a) all amounts then payable or repayable under the Deutsche Bank Facility Agreement in relation to the Sale Assets from which the Net Proceeds then held in the Net Proceeds Account have been derived,
- (b) the amount required for redemption of Units permitted by ASIC on "hardship" grounds,
- (c) the amount required to pay distributions to Members previously determined by the RE but not yet paid,
- (d) the amount required for feeder fund payments for distributions and expenses allowed under the Deutsche Bank Facility Agreement,
- (e) the amount that in the RE's opinion should be held in cash reserve for any Liabilities (including operational costs, provisions and contingencies) or other purposes, and
- (f) the amount of the Net Proceeds that is available (after deducting the amounts referred to in paragraphs (a) to (e) above) for distribution to Members (**Distributable Net Proceeds**).

9A.12 The RE may at any time and from time to time as it considers fit apply out of the Net Proceeds Account any amount credited to a reserve referred to in paragraphs 9A.11(a) to (e) above towards the payments contemplated by that reserve.

Allocation of Income

9A.13 Subject to clause 9A.15, the RE may at any time and from time to time as it considers fit:

- (a) allocate the balance at that time in the Sale Asset Income Account to any of the reserves noted in paragraphs (a) to (e) of clause 9A.11,
- (b) apply any amount so credited to any of those reserves towards the payments contemplated by that reserve,
- (c) allocate the balance after such allocations and applications to a reserve for distribution to Members (**Available Sale Income Reserve**), and
- (d) distribute to Members out of the Available Sale Income Reserve in cash any amount that in the RE's opinion should be distributed to Members to assist them to pay Australian tax liabilities expected to be incurred on distributions in respect of the Sale Asset Income.

9A.14 Subject to clause 9A.15, the RE may at any time and from time to time as it considers fit:

- (a) allocate the balance at that time in the Hold Asset Income Account to any of the reserves noted in paragraphs (a) to (e) of clause 9A.11,
- (b) apply any amount so credited to any of those reserves towards the payments contemplated by that reserve,
- (c) allocate the balance after such allocations and applications to a reserve for distribution to Members (**Available Hold Income Reserve**), and

- (d) distribute to Members out of the Available Hold Income Reserve in cash any amount that in the RE's opinion should be distributed to Members to assist them to pay Australian tax liabilities expected to be incurred on distributions in respect of the Hold Asset Income.

9A.15 No amount credited to the Sale Asset Income Account or the Hold Asset Income Account or distributed under clauses 9A.13 and 9A.14 will constitute Distributable Income until it is determined to be Distributable Income under clause 11.3.

9A.16 Where an amount is distributed to Members under this clause 9A, the determination of whether that distribution is a distribution of capital or income will not be affected by the crediting of that amount to or distribution out of any of the accounts referred to in clause 9A.10 or any of the reserves referred to in clause 9A.11.

Distribution Directions

9A.17 Each Selling Member irrevocably directs the RE:

- (a) to invest on its behalf all amounts distributed to it out of the Available Sale Income Reserve or the Available Hold Income Reserve (other than cash amounts distributed under clauses 9A.13 or 9A.14) into a separate account of the RE to be held (together with any interest earned on those amounts) on trust for that Selling Member; and
- (b) to pay those amounts (together with any interest earned on those amounts) on its behalf upon completion of the transfer of its Sale Units in accordance with the directions in clause 9A.28.

9A.18 Each Buying Member irrevocably directs the RE:

- (a) to invest on its behalf all amounts distributed to it out of the Available Sale Income Reserve (other than cash amounts distributed under clause 9A.13) into a separate account of the RE to be held (together with any interest earned on those amounts) on trust for that Buying Member;
- (b) to pay those amounts (together with any interest earned on those amounts) on its behalf upon completion of the transfer of Sale Units to it in accordance with the directions in clause 9A.28;
- (c) to reinvest all distributions made to it out of the Available Hold Income Reserve before the Release Date (other than cash amounts distributed under clause 9A.14) by way of application for additional Units in the Scheme under, and on the terms of, clause 12.6 on the basis that, for the purposes of that clause, the RE is deemed to have invited the Buying Member to make that reinvestment, and the Buying Member is deemed to have accepted that reinvestment offer; and
- (d) to pay or apply all distributions made to it out of the Available Hold Income Reserve on or after the Release Date in accordance with clauses 11 and 12 as applying at that time.

9A.19 Each Member irrevocably directs the RE to distribute on each Distribution Date the Distributable Net Proceeds as at that date to the Members in accordance with this clause 9A pro rata to their Unit Holdings as at that Distribution Date.

Sale and Purchase of Units

9A.20 On the 5th Business Day after the Final Completion Date for a Unit Sale Program, and on such other earlier date or dates as the RE considers appropriate, (each a **Trigger Date**) the RE must give a notice (**Sale and Purchase Notice**) to Members setting out:

- (a) the number of Units that have been confirmed for sale in Member Elections (as adjusted under clause 9A.43) that have not previously been transferred under the Transfer Facility or otherwise since the Invitation Date for that Unit Sale Program (and excluding Member Elections rejected under clause 9A.4) (**Disposal Units**),
 - (b) the amount of the Distributable Net Proceeds as at the Trigger Date,
 - (c) the number of Units to be sold and purchased (as whole Units) under this clause 9A in relation to those Member Elections as at that Trigger Date (**Sale Units**), where that number is calculated (subject to clauses 9A.4, 9A.21, 9A.22 and 9A.23) by dividing the amount of the Distributable Net Proceeds as at that Trigger Date by the Actual Unit Sale Price as at that Trigger Date, rounded down to the nearest whole Unit,
 - (d) the proportion of each Selling Member's Disposal Units as at that Trigger Date that will be sold under this clause 9A (subject to rounding down to whole Units under clause 9A.22), where that proportion (**Pro Rata Seller Proportion**) is the fraction calculated by dividing the number of Sale Units as at that Trigger Date (as adjusted under clauses 9A.4, 9A.21 and 9A.23 but before adjustment for rounding down under clause 9A.22) by the number of Disposal Units as at that Trigger Date, expressed as a percentage,
 - (e) the number of Sale Units to be bought by each Buying Member under this clause 9A as at that Trigger Date, expressed as a number per Unit held by a Buying Member (**Pro Rata Buyer Proportion**), where that number is calculated by dividing the number of Sale Units as at that Trigger Date (as adjusted under clauses 9A.4, 9A.21, 9A.22 and 9A.23) by the number of all Units held by Buying Members as at that Trigger Date, rounded down to two decimal points,
 - (d) the Liquidity Date for that Trigger Date, and
 - (e) the Distribution Date for that Trigger Date.
- 9A.21 If the number of Sale Units calculated under clause 9A.20(c) for a Trigger Date plus the aggregate number of Sale Units calculated under clause 9A.20(c) for each previous Trigger Date in the same Unit Sale Program is greater than or equal to the number of Disposal Units for that Unit Sale Program:
- (a) the number of Sale Units as at that Trigger Date will be deemed to be the number equal to the balance of the Disposal Units for that Unit Sale Program then remaining unsold (whether under the Unit Sale Program or otherwise);
 - (b) the Pro Rata Seller Proportion will be deemed to be 100%; and
 - (c) the amount of the Distributable Net Proceeds that is attributable to the number of Sale Units that is greater than the number of Disposal Units will be reallocated to the cash reserve referred to in clause 9A.11(d).
- 9A.22 The number of a Selling Member's Disposal Units that will be sold under this clause 9A in relation to a Trigger Date (**Selling Member's Sale Units**) will be the number calculated by multiplying the number of that Selling Member's Disposal Units remaining unsold as at that Trigger Date (whether under the Unit Sale Program or otherwise) by the Pro Rata Seller Proportion, adjusted (where applicable) under clause 9A.23, and rounded down to the nearest whole Unit. The number of Sale Units calculated under clause 9A.20(c) will be reduced to reflect any such adjustment and rounding down so that the total number of Sale Units equals the sum of all of the Selling Members Sale Units.
- 9A.23 In addition to the adjustment under clauses 9A.21 and any rounding down under clause 9A.22, and without limiting clauses 9A.34 and 9A.37, the RE may reduce the number of a

Selling Member's Sale Units for a Trigger Date by any number (including to zero) if the RE considers that such reduction is necessary to ensure that the implementation of the Transfer Facility does not have a material adverse financial effect on the Scheme. In determining whether to make any such reduction and, if so, how to apply it to a Selling Member's Sale Units for a Trigger Date, the RE may take into account:

- (a) the implications of the sale of the Selling Member's Sale Units for that Trigger Date under the Transfer Facility on the tax treatment of the Scheme (including in relation to the trading history of Units and the change in the members of the Scheme during relevant periods),
- (b) the principle that priority should be given to Member Elections in terms of the chronological order in which they have been received by the RE, and
- (c) such other factors as in the RE's opinion are relevant to the potential material adverse financial effect on the Scheme in relation to which such reduction is necessary.

9A.24 The number of the Sale Units (as adjusted under clauses 9A.4, 9A.21, 9A.22 and 9A.23) to be bought by a Buying Member under this clause 9A as at any Trigger Date (**Buying Member's Proportion of the Sale Units**) will be the number calculated by multiplying the number of Units held by the Buying Member as at the Trigger Date by the Pro Rata Buyer Proportion, rounded down to two decimal points .

9A.25 The amount of the Distributable Net Proceeds that is attributable through the calculations in clause 9A.20 to:

- (a) any fraction of the Selling Member's Disposal Units that is excluded from the Selling Member's Sale Units by the rounding down in clause 9A.22,
 - (b) any fraction of a Unit that is excluded from the Sale Units by the rounding down in clause 9A.20(c), or
 - (c) any Unit that is excluded from the Sale Units by a reduction under clause 9A.23,
- will be reallocated to the cash reserve referred to in clause 9A.11(e).

9A.26 On each Trigger Date in a Unit Sale Program a binding agreement will be deemed to have come into effect between the Members under which:

- (a) each Selling Member agrees to sell its Selling Member's Sale Units as at that Trigger Date to the Buying Members for that Unit Sale Program, allocated between them in accordance with the Pro Rata Buyer Proportion for that Trigger Date, and
- (b) each Buying Member agrees to buy from the Selling Members its Buying Member's Proportion of the Sale Units as at that Trigger Date,

in each case:

- (c) at a price per Unit equal to the Actual Unit Sale Price as at that Trigger Date,
- (d) on the basis that:
 - (i) at Completion all amounts held for Selling Members in accordance with their direction in clause 9A.17 in respect of the Sale Units as at that Trigger Date (**Held Cash**) will be applied in accordance with the directions in clause 9A.28, and

- (ii) the transfer of any Sale Units includes all rights to distributions of capital and income in respect of the Sale Units paid on or after that Trigger Date (irrespective of when the distribution was determined by the RE),
- (e) with completion of the transfer of the Sale Units to occur on the Liquidity Date for that Trigger Date but on the basis that payment of the price for the Units will be paid on the Distribution Date for that Trigger Date ,
- (f) on the basis that each Member appoints the RE its attorney to complete the sale and purchase on its behalf with full authority to do so as more specifically described in clause 9A.30,
- (g) on the basis that each Selling Member warrants to each Buying Member and to the RE that, at the time of completion of the transfer under this clause 9A:
 - (i) the Selling Member's Sale Units will be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions of any kind, and
 - (ii) it has full power and capacity to sell and transfer its Selling Member's Sale Units (together with any rights and entitlements attaching to those Units) to the Buying Members under the Transfer Facility, and
- (h) otherwise on the terms and conditions of this clause 9A.

Completion of Sale and Purchase

9A.27 Each Member directs the RE to take all steps, including execute and deliver all documents (whether under seal or otherwise) and make all payments, in the name of and on behalf of the Member, that the RE considers necessary or desirable to confirm and complete any sale and purchase of Units that is referred to in clause 9A.26.

9A.28 Without limiting clause 9A.27:

- (a) each Selling Member directs the RE to pay to the Buying Members (or as they direct) all of the Held Cash attributable to its Sale Units as at the relevant Trigger Date; and
- (b) each Buying Member directs the RE to apply the Distributable Net Proceeds that are distributed to it on a Distribution Date under clause 9A.19 (including any amount distributed to it in respect of its Buying Member's Proportion of the Sale Units) and the amount held for it in relation to its Units in accordance with its directions in clause 9A.18 and all Held Cash distributed to it in accordance with the Selling Members' directions under clause 9A.28(a) towards:
 - (i) payment on that date of the price payable by it under clause 9A.26 for those Units until that price is paid in full, and
 - (ii) payment on that date to the relevant Office of State Revenue of any duty payable by it on the transfer of those Units,

and to reinvest any remaining surplus by way of application for additional Units in the Scheme under, and on the terms of, clause 12.6 on the basis that, for the purposes of that clause, the RE is deemed to have invited the Buying Member to make that reinvestment, and the Buying Member is deemed to have accepted that reinvestment offer.

These directions are irrevocable.

9A.29 The RE must register each transfer of Units completed in accordance with clause 9A.26 on the Liquidity Date for the relevant Trigger Date.

Appointment of RE as attorney

9A.30 Without limiting clause 20, each Member appoints the RE and any director, officer, attorney or substitute nominated by the RE severally for this purpose as its attorney and agent with the right and authority to take all steps, including execute and deliver all documents (whether under seal or otherwise) and make all payments, in the name of and on behalf of the Member to confirm and complete any sale and purchase of Units under this clause 9A, including (without limitation):

- (a) to determine as it sees fit (consistently with the agreement set out in clause 9A.26) the particular Sale Units that are to be transferred on completion by a particular Selling Member to a particular Buying Member,
- (b) to execute and deliver on the Liquidity Date on behalf of the both the relevant Selling Member and the relevant Buying Member all instruments of transfer of Units necessary or desirable to give effect to that determination;
- (c) to pay to a Selling Member on the Distribution Date the price payable to that Selling Member under clause 9A.26 out of the distributions that it is directed by the Buying Members to apply towards that purpose under clause 9A.28;
- (d) to pay to each relevant Office of State Revenue on behalf of the relevant Buying Member any duty payable by that Buying Member on the transfer of Units to it under the Transfer Facility; and
- (e) to enforce on behalf of any Member at the cost of the Scheme any of its rights under the Transfer Facility (including in relation to any breach of the warranty set out in clause 9A.26(g)).

9A.31 At the request in writing of the RE a Member must execute separate powers of attorney in a form reasonably required by the RE appointing the RE as its attorney for the purposes of this clause.

9A.32 Any attorney may exercise its rights under clause 9A.30 or any power of attorney executed under clause 9A.31 notwithstanding that the exercise of the right constitutes a conflict of interest or duty.

9A.33 Each Member indemnifies and shall keep indemnified each attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under clause 9A.30 or any power of attorney executed under clause 9A.31.

Termination of Unit Sale Program

9A.34 Notwithstanding the other provisions of this clause 9A, if at any time the RE considers that it is not in the best interests of Members to continue to implement the Transfer Facility in relation to a particular Investment Allocation Request issued under this clause, the RE may terminate the Unit Sale Program initiated by that Investment Allocation Request by a determination to that effect.

9A.35 Upon making any such determination under clause 9A.34:

- (a) all notices, elections, agreements and other steps taken or deemed to have occurred under this clause 9A in relation to that Unit Sale Program will cease to have effect except for steps relating to transfers of Units which have been completed under this clause before the determination was made, and

- (b) the RE must take all steps necessary (including in relation to allocations in, and distributions out of, the Facility Accounts) to put the Members back into the same position in relation to the Units they continue to hold that that they would have been in if the Unit Sale Program had not been initiated.

9A.36 A determination in relation to a Unit Sale Program under clause 9A.34 does not affect the implementation of any other Unit Sale Program. For the avoidance of doubt, any determination under clause 9A.34 does not affect any determinations made by the RE under clauses 11.3 or 12.1 in relation to the Distributable Income of the Scheme for a Distribution Period and does not affect Members present entitlement to that Distributable Income under clause 12.3.

Acknowledgements and authorities

9A.37 Without limiting any of its rights, powers, discretions, authorities and indemnities under this clause 9A, it is expressly acknowledged and the RE is expressly instructed that it is authorised to initiate and implement any Unit Sale Program, including the issue of Investment Allocation Requests and Sale and Purchase Notices, notwithstanding that doing so may or will result in a material adverse financial effect on the Scheme (whether in relation to the tax treatment of the Scheme or otherwise).

9A.38 The Buying Members authorise the RE to appoint itself or the Custodian or such other person as the RE determines as their nominee to hold the Sale Units transferred to the Buying Members under any Unit Sale Program on their behalf in the name of the nominee on such terms as the RE considers appropriate.

9A.39 The Buying Members acknowledge that all administrative options selected by a Buying Member in relation to its Units (including as to currency conversion, investment term and distribution reinvestment directions) will be deemed to apply also to all Units transferred to the Buying Member under this clause 9A, and that any costs incurred in providing and administering those options are expenses of the Scheme.

Further Unit Sale Programs

9A.40 The RE may from time to time issue a further Investment Allocation Request under clause 9A before the Final Completion Date for an earlier Investment Allocation Request provided that:

- (a) the assets identified for sale in the further Investment Allocation Request do not include assets that comprise Sale Assets in any earlier Investment Allocation Request;
- (b) a Member is not entitled to elect to dispose in its Member Election in response to a further Investment Allocation Request any Units that it has confirmed for disposal in its Member Election in response to an earlier Investment Allocation Request (other than Units that it continues to hold due to the rejection of its Member Election under clause 9A.4 or due to any adjustment under clauses 9A.21, 9A.22, 9A.23 or 9A.43);
- (c) the sale and purchase of Units resulting from that further Investment Allocation Request (and all steps relating to it) will be taken to be a separate Unit Sale Program under this clause 9A;
- (d) the RE must establish separate Facility Accounts for each Unit Sale Program; and
- (e) each of the definitions in clause 9A.1 will apply separately in relation to each Unit Sale Program by reference to the Investment Allocation Request, Sale Assets,

Member Elections Trigger Dates and other elements of and steps in that Unit Sale Program.

Withdrawal Notices

- 9A.41 All Withdrawal Notices given by Members to the RE which remain unprocessed as the date on which this clause 9A comes into effect (other than Withdrawal Notices permitted by ASIC on hardship grounds) are deemed to be of no effect.
- 9A.42 Unless the RE determines otherwise and notifies the Members accordingly, a Member may not give a Withdrawal Notice in relation to any of its Units before the Release Date (other than a Withdrawal Notice permitted by ASIC on hardship grounds).

Adjustment of Member Elections

- 9A.43 A Member may at any time by notice to the RE ask the RE to adjust its Member Election for a Unit Sale Program by increasing or reducing (as set out in the Member's notice) the percentage of the Member's Unit Holding that it wishes to sell.
- (a) The RE may accept (in whole or in part) or reject any such request in its absolute discretion.
 - (b) If the RE decides to accept the request (in whole or in part) It may only do so in accordance with and to the extent permitted by this clause 9A.43.
 - (c) The RE may not reduce the Member's Election in a way that would affect the sale of any Units that have already, as at the date of the RE's decision (**Adjustment Date**), been sold under that Unit Sale Program or that are included in the Sale Units for that Unit Sale Program notified in a Sale and Purchase Notice issued on or before the Adjustment Date.
 - (d) The RE may not increase the Member's Election in a way that would increase the number of Sale Units for that Unit Sale Program notified in a Sale and Purchase Notice issued on or before the Adjustment Date.
 - (e) Where a Member wishes to increase the percentage of its Unit Holding that it wishes to sell in a Unit Sale Program, and distributions have been made, between the Invitation Date for that Unit Sale Program and the Adjustment Date, out of the Available Sale Income Reserve or Available Hold Income Reserve on Units which would be included in that Member's Disposal Units if the RE accepted the Member's request (**Additional Sell Units**):
 - (i) the Actual Unit Sale Price for that Member's Sale Units in that Unit Sale Program must be reduced to the extent necessary to ensure that the RE is able to implement the Transfer Facility for other Members in accordance with the principles on Unit value and cash payments on Completion set out in the other clauses of this clause 9A as if the Additional Sell Units had been included in that Member's Election for that Unit Sale Program when it first gave that Member Election to the RE, and
 - (ii) the RE must take all other steps necessary to put the Members into the same position on and from the Adjustment Date that they would have been in if the Additional Sell Units had been included in that Member's Election for that Unit Sale Program when it first gave that Member Election to the RE.
 - (f) Where a Member wishes to reduce the percentage of its Unit Holding that it wishes to sell in a Unit Sale Program, and distributions have been made, between the

Invitation Date for that Unit Sale Program and the Adjustment Date, out of the Available Sale Income Reserve or Available Hold Income Reserve on Units which would cease to be included in that Member's Disposal Units if the RE accepted the Member's request (**Additional Hold Units**):

- (i) the RE must deal (or adjust its dealings) with those distributions as necessary to ensure that they are held or reinvested as they would have been under this clause 9A (including the directions in clauses 9A.17 and 9A.18) if the Additional Hold Units had not been included in that Member's Election for that Unit Sale Program when it first gave that Member Election to the RE, and
- (ii) the RE must take all other steps necessary to put the Members into the same position on and from the Adjustment Date that they would have been in if the Additional Hold Units had not been included in that Member's Election for that Unit Sale Program when it first gave that Member Election to the RE.

Facilitating Implementation

9A.44 Notwithstanding any other provision of this clause 9A, if the RE encounters any administrative difficulty when it implements the Transfer Facility (whether due to lack of express guidance in this clause 9A, or inconsistency between provisions or any other factor) the Members authorise the RE to take all steps the RE considers necessary or desirable (including making adjustments to the number or allocation of Disposal Units and Sale Units, or the calculations of the Actual Unit Sale Price, or to allocations in, and distributions out of, the Facility Accounts) to enable the RE to implement the Transfer Facility for Members in a way that in the RE's opinion is most consistent with the principles in this clause 9A."

2. NEW CLAUSE 3.3A

With effect on and from the Effective Date, the Constitution is amended by inserting a new clause 3.3A as follows:

"3.3A Notwithstanding clause 3.3, a fraction of a Unit up to two decimal places may be transferred under clauses 9 or 9A. Without limiting clause 9A, where a sale and purchase under clause 9A would result in the transfer of a fraction of a Unit, the number of Units to be transferred must be rounded down to the nearest two decimal points."

3. NEW CLAUSE 5.1A

With effect on and from the Effective Date, the Constitution is amended by inserting a new clause 5.1A as follows:

"5.1A Notwithstanding clause 5.1(a), the RE does not have power to, and must not, issue any Unit between the last Business Day of a Sale Period and the Distribution Date for that Sale Period."

4. MODIFY CLAUSE 9.1

With effect on and from the Effective Date, the Constitution is amended by modifying clause 9.1(a) to read as follows:

"9.1(a) Subject to this Constitution, a Unit (including a fraction of a Unit up to two decimal places) may be transferred by instrument in writing, in any form authorised by Law or in any other form that the RE approves. In this Constitution any reference to the transfer or transmission of a Unit will be taken to include a reference to a fraction of a Unit up to two

decimal places, and the interest of a Member will include any interest represented by any such fraction of a Unit that the Member holds."

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS. 3508/2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)
(RECEIVERS APPOINTED)
ACN 077 208 461:

JOHN RICHARD PARK AND GINETTE DAWN MULLER
AS LIQUIDATORS OF LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461
THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND
ARSN 089 343 288

First Applicant

LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461
THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND
ARSN 089 343 288

Second Applicant

DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE
THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND
ARSN 089 343 288
PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001

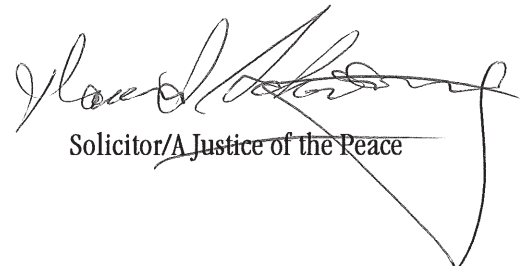
Respondent

CERTIFICATE OF EXHIBIT

Pages 410 – 602 of Exhibit “DW-1” to the Affidavit of DAVID WHYTE sworn this 12th day of June 2015



Deponent



Solicitor/A Justice of the Peace

CERTIFICATE OF EXHIBIT:
Form 47, R.435

Filed on behalf of the Respondent, David Whyte

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000
Tele: (07) 300 300 00
Fax: (07) 300 300 33

30 September 2014

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 21, ONE ONE ONE
111 Eagle Street
BRISBANE QLD 4000
AUSTRALIA

RECEIVED
3 OCT 2014

David Whyte
Partner
BDO
Level 10
12 Creek Street
BRISBANE QLD 4000

Tel +61 7 3414 2888
Fax +61 7 3414 2999
GPO Box 407, Brisbane QLD 4001
DX 114 Brisbane
nortonrosefulbright.com

BY: _____

Direct line
+61 7 3414 2930

Email
peter.schmidt@nortonrosefulbright.com

Your reference: **Our reference:**
2796353

Dear David

RE The LM First Mortgage Income Fund (ARSN 089 343 288) (LMFMIF)

Further to our recent discussions, I am writing to you to provide you details of the basis on which Norton Rose Fulbright claims to be a creditor of the LMFMIF.

1 Background

- 1.1 Prior to the appointment of the administrators on 19 March 2013, Norton Rose Fulbright undertook a considerable amount of work for LM Investments Management Limited (In Liquidation) (LM) in respect of its ongoing management of the various funds under which it was the responsible entity, which included the fund over which you have appointed to wind up, being the LM First Mortgage Income Fund (LMFMIF).
- 1.2 For the reason explained below, it is my view that most of this work undertaken by our firm was on behalf of the LMFMIF.
- 1.3 **Enclosed** are the following:
 - (1) a summary of our outstanding accounts which relates to the LMFMIF;
 - (2) copies of the relevant invoices for each matter; and
 - (3) copies of the relevant letters of engagement signed by LM as RE for the LMFMIF and in the case of the file in respect of Trilogy, also as RE of the LM Wholesale First Mortgage Income Fund (LMWFMIF) and the LM Currency Protected Australian Income Fund (LMCPAIF).
- 1.4 I will give a brief description of the work undertaken which is described in more detail in the **enclosed** accounts.

APAC-#24067025-v1

2 ASIC investigation file no. 2787923

- 2.1 We were instructed by LM in September 2012 to assist LM in respect to a number of ongoing issues with ASIC.
- 2.2 These matters from ASIC were in respect to a number of issues in respect to the LMFMIF but mainly about;
- (1) The majority of discussions and negotiations with ASIC was in respect of the “forward looking” management of the LMFMIF. This involved negotiations and meetings with ASIC and substantial reports, and provision of information to ASIC as to the current status of the fund and the steps which LM intended to take as RE to move to an orderly sale of the assets of that fund;
 - (2) Advise on constitutional amendments, procedure regarding redemption. Settling RG45 Report and investor communications;
 - (3) The work also involved an application, following ASIC’s invitation at a one of the meetings held, by LM as RE of the LMFMIF to make an application for relief from the provisions of section 253E of the *Corporations Law* which would allow LM as RE of the Feeder Funds to vote on behalf of those feeder funds if, as was expected would occur at that time, Trilogy Funds Management Limited called a meeting of the members of the LMFMIF in order to seek orders to have LM replaced as RE of that fund. The reasons why that was in the interests of members is discussed below; and
 - (4) Provision of documentation, and responses on specific issues, following the receipt of notices issued by ASIC.

3 Trilogy Funds Management - File no. 2789191

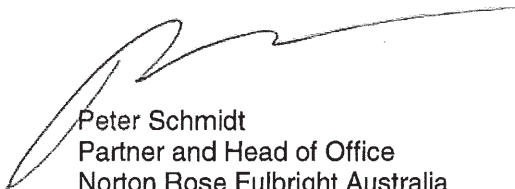
- 3.1 As shown by the letter of engagement, the engagement in respect of this matter was on behalf of LM as responsible entity of the LMFMIF and its 2 feeder funds, LMWFMIF and LMCPAIF, because at the time, the view was taken that the interests of members was the same, at least for the work which we were being asked to undertake.
- 3.2 The work undertaken involved advice to LM on steps it could take to defeat the application of Trilogy, not only to be replaced as RE of the feeder funds, but also the expected upcoming application by Trilogy to call a meeting of members of the main fund to replace LM as RE.
- 3.3 As you are aware, in the end, Trilogy changed tack and tried to make an application under the *Corporations Law* to be appointed as temporary responsible entity, which sparked the subsequent court litigation.
- 3.4 As you are also aware, Dalton J. eventually found it was not in the interests of members of the LMFMIF for Trilogy to be appointed as responsible entity of the LMFMIF (refer paragraph [31] of the judgment delivered on 8 August 2013)
- 3.5 For the same reasons, it was reasonable for LM as RE of the LMFMIF to form the view that the appointment of Trilogy as RE of the fund was not in the interests of members and therefore defending attempts by Trilogy to be appointed was in the interests of members.
- 3.6 From my review of the accounts on this file, it appears that some of the work done on the application referred to in paragraph 2.2(2) above was also recorded on this file.
- 3.7 Some of the work the subject of the unpaid invoices on this file also related to assisting LM in its role as RE of the feeder funds to deal with the handover of the management of those funds to Trilogy. It may be that some of these accounts should be split between the 3 funds.

30 September 2014

 NORTON ROSE FULBRIGHT

Once you have had an opportunity to consider this, I am happy to meet to discuss what further information you require. If you want to inspect any files or documents let me know.

Kind regards



Peter Schmidt
Partner and Head of Office
Norton Rose Fulbright Australia

Encls:

Schedule of Unpaid Fees Pre Administration -LM as RE of the Norton Rose Australia

Bill Number	Bill Date	Total of Account	Total AR
2787923 - ASIC Investigation			
1190423	21/11/2012	184,335.89	84,335.89
1187306	30/12/2012	123,151.91	123,151.91
1194858	31/01/2013	32,876.43	32,876.43
1198471	28/02/2013	13,149.79	13,149.79
2787923 Total		353,514.02	253,514.02
2789191 - Trilogy Funds Management Limited - Change of RE			
1187325	30/11/2012	42,701.46	42,701.46
1190420	21/12/2012	19,385.73	19,385.73
2789191 Total		62,087.19	62,087.19
Total		415,601.21	315,601.21

COPY

NORTON ROSE

TAX INVOICE

Invoice Number 1187306
Date/Tax Point 30 November 2012
Our ref 574369/2787923/PAS/105

Norton Rose Australia
ABN 32 720 868 049
Level 21
ONE ONE ONE
111 Eagle Street
BRISBANE QLD 4000
AUSTRALIA

Tel +61 (0)7 3414 2888
Fax +61 (0)7 3414 2999
GPO Box 407, Brisbane Qld 4001
DX114 Brisbane
www.nortonrose.com

LM Investment Management Ltd
PO Box 485
SURFERS PARADISE QLD 4217

For the attention of: Francene Mulder

	Charges AU \$	GST Rate %
ASIC Investigation		
CHARGES FOR PROFESSIONAL SERVICES RENDERED to 30 November 2012.	166,972.50	10.00
DISBURSEMENTS		
Search fees	25.20	10.00
Travel expenses	260.28	10.00
OTHER CHARGES		
Document reproduction	320.10	10.00
Net	167,578.08	
GST	16,757.81	
TOTAL AMOUNT NOW DUE AND PAYABLE	AU \$184,335.89	

Invoices are payable net when rendered. Payments may be made by cheque to GPO Box 4592SS Melbourne VIC 3001 or by credit transfer to the account of Norton Rose Australia, ANZ Banking Group Limited, 324 Queen Street, Brisbane, BSB Number 014-002, Account Number 8349-91656, Swift Code ANZBAU3M. Please advise us of your EFT payment by email to aucredit@nortonrose.com.

This invoice may include fees and disbursements of the constituent parts of Norton Rose Group.
Where applicable, exchange rates have been applied to this bill according to the date of each transaction.
Your attention is drawn to the notice on the reverse.

-2-
Y9000

We may charge interest at the rate equal to the Cash Target Rate specified from time to time by the Reserve Bank of Australia, increased by 2 percentage points, on legal costs unpaid 30 days or more after giving you this bill.

The following avenues are open to a client in the event of a dispute in relation to legal costs comprised in this bill:

- (i) costs assessment under Division 7 of Part 3.4 of Chapter 3 of the Legal Profession Act 2007 (QLD) ("the Act").
(An application for assessment must be made within 12 months after the bill was given.)
- (ii) the setting aside of a costs agreement under section 328 of the Act.

The file in this matter may be destroyed seven years from the date of our final account unless you write to us requesting retention for a longer period.

Zein El Hassan – Partner

Date	Description	Hours
22-Nov-2012	Considering scenarios for response to ASIC questions	0.80
23-Nov-2012	Considering equal treatment regarding scenarios	3.00
26-Nov-2012	Considering scenarios for response to ASIC	3.00
27-Nov-2012	Considering scenarios for response to ASIC	2.80
28-Nov-2012	Considering response to ASIC questions	13.00
29-Nov-2012	Considering response to ASIC questions	11.00

Paul Humphreys – Partner

Date	Description	Hours
12-Nov-2012	Attending discussion re tax issues.	0.20

John Moutsopoulos – Partner

Date	Description	Hours
09-Nov-2012	Confer M Asimus and J Kelly regarding ASIC issues; Confer P Schmidt regarding ASIC notices; Confer New Zealand Lawyers; call to Ben Parsons;	4.20
12-Nov-2012	Confer M Asimus regarding go forward strategy and related party note ; review draft paper; Confer J Kelly regarding ASIC concern on unilateral changes	4.00
13-Nov-2012	Confer J Kelly regarding ASIC concerns, review draft note; Confer M Asimus regarding ASIC concerns; confer P Schmidt regarding ASIC concerns and draft note	6.10
14-Nov-2012	Review various emails to and from LM, confer P Schmidt, confer J Kelly regarding ASIC concerns, confer P Schmidt	3.40
15-Nov-2012	Confer P Schmidt and M Asimus regarding draft ASIC letter; call to ASIC; confer M Asimus review draft; confer J Kelly regarding ASIC concern and LM response	2.50
16-Nov-2012	Confer J Kelly regarding ASIC concern; Confer M Asimus regarding go forward letter	1.90
20-Nov-2012	Confer M Asimus; confer J Kelly regarding ASIC concerns; confer P Schmidt	3.90
21-Nov-2012	Confer J Kelly regarding ASIC concerns; Confer Fran; Confer P Schmidt	2.40
22-Nov-2012	Confer Z El Hassan regarding unequal treatment obligation; Confer M Asimus regarding performance fund; Confer J Kelly regarding ASIC concern; Confer P Schmidt, Confer F Mulder regarding performance fund	5.10

Peter A Schmidt – Partner

Date	Description	Hours
08-Nov-2012	considering issues in notices and identifying areas to review, considering with Michelle re advice on sale of assets and redemptions under constitutions	0.80
09-Nov-2012	conference with John and his team reviewing at length the ASIC issues, reviewing responses and documents and research needed for each item and working out what further info is needed	1.50

Peter A Schmidt – Partner

Date	Description	Hours
09-Nov-2012	with G Hinds reviewing issues to be answered and instructing on issues to be researched and documents to be considered	0.80
12-Nov-2012	Reviewing valuation material provided to ASIC previously , reviewing ASIC Reg Guides since 2008 on Valuations, reviewing PDS and CON, considering schedule of changes in valuations over last 4 or so years and reasons for changes	3.20
13-Nov-2012	with John and Michelle reviewing status of responses to ASIC and further info required.	0.80
13-Nov-2012	Settling email re issues to cover in response to ASIC re valuations, drafting response to ASIC	1.40
13-Nov-2012	Reviewing Constitution, Compliance Plans, Valuation Policy and Procedures Manual, ASIC guidelines and cavuations schedule, drafting email to LM re views and info needed	2.50
14-Nov-2012	Settling and sending email to F Mulder re Valuations	0.20
14-Nov-2012	Reviewing and settling lists of other issues raised by ASIC prior to last meeting	0.80
14-Nov-2012	settling questions in respect to info needed on related party transactions, drafting email	0.80
14-Nov-2012	with John re responses and emails received from Peter and others, reviewing "moving forward" policy and settling draft letter	1.20
15-Nov-2012	Reviewing draft letters, conference call with Sydney Team, settling email response, reviewing emails and responding	1.60
20-Nov-2012	Attending telecon with John and his team, going through outstanding issues and identifying remaining steps, then drafting email to F Mulder re action items and other issues	1.80
21-Nov-2012	Reviewing previous responses re related party transaction, considering issue re interest of members as a whole	1.20
22-Nov-2012	meeting with John and team identifying remaining issues and answers to ASIC notices and further documents required	0.80
23-Nov-2012	reviewing redemption advice and other issues and going through points with John and his team	1.10
23-Nov-2012	Reviewing checklist and sending email	0.20
26-Nov-2012	Tony Hickey in respect to various issues	0.30
27-Nov-2012	at LM Offices on Gold Coast for meeting with Board reviewing ASIC expenses, including travel	5.00
28-Nov-2012	Drafting framework of responses on Valuations and Related Party Transactions	1.20
29-Nov-2012	Reviewing email from Tony and responding	0.30
29-Nov-2012	Drafting detailed ASIC response on Valuation methods and email to John Moutsopoulos	4.50
29-Nov-2012	Drafting email to Simon Tickner	0.50
30-Nov-2012	Drafting the Related Party response to ASIC, reviewing previous disclosure and the Board Minutes and Conflicts manual, reviewing the instructions from LM, telephone call with Simon and F Mulder, drafting email to F Mulder Mulder	4.20
30-Nov-2012	Reviewing Valuation response, drafting changes to response, reviewing documents for related party response, instructions from LM , calls to Simon and F Mulder	3.20

Michelle Asimus – Senior Associate

Date	Description	Hours
01-Nov-2012	Preparing amendments to ASIC minutes and covering email to LM	0.40

Michelle Asimus – Senior Associate

Date	Description	Hours
05-Nov-2012	Drafting board paper on strategy of FMIF and Feeder Funds including possibility of selling down assets and making capital distributions, making pro rata redemptions based on liquid fund rules and winding up FMIF	3.30
06-Nov-2012	Considering options for implementing strategy of FMIF to carry out an orderly sale of assets and distribute realisation proceeds to investors, preparing note outlining options	3.40
08-Nov-2012	Drafting note on three options to consider for LM implementing an asset sell down strategy	3.70
08-Nov-2012	Meeting with J Moutsopoulos to discuss note on options for LM to consider for implementing go forward strategy	1.10
09-Nov-2012	Drafting report on strategy for FMIF and options for sell down of FMIF assets	2.80
12-Nov-2012	Reviewing LM's continuous disclosure obligations in connection with the forward looking strategy of FMIF	0.50
12-Nov-2012	Meeting with J Moutsopoulos to discuss three legal strategies for carrying out forward looking strategy	0.60
12-Nov-2012	Drafting amendments to Board Report on three proposals for implementing go forward strategy of carrying out an orderly sell down of assets and distributing capital to investors and covering email to Tony Hickey on recommendation	2.60
12-Nov-2012	Drafting related party transaction note for P Schmidt	1.10
12-Nov-2012	Considering response to ASIC on related party transactions	2.30
13-Nov-2012	Further consideration with J Moutsopoulos on Norton Rose response to ASIC on forward looking issues and response to Michelle Ballard on investor communication	1.10
13-Nov-2012	reviewing draft investor communication, discussing with J Moutsopoulos, drafting response to Michelle Ballard on investor communication, considering further points on investor communication and drafting further response to Michelle Ballard	0.80
13-Nov-2012	Drafting Norton Rose response to ASIC on ASIC's forward looking concerns	4.60
13-Nov-2012	Telephone with Tony Hickey to discuss additional queries on matters raised in Norton Rose's strategy paper and to discuss program to orderly sell down assets	0.50
13-Nov-2012	Considering queries raised by Tony Hickey in email response to Norton Rose's forward looking strategy paper and drafting response to Tony Hickey and LM	1.70
13-Nov-2012	Telephone with J Moutsopoulos and P Schmidt on NR forward looking ASIC response and ASIC's concerns with independent valuations	0.60
13-Nov-2012	Meeting with J Moutsopoulos to discuss NR's forward looking response to ASIC	0.90
15-Nov-2012	Meeting with J Moutsopoulos to settle amendments to ASIC forward looking response	0.60
15-Nov-2012	Meeting with P Schmidt, J Moutsopoulos and J Kelly to discuss NR response to ASIC	0.60
15-Nov-2012	Reviewing P Drake and T Hickey's comments on forward looking response, preparing amendments to forward looking response, recirculating with covering email comments on forward looking strategy, reviewing further comments from P Drake, F Mulder and T Hickey on forward looking response and preparing additional amendments	1.40
15-Nov-2012	Drafting email to Leanne Damary seeking a further extension from ASIC on response for backward looking issues	0.20
16-Nov-2012	Drafting amendments to NR forward looking response based on comments from LM, email to LM confirming final response and instructions to lodge response with ASIC, submitting response with ASIC	0.80

Michelle Asimus – Senior Associate

Date	Description	Hours
16-Nov-2012	Telephone with Grant Fischer regarding lodgement of financial statements	0.10
16-Nov-2012	Drafting email to LM in response to email received from ASIC dealing with relief from s253E and request for information on LM Managed Performance Fund	0.40
16-Nov-2012	Confer with J Moutsopoulos on forward looking strategy, Deed of Partial Termination and covering email and email received from ASIC requesting information on LM MPF and relief from s253E	1.20
19-Nov-2012	Drafting relief application and instrument for s253 voting	4.30
20-Nov-2012	Attending teleconference with P Schmidt, J Moutsopoulos and J Kelly to discuss ASIC response on backward looking issues	0.80
20-Nov-2012	Drafting email to F Mulder on investor communication on forward looking strategy and updated RG statements	0.50
20-Nov-2012	Drafting ASIC relief application for s253E relief for feeder fund voting	2.40
20-Nov-2012	Discussion with J Moutsopoulos on ASIC relief application	0.30
22-Nov-2012	Drafting Backward looking response to ASIC	0.50
22-Nov-2012	Discussion with P Schmidt, J Moutsopoulos and J Kelly to discuss backward looking issue and outstanding legal items	0.80
23-Nov-2012	Drafting ASIC backward looking response	2.50
23-Nov-2012	Drafting amendments to Investor Communication for forward looking strategy	0.80
23-Nov-2012	Reviewing unilateral amendment to Constitution made in 2008 based on ASIC's concerns that it required a special resolution as part of backward looking response to ASIC and conferring with J Kelly on amendment	0.70
26-Nov-2012	Drafting ASIC backward looking response for FMIF	2.30
26-Nov-2012	Conferring with J Kelly on NR response to ASIC on unilateral amendments	0.40
26-Nov-2012	Drafting investor communication on forward looking strategy for FMIF and discussion with J Moutsopoulos on the same	1.60
26-Nov-2012	Telephone call with Trevor Fenwick concerning Services Agreement and capacity that LM Investment Management entered into it.	0.20
29-Nov-2012	Drafting backward looking response to ASIC	1.30
29-Nov-2012	Reviewing and drafting amendments to valuations section of backward looking response	0.80
29-Nov-2012	Drafting unilateral amendments to constitution backward looking response	6.30
29-Nov-2012	Drafting amendments to Schedule 5 of ASIC's backward looking response regarding additional agenda items	0.50
29-Nov-2012	Reviewing case law on responsible entity's ability to unilaterally amend a constitution current during period 2005 to 2008	1.20

Michele Levine – Senior Associate

Date	Description	Hours
26-Nov-2012	Reviewing advice regarding response to ASIC	4.10
27-Nov-2012	Drafting advice regarding response to ASIC	9.10
28-Nov-2012	Drafting advice regarding response to ASIC	13.00
29-Nov-2012	Drafting advice regarding redemptions	11.50

Georgia Hinds – Lawyer

Date	Description	Hours
09-Nov-2012	Attending with P Schmidt regarding steps for responding to ASIC questions	0.30

Georgia Hinds – Lawyer

Date	Description	Hours
12-Nov-2012	Considering commentary to Corporations Act commentary regarding RE valuation obligations, considering ASIC releases regarding RE valuation obligations, reviewing First Mortgage Fund constitutions	0.80
12-Nov-2012	Attending to compiling constitution, compliance plan and PDS and marking sections relevant to valuation policies	0.30
12-Nov-2012	Considering Product Disclosure Statement, considering Compliance Plan and Compliance Committee Notes in relation to valuation policies and methodologies, drafting memorandum to P Schmidt regarding same	1.70
13-Nov-2012	Reviewing lending policies of First Mortgage Income Fund regarding valuation policies	0.30
13-Nov-2012	Drafting table of responses to ASIC email of 22 October 2012, drafting email to LM regarding ASIC queries on Related Party Transactions	1.90
13-Nov-2012	Attending to conducting historical company search and updating ASIC response regarding resignation and appointment of directors	0.20
14-Nov-2012	Drafting list of funds and details of directors for inclusion in response to ASIC queries	0.20

Jack Kelly – Lawyer

Date	Description	Hours
06-Nov-2012	Considering liabilities following removal as responsible entity of FMIF	1.00
07-Nov-2012	Considering ASIC backward looking concerns (unilateral amendments, selective redemptions)	3.50
08-Nov-2012	Considering ASIC concerns and reviewing documents	2.70
08-Nov-2012	Confer with J Moutsopoulos and M Asimus regarding ASIC concerns	0.80
08-Nov-2012	Confer with M Asimus to receive instructions regarding ASIC concerns	0.40
08-Nov-2012	Reviewing documents from dataroom	0.80
09-Nov-2012	Reviewing original s30 responses regarding unilateral amendments. Preparing timeline regarding redemptions.	2.50
09-Nov-2012	Confer with J Moutsopoulos, P Schmidt and M Asimus regarding ASIC issues and legal issues going forward	2.00
09-Nov-2012	Preparing for teleconference with NZ and P Schmidt	0.20
09-Nov-2012	Reviewing ASIC notices, meeting minutes and other correspondence and preparing additional list of ASIC concerns	0.60
10-Nov-2012	Reviewing hard copy s30/s912C documents	0.80
11-Nov-2012	Reviewing hard copy s30/s912C documents and preparing note on unilateral amendments to constitutions	5.00
12-Nov-2012	Reviewing PDSs and reordering into chronological order	0.90
12-Nov-2012	Confer with J Moutsopoulos regarding unilateral amendments	0.50
12-Nov-2012	Preparing ASIC timeline. Amending LM timeline of critical events.	0.80
12-Nov-2012	Reviewing privilege bundle of documents (s30/s912C notices)	1.20
12-Nov-2012	Preparing review note/email on unilateral amendments. Confer with J Moutsopoulos of the same. Re-review PDS for specific queries.	3.90
12-Nov-2012	Preparing amendments and re-drafting email to LM regarding unilateral amendments. Reviewing PDS for the same purpose.	1.80
13-Nov-2012	Drafting NR's response on forward looking issues to ASIC	4.10
13-Nov-2012	Considering 10:50pm response from F Mulder	0.10
13-Nov-2012	Confer with J Moutsopoulos regarding unilateral amendments and selective redemption concerns	2.90
13-Nov-2012	Reviewing PDS regarding selective redemption and class issue	1.20
13-Nov-2012	Drafting note regarding selective redemption issue	0.50
13-Nov-2012	Confer with M Asimus regarding outstanding ASIC concerns	0.20
13-Nov-2012	Considering draft LM communication to investors	0.20

Jack Kelly – Lawyer

Date	Description	Hours
14-Nov-2012	Preparing edits to selective redemption issue. Reviewing PDS. Searching ASIC registers regarding WFMIF. Searching ASIC RG, CO and INFO documents regarding redemption issue.	1.50
14-Nov-2012	Considering selective redemption issue.	2.30
14-Nov-2012	Confer with J Moutsopoulos regarding selective redemption issue	1.50
14-Nov-2012	Reviewing PDS regarding selective redemption issue	1.00
14-Nov-2012	Considering emails regarding ASIC concerns (going forward, backward looking issues, strategy)	0.50
14-Nov-2012	Preparing edits and conferring with J Moutsopoulos regarding strategy paper implementing forward looking strategy for FMIF	0.70
14-Nov-2012	Drafting note regarding selective redemptions consider s912C notice. Amending draft letter to ASIC on FMIF forward looking strategy	2.40
15-Nov-2012	Confer with J Moutsopoulos, P Schmidt and M Asimus regarding ASIC's concerns and outstanding legal issues	0.60
15-Nov-2012	Confer with M Asimus regarding forward and backward looking issues	0.40
15-Nov-2012	Telephone Eryn Vannucci of LM regarding financial handover	0.20
15-Nov-2012	Preparing selective redemption table. Considering ASIC concerns regarding selective redemption. Preparing response to C Hodge regarding unilateral amendments. Considering emails from LM. Confer with J Moutsopoulos of the same.	5.40
16-Nov-2012	Confer with J Moutsopoulos regarding redemptions	1.10
16-Nov-2012	Considering selective redemption and priority of redemptions	2.50
16-Nov-2012	Confer with J Moutsopoulos to settle document	0.70
16-Nov-2012	Preparing second note regarding selective redemption	3.80
19-Nov-2012	Preparing note on selective redemption. Considering legal issues. Considering financial accounts lodged with ASIC and comments regarding different classes existing. Considering unilateral amendments to constitutions.	7.10
20-Nov-2012	Confer with J Moutsopoulos regarding selective redemption ASIC concern	0.50
20-Nov-2012	Considering selective redemption issue	1.50
20-Nov-2012	Considering third tranche unilateral amendments made to FMIF constitution (Replacement Constitution dated April 2008)	1.20
20-Nov-2012	Reviewing and considering emails forwarded from C Hodge to J Moutsopoulos on 16 November 2012 regarding second unilateral amendment dated 2007.	0.60
20-Nov-2012	Reviewing early withdrawal management fee penalty excel spreadsheet	0.40
20-Nov-2012	Reviewing and considering 2010 and 2011 audited reports for the purposes of unilateral constitutional amendments	0.40
20-Nov-2012	Preparing for and attending teleconference with J Moutsopoulos, P Schmidt and M Asimus regarding outstanding legal issues, way forward and backward looking concerns	0.80
20-Nov-2012	Telephone with C Hodge of LM and J Moutsopoulos at 4.10pm regarding handing over of documents (particular question regarding WFMIF audited reports)	0.30
20-Nov-2012	Reviewing and discussing selective redemption note with J Moutsopoulos	2.10
21-Nov-2012	Considering and preparing edits to draft note. Reviewing draft note.	4.50
21-Nov-2012	Confer with J Moutsopoulos regarding selective redemption note.	0.50
21-Nov-2012	Confer with J Moutsopoulos (various times) regarding amendments to selective redemption note.	2.10
21-Nov-2012	Drafting edits and considering impact of edits to selective redemption note. Considering financial statements regarding disclosure of classes.	3.80
22-Nov-2012	Confer with J Moutsopoulos (various times) regarding amendments to selective redemption note.	2.10

Jack Kelly – Lawyer

Date	Description	Hours
22-Nov-2012	Drafting and considering amendments to selective redemption note. Considering s912C notice. Considering FMIF, CPAIF, WFMIF and ICPAIF constitutions. Considering FMIF PDS disclosures.	3.50
22-Nov-2012	Confer with Z El Hassan and J Moutsopoulos regarding treating unitholders equally and fairly	0.70
22-Nov-2012	Preparing edits discussed with J Moutsopoulos on 21 November 2012	2.60
22-Nov-2012	Confer with J Moutsopoulos to consider amendments following confer with Z El Hassan	0.80
22-Nov-2012	Confer with P Schmidt, J Moutsopoulos and M Asimus regarding outstanding legal issues and way forward	0.80
23-Nov-2012	Confer with M Asimus regarding unilateral amendment	0.50
23-Nov-2012	Considering ASIC's queries regarding unilateral amendments. Reviewing constitutions of FMIF, WFMIF and CPAIF.	6.40
23-Nov-2012	Considering BT/Asgard and OnePath redemption queries. Confer with M Asimus of the same.	1.20
23-Nov-2012	Drafting email to LM attaching analysis. Amending draft.	0.20
23-Nov-2012	Considering legal analysis of redemption issue	0.90
23-Nov-2012	Confer with Z El Hassan and J Moutsopoulos regarding selective redemption note	1.00
26-Nov-2012	Confer with M Asimus regarding outstanding legal issues	0.40
26-Nov-2012	Telephone C Hodge of LM regarding constitutions	0.10
26-Nov-2012	Confer with J Moutsopoulos regarding constitutional amendments. Processing edits.	1.10
26-Nov-2012	Considering unilateral amendments	2.50
26-Nov-2012	Considering selective redemption issue and amendments following confer with Z El Hassan and J Moutsopoulos	2.20
26-Nov-2012	Considering first unilateral amendment, case law regarding unilateral amendments and previous responses provided by LM	2.10
26-Nov-2012	Preparing edits to selective redemption note regarding Feeder Fund payments post suspension of redemptions	0.70
26-Nov-2012	Drafting LM's response to ASIC's concerns regarding unilateral amendments	2.20
27-Nov-2012	Considering email regarding Trilogy's request for documents and "backward looking" issues	0.20
27-Nov-2012	Considering LM's responses. Drafting email to LM regarding first two unilateral amendments and original responses to ASIC	1.00
27-Nov-2012	Reviewing unilateral amendments and considering LM's responses regarding management fees and other issues	2.00
27-Nov-2012	Preparing draft note on unilateral amendments	6.00
28-Nov-2012	Considering unilateral amendments and case law. Telephones with C Hodge of LM regarding additional documents. Confer with J Moutsopoulos of the same.	2.50
29-Nov-2012	Considering unilateral amendments. Confer with M Asimus of the same	5.80
29-Nov-2012	Drafting revised note on unilateral amendments. Considering research and case law. Considering PDS disclosures. Reviewing s912C notice responses.	3.00
29-Nov-2012	Considering with J Moutsopoulos regarding unilateral amendments	1.50
29-Nov-2012	Considering responses from LM and additional documents provided by C Hodge	0.60
29-Nov-2012	Confer with Z El Hassan, M Asimus and J Moutsopoulos regarding ASIC's backward looking concerns	0.30
29-Nov-2012	Reviewing and considering other backward looking issues	1.30

My Linh Pham – Graduate

Date	Description	Hours
28-Nov-2012	Drafting riders re liquidity policy	0.40

Disbursements

Search fees		
Prime Legal - ASIC Historic Company Extract: LM INVESTMENT MANAGEMENT LIMITED		\$25.20

Travel expenses		
Vendor: Kelly, Jack; Invoice#: C743FA63EBEB3420EB36; Date: 21/11/2012 Taxi Working late (9.58pm) (13/11/2012)		\$85.77
Vendor: Asimus, Michelle; Invoice#: CC8E62988FB1E437B9A8; Date: 20/11/2012 Working late(9.27pm) (13/11/2012)		\$64.91
Vendor: Kelly, Jack; Invoice#: C19F58EF2B8884D03826; Date: 26/11/2012 Working Late (8.41pm) (22/11/2012)		\$83.36
Vendor: Kelly, Jack; Invoice#: C9354A99F5EAD47B9A7B; Date: 26/11/2012 Taxi (Working Late 8.2pm) (21/11/2012)		\$26.24

Total	AU \$285.48
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Other Charges

Document reproduction	\$320.10
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Total	AU \$320.10
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COPY

NORTON ROSE

TAX INVOICE

Invoice Number 1190423
 Date/Tax Point 21 December 2012
 Our ref 574369/2787923/PAS/105

Norton Rose Australia
 ABN 32 720 868 049
 Level 21
 ONE ONE ONE
 111 Eagle Street
 BRISBANE QLD 4000
 AUSTRALIA

Tel +61 (0)7 3414 2888
 Fax +61 (0)7 3414 2999
 GPO Box 407, Brisbane Qld 4001
 DX114 Brisbane
www.nortonrose.com

LM Investment Management Ltd
 PO Box 485
 SURFERS PARADISE QLD 4217

For the attention of: Francene Mulder

	Charges AU \$	GST Rate %
ASIC Investigation		
CHARGES FOR PROFESSIONAL SERVICES RENDERED to 20 December 2012.	111,287.00	10.00
DISBURSEMENTS		
Search fees	25.20	10.00
Travel expenses	160.33	10.00
OTHER CHARGES		
Document reproduction	483.75	10.00
Net	111,956.28	
GST	11,195.63	
TOTAL AMOUNT NOW DUE AND PAYABLE	AU \$123,151.91	

Invoices are payable net when rendered. Payments may be made by cheque to GPO Box 4592SS Melbourne VIC 3001 or by credit transfer to the account of Norton Rose Australia, ANZ Banking Group Limited, 324 Queen Street, Brisbane, BSB Number 014-002, Account Number 8349-91656, Swift Code ANZBAU3M. Please advise us of your EFT payment by email to aucredit@nortonrose.com.

This invoice may include fees and disbursements of the constituent parts of Norton Rose Group.
 Where applicable, exchange rates have been applied to this bill according to the date of each transaction.
Your attention is drawn to the notice on the reverse

We may charge interest at the rate equal to the Cash Target Rate specified from time to time by the Reserve Bank of Australia, increased by 2 percentage points, on legal costs unpaid 30 days or more after giving you this bill.

The following avenues are open to a client in the event of a dispute in relation to legal costs comprised in this bill:

- (i) costs assessment under Division 7 of Part 3.4 of Chapter 3 of the Legal Profession Act 2007 (QLD) ("the Act").
(An application for assessment must be made within 12 months after the bill was given.)
- (ii) the setting aside of a costs agreement under section 328 of the Act.

The file in this matter may be destroyed seven years from the date of our final account unless you write to us requesting retention for a longer period.

Zein El Hassan – Partner

Date	Description	Hours
30-Nov-2012	Advising regarding management of redemption requests and ASIC questions	4.30
02-Dec-2012	Advising regarding valuation of scheme assets	2.50
02-Dec-2012	Amendments to scheme consultation	1.00
03-Dec-2012	Reviewing Schedules and considering issues in relation to redemptions, independent valuations, related party transactions and constitutional amendments	6.60
04-Dec-2012	Considering issues in relation to constitutional amendments	0.80
11-Dec-2012	Considering issues regarding redemption requests	0.30
18-Dec-2012	Considering specific redemption requests	0.20

John Moutsopoulos – Partner

Date	Description	Hours
29-Nov-2012	Confer M Asimus regarding ASIC concerns; confer Z El Hassan regarding ASIC concerns; Review 3rd Supplementary Deeds and relevant PDS's	6.30
30-Nov-2012	Confer M Asimus regarding investor communication and review draft; Confer P Schmidt; Confer T Hickey; Review drafts of responses to ASIC concerns; Confer J Kelly; Confer F Mulder; Confer ASIC;	6.80
03-Dec-2012	Internal team Norton Rose meeting to discuss status and meet steps; Confer P Schmidt; Confer Z El Hassan; Confer J Kelly	6.00
04-Dec-2012	Confer J Kelly regarding redemptions paper; confer Z El Hassan; confer P Schmidt regarding responsible party paper; confer M Asimus; review paper; confer F Mulder and C Hodge regarding unilateral amendments	7.30
06-Dec-2012	Confer M Levine, regarding BT/Asgard and One Path; confer M Asimus regarding further queries from LM regarding New Zealand legal advice; confer M Asimus regarding investor communication and other matters; confer P Schmidt regarding Trilogy email	1.70
10-Dec-2012	Review various emails; confer F Mulder; Review draft Hickey Lawyer brief	1.80
11-Dec-2012	Confer P Schmidt regarding Hickey brief; conference call with Hickey Lawyers	1.00
12-Dec-2012	Confer J Kelly regarding RG45	0.40
13-Dec-2012	Call from L Demary of ASIC; confer J Kelly regarding RG45; review various emails	2.20
14-Dec-2012	Confer J Kelly and LM regarding RG 45	2.80
17-Dec-2012	Confer J Kelly regarding RG45 for Main Fund and currency fund; Confer M Asimus regarding investor communication	3.10
18-Dec-2012	Confer J Kelly regarding RG45 and continuous disclosure; confer Z El Hassan	2.70
19-Dec-2012	Confer J Kelly; review emails	2.10

Peter A Schmidt – Partner

Date	Description	Hours
30-Nov-2012	Reviewing and sending updated valuation response	1.50
03-Dec-2012	Reviewing comments from Sydney Team reviewing ASIC RG;s and settling changes to Valuation Response, drafting email	2.20
03-Dec-2012	Reviewing changes from LM, making further reviews, sending to Sydney for checking and inclusion in response	0.80

Peter A Schmidt – Partner

Date	Description	Hours
04-Dec-2012	Reviewing and making further changes to response, drafting email to LM and others	2.50
04-Dec-2012	Attending with John reviewing various issues and idea of meeting with ASIC next week	0.50
04-Dec-2012	Reviewing Relate Party response, call with Simon and Fran re changes, making amends to deed and sending further draft	3.50
05-Dec-2012	Reviewing emails and calling Tony e various issues and response to Trilogy	0.80

Michelle Asimus – Senior Associate

Date	Description	Hours
30-Nov-2012	Drafting amendments to Schedule 5: response on ASIC's additional agenda items and drafting email to F Mulder on queries relating to response	0.40
30-Nov-2012	Drafting email to F Mulder on investor communication addressing go forward strategy	0.10
30-Nov-2012	Conferring with J Moutsopoulos on investor communication on the go forward strategy	0.40
30-Nov-2012	Drafting additional amendments to go forward investor communication and covering email to F Mulder	0.60
30-Nov-2012	Telephone with F Mulder to discuss Schedule 5: other agenda items and investor communication	0.20
30-Nov-2012	Reviewing LM's comments on Schedule 5, Deutsche facility and drafting amendments to Schedule 5: additional ASIC agenda items based on LM's comments on document of 30 November 2012	0.90
30-Nov-2012	Reviewing LM's comments on forward looking investor communication and preparing additional amendments	0.50
30-Nov-2012	Drafting amendments to backward looking response and reviewing Schedule 1, 2 and 3 and preparing amendments, collating attachments to response	4.30
30-Nov-2012	Drafting amendments to Schedule 4: unilateral amendments to Main Fund Constitution	0.70
02-Dec-2012	Reviewing related party transactions Schedule 2 and preparing amendments, reviewing updated Schedules 3 and 4	2.30
03-Dec-2012	Drafting amendments to backward looking response, reviewing and drafting amendments to Schedule 2 and 4, preparing additional amendments to Schedule 5 incorporating LM's comments	4.10
03-Dec-2012	Reviewing PDSs and financial statements for related party transaction disclosure and drafting related party transaction disclosure section of Schedule 2	2.90
03-Dec-2012	Reviewing email from F Mulder on investor communication on forward looking strategy and preparing amendments to investor communication	0.50
03-Dec-2012	Finalising letter to ASIC, Schedule 1, Schedule 3 and Schedule 5 and emailing response and schedules to ASIC	1.10
03-Dec-2012	Confer with J Moutsopoulos, Z El Hassan, P Schmidt, M Levine and J Kelly to discuss outstanding legal issues on backward looking response	0.80
04-Dec-2012	Conferring with J Moutsopoulos and P Schmidt on Schedule 2 related party transaction response	0.50
04-Dec-2012	Reviewing Schedule 2 and drafting amendments to Schedule 2 (related party transactions), reviewing LM's final comments on paragraph 6.16 and amending Schedule 2 based on LM's edits	7.40
04-Dec-2012	Finalising Schedule 2 and attachments and sending Schedule 2 and Schedule 4 to ASIC	0.70

Michelle Asimus – Senior Associate

Date	Description	Hours
06-Dec-2012	Confer with J Moutsopoulos on investor communication on forward looking strategy	0.50
06-Dec-2012	Confer with J Moutsopoulos on redaction of Compliance Committee minutes and reports before sending to Trilogy	0.30
06-Dec-2012	Drafting additional amendments to investor communication on forward looking strategy and sending to F Mulder	0.40
06-Dec-2012	Drafting ASIC s253E relief application	2.10
07-Dec-2012	Drafting ASIC application for s253E relief	2.80
10-Dec-2012	Drafting s253E relief application for submission to ASIC	5.10
11-Dec-2012	Drafting ASIC s253E relief application	1.40
13-Dec-2012	Confer with P Schmidt on Hickey brief regarding Trilogy	0.30
13-Dec-2012	Confer with J Moutsopoulos on Hickey Trilogy brief	0.30
13-Dec-2012	Reviewing Hickey letter to ASIC and attachments	2.90
13-Dec-2012	Drafting additional amendments to forward looking investor communication and covering email to F Mulder raising four issues on the communication	1.50
14-Dec-2012	Telephone with Leanna Damary of ASIC regarding submission of hard copy documents for MPF response	0.20
17-Dec-2012	Reviewing additional LM amendments to investor forward looking communication	0.70
17-Dec-2012	Confer with J Moutsopoulos on amendments to forward looking investor communication	0.40
17-Dec-2012	Drafting additional amendments to forward looking strategy and queries to F Mulder on forward looking strategy	1.60
18-Dec-2012	Telephone with F Mulder on queries regarding forward looking investor communication and MPF response to ASIC	0.20
18-Dec-2012	Drafting additional amendments to investor communication on go forward strategy and list of queries for F Mulder	0.30
20-Dec-2012	Drafting amendments to s253E ASIC relief application	0.50
20-Dec-2012	Drafting covering letter to ASIC enclosing response to question 2 and 3 "Fund Assets" part of s912C Notice	0.40
20-Dec-2012	Reviewing additional response to question 2 and amending letter to ASIC to include all responses and LM's comments on NR marked up changes to question 3, finalising response and attachments and sending to ASIC	3.90

Michele Levine – Senior Associate

Date	Description	Hours
30-Nov-2012	Drafting advice regarding redemptions	5.30
01-Dec-2012	Reviewing Schedule 2 Valuation Policy and Schedule 4 Unilateral Amendments	1.60
02-Dec-2012	Drafting amendments to Schedule 2 Valuation Policy	2.20
03-Dec-2012	Drafting Schedule 1 Redemptions advice and Schedule 2 Related party transactions	6.20
06-Dec-2012	Considering specific BT redemption requests	0.30
11-Dec-2012	Advising regarding specific BT, Asgard and OnePath Redemption Requests	2.00
12-Dec-2012	Advising on specific redemption requests for BT, Asgard and OnePath	2.50
17-Dec-2012	Considering specific redemption requests	1.00
18-Dec-2012	Considering specific redemption requests	3.40
19-Dec-2012	Considering specific redemption requests	1.00

Jack Kelly – Lawyer

Date	Description	Hours
30-Nov-2012	Considering unilateral amendments and best interests	0.80
30-Nov-2012	Confer (various times) with P Schmidt and J Moutsopoulos regarding backward looking issues	0.40
30-Nov-2012	Confer with J Moutsopoulos, F Mulder and C Hodge regarding unilateral constitutional amendments	1.30
30-Nov-2012	Drafting unilateral constitutional amendments following responses from LM	6.00
30-Nov-2012	Drafting backward looking notes	2.50
30-Nov-2012	Considering emails and responses from LM	0.60
01-Dec-2012	Considering emails from LM and NRA regarding backward looking issues	1.00
02-Dec-2012	Reviewing Schedules to ASIC response	3.00
03-Dec-2012	Confer with J Moutsopoulos, Z El Hassan, M Asimus, M Levine, P Schmidt regarding outstanding issues and "backward looking" response	0.80
03-Dec-2012	Considering unilateral amendments. Amending document. Considering answers from C Hodge regarding unilateral amendments. Reviewing other Schedules to ensure consistency and content regarding amendments.	6.50
03-Dec-2012	Confer with J Moutsopoulos regarding unilateral amendments	1.10
04-Dec-2012	Considering unilateral amendment note. Preparing amendments. Confer with J Moutsopoulos of the same. Telephone F Mulder and C Hodge regarding review of papers.	6.00
04-Dec-2012	Confer with J Moutsopoulos regarding redemptions paper	1.00
04-Dec-2012	Considering correspondence between LM and NR	0.30
05-Dec-2012	Preparing redactions and edits to compliance committee minutes and reports	2.00
05-Dec-2012	Reviewing case law and general law regarding beneficiaries right to access trust documents. Preparing email.	1.70
05-Dec-2012	Preparing and updating matter file	1.00
05-Dec-2012	Reviewing Trilogy communication	0.40
06-Dec-2012	Research general law equitable right to accessing documents of a trust.	1.00
07-Dec-2012	Reviewing cases regarding handover of documents. Confer with M Asimus of the same.	1.50
11-Dec-2012	Preparing compare constitutions regarding WFMI and CPAIF for the purposes of the OnePath and Asgard requests. Confer with M Levine of the same	0.70
12-Dec-2012	Considering RG45	2.00
12-Dec-2012	Considering response from D Alexander of LM regarding RG 45 and "older" RG 45 requirements	1.00
12-Dec-2012	Considering draft RG 45 disclosure documentation from LM	1.80
12-Dec-2012	Confer with J Moutsopoulos regarding RG 45	0.80
13-Dec-2012	Preparing RG45. Confer with J Moutsopoulos of the same. Confer with LM regarding edits	6.00
14-Dec-2012	Considering RG45 disclosure document. Considering D Alexander's responses to queries regarding disclosure. Confer with J Moutsopoulos of the same	5.00
16-Dec-2012	Considering RG45 disclosure	0.70
17-Dec-2012	Preparing edits to RG45 disclosure and CPAIF wrapper. Confer with D Alexander and J Moutsopoulos of the same	4.00
18-Dec-2012	Considering additional questions raised by F Mulder and D Alexander regarding disclosure and RG 45. Considering regulation and Corporations Act. Preparing response. Confer with J Moutsopoulos of the same.	4.00
18-Dec-2012	Considering investor communication letter, amendments made and impact on RG45 disclosure and other disclosures to ASIC	0.40

Jack Kelly – Lawyer

Date	Description	Hours
18-Dec-2012	Preparing edits / comments for RG 45 Disclosure. Confer with J Moutsopoulos and M Asimus of the same	1.50
19-Dec-2012	Telephone C Hodge regarding Feeder Fund wrapper	0.20
19-Dec-2012	Considering amendments and issues regarding investor communication, RG45 disclosure and disclosure obligations	1.20
20-Dec-2012	Considering RG45 and amendments	1.00

My Linh Pham – Graduate

Date	Description	Hours
30-Nov-2012	Research cases re sections 601FC(1)(c) and (d)	2.50

Disbursements

Search fees	Prime Legal - ASIC Historic Company Extract: AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY L	\$25.20
Travel expenses	Vendor: Asimus, Michelle; Invoice#: C6F2EEE3FE65848F5BA3; Date: 11/12/2012 Taxi working late (9.27pm) (04/12/2012)	\$64.68
	Vendor: Kelly, Jack; Invoice#: CFA5972F0DD1A461BA8B; Date: 11/12/2012 Taxi working late(9.32pm) (30/11/2012)	\$95.65

Total	AU \$185.53
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Other Charges

Document reproduction	\$483.75
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Total	AU \$483.75
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COPY

NORTON ROSE

TAX INVOICE

Invoice Number 1194858
Date/Tax Point 31 January 2013
Our ref 574369/2787923/PAS/105

Norton Rose Australia
 ABN 32 720 868 049
 Level 21
 ONE ONE ONE
 111 Eagle Street
 BRISBANE QLD 4000
 AUSTRALIA

Tel +61 (0)7 3414 2888
 Fax +61 (0)7 3414 2999
 GPO Box 407, Brisbane Qld 4001
 DX114 Brisbane
www.nortonrose.com

LM Investment Management Ltd
PO Box 485
SURFERS PARADISE QLD 4217

For the attention of: Francene Mulder

	Charges AU \$	GST Rate %
ASIC Investigation		
CHARGES FOR PROFESSIONAL SERVICES RENDERED to 30 January 2013.	28,730.00	10.00
DISBURSEMENTS		
Official Registry Fees	1,000.00	0.00
Travel expenses	208.67	10.00
OTHER CHARGES		
Document reproduction	39.90	10.00
Net	29,978.57	
GST	2,897.86	
TOTAL AMOUNT NOW DUE AND PAYABLE	AU \$32,876.43	

Invoices are payable net when rendered. Payments may be made by cheque to GPO Box 407, Brisbane QLD 4001 or by credit transfer to the account of Norton Rose Australia, ANZ Banking Group Limited, 324 Queen Street, Brisbane, BSB Number 014-002, Account Number 8349-91656, Swift Code ANZBAU3M. Please advise us of your EFT payment by email to aucredit@nortonrose.com.

This invoice may include fees and disbursements of the constituent parts of Norton Rose Group. Where applicable, exchange rates have been applied to this bill according to the date of each transaction. Your attention is drawn to the notice on the reverse.

We may charge interest at the rate equal to the Cash Target Rate specified from time to time by the Reserve Bank of Australia, increased by 2 percentage points, on legal costs unpaid 30 days or more after giving you this bill.

The following avenues are open to a client in the event of a dispute in relation to legal costs comprised in this bill:

- (i) costs assessment under Division 7 of Part 3.4 of Chapter 3 of the Legal Profession Act 2007 (QLD) ("the Act").
(An application for assessment must be made within 12 months after the bill was given.)
- (ii) the setting aside of a costs agreement under section 328 of the Act.

The file in this matter may be destroyed seven years from the date of our final account unless you write to us requesting retention for a longer period.

Zein El Hassan – Partner

Date	Description	Hours
21-Dec-2012	Advising regarding annual accounts and Trilogy queries	0.50
07-Jan-2013	Considering redemption requests for BT	0.80
09-Jan-2013	Considering redemption requests for BT/Asgard	1.50
10-Jan-2013	Considering specific redemption requests	0.80
16-Jan-2013	Considering ASIC issues	0.40

John Moutsopoulos – Partner

Date	Description	Hours
21-Dec-2012	Confer J Kelly regarding RG45; Confer F Mulder; Draft email; Confer M Asimus; Confer M Asimus regarding 253E application	2.80
15-Jan-2013	Confer P Schmidt; confer J Kelly, review email from F Mulder	0.40
16-Jan-2013	Conference call with Fran Mulder, confer Z El Hassan	0.70
17-Jan-2013	Confer J Kelly regarding FX hedged disclosure	0.60
18-Jan-2013	Confer J Kelly regarding FX analysis of PDS's and Advisor liability, Confer P Schmidt	1.90
21-Jan-2013	Confer J Kelly regarding Trilogy email and confer P Schmidt	1.00
23-Jan-2013	Confer M Mulder and J Kelly	0.90
29-Jan-2013	Confer F Mulder, E Van der Hoven, D Longan regarding capital distributions, Review ASIC hardship relief	0.90
30-Jan-2013	Confer J Kelly regarding ASIC hardship relief and "liquid" decision of Board	0.40

Peter A Schmidt – Partner

Date	Description	Hours
15-Jan-2013	Teleconference with John, F Mulder and others re issues moving forward	1.40
17-Jan-2013	John re various issues re responses and issues raised by Trilogy	0.40
21-Jan-2013	Telephone conference with J Moutsopoulos and J Kelly considering response to Trilogy's email to Compliance Committee	0.60
23-Jan-2013	Teleconference with F Mulder, J Moutsopoulos and J Kelly	0.60

Michelle Asimus – Senior Associate

Date	Description	Hours
21-Dec-2012	Confer with J Moutsopoulos on s253E ASIC relief application	0.80
21-Dec-2012	Conferring with J Moutsopoulos on draft relief instrument to be submitted to ASIC as part of s253E relief application	0.50
21-Dec-2012	Drafting amendments to s253E ASIC relief application	1.90
21-Dec-2012	Drafting email to ASIC enclosing forward looking investor communication and final RG45s	0.20
24-Dec-2012	Drafting amendments to ASIC relief application, finalising application and submission to ASIC	0.70
27-Dec-2012	Correspondence with Simon Tickner regarding further valuations submissions for s30 notice	0.30
28-Dec-2012	Reviewing further submission from LM on s30 notice (valuations) and submitting to ASIC	1.20

Michele Levine – Senior Associate

Date	Description	Hours
05-Dec-2012	Reviewing specific redemption requests	0.80
20-Dec-2012	Considering specific redemption requests	0.50
21-Dec-2012	Considering specific redemption requests	0.40
07-Jan-2013	Considering BT redemption request	4.60
07-Jan-2013	Considering issues	0.10
09-Jan-2013	Considering BT/Asgard redemption request	1.50
10-Jan-2013	Advising on specific BT/Asgard redemption request	1.00
11-Jan-2013	Advising on BT/Asgard redemption requests	5.70
16-Jan-2013	Considering FX margin calls and adviser commissions	0.40

Jack Kelly – Lawyer

Date	Description	Hours
21-Dec-2012	Considering amendments to RG45. Confer with J Moutsopoulos of the same. Preparing amendments to RG45 document and circulating to LM.	1.50
16-Jan-2013	Telephone conference with LM (F Mulder, D Longen and Eryn) and J Moutsopoulos and P Schmidt regarding ASIC concerns, Asgard and OnePath issues and other outstanding issues	1.30
16-Jan-2013	Confer with J Moutsopoulos, Z El Hassan and M Levine regarding outstanding ASIC issues and issues arising out of earlier LM teleconference.	0.40
16-Jan-2013	Reviewing CPAIF and ICPAIF constitutions and PDS regarding advisor fees and issues regarding hedging and cashflows/liquidity from FMIF	2.10
17-Jan-2013	Confer with J Moutsopoulos regarding foreign currency hedging in CPAIF and ICPAIF	0.60
17-Jan-2013	Reviewing CPAIF and ICPAIF PDS regarding foreign currency hedge issue	1.50
17-Jan-2013	Considering foreign currency hedge issue and preparing note	1.50
18-Jan-2013	Confer with J Moutsopoulos regarding FX hedge and advisor fees. Confer with P Schmidt of the same.	1.60
18-Jan-2013	Preparing note and considering PDS disclosures regarding FX hedge and advisor fees.	3.50
21-Jan-2013	Considering questions raised by Trilogy to LM Compliance Committee members. Reviewing Corporations Act, ASIC guidance and common law regarding such requests.	3.20
21-Jan-2013	Telephone P Schmidt and J Moutsopoulos regarding Compliance Committee queries.	0.40
21-Jan-2013	Drafting email to F Mulder of LM regarding telephone conference tomorrow	0.10
23-Jan-2013	Telephone conference with F Mulder of LM, J Moutsopoulos and P Schmidt regarding response to Trilogy queries	0.50
23-Jan-2013	Reviewing queries raised by Trilogy. Reviewing audited financial statements, PDS and Corporations Act.	2.00
23-Jan-2013	Preparing draft responses to Trilogy	0.20
25-Jan-2013	Telephone call from F Mulder. Reviewing letters to ASIC to determine illiquidity date.	0.20
29-Jan-2013	Preparing for teleconference regarding illiquidity	0.20
29-Jan-2013	Reviewing email response from LM regarding queries from Trilogy to Compliance Committee	0.20
29-Jan-2013	Telephone conference with F Mulder, E van der Hoven and D Longan of LM and J Moutsopoulos regarding declaring the funds illiquid, hardship relief and capital distributions	0.70
29-Jan-2013	Reviewing ASIC hardship relief policy and media releases	0.30

Jack Kelly – Lawyer

Date	Description	Hours
30-Jan-2013	Searching for LM's relief instrument received by ASIC regarding hardship provisions	1.00
30-Jan-2013	Reviewing and preparing response regarding withdrawal requests and hardship provisions	0.80
30-Jan-2013	Preparing board minutes for the determination of FMIF, CPAIF and ICPAIF as being not "liquid" for the purposes of the Act	1.60
30-Jan-2013	Confer with J Moutsopoulos regarding hardship relief instrument email. Considering and making amendments to email.	0.50
30-Jan-2013	Preparing email to F Mulder. Settling board minutes with J Moutsopoulos.	0.30

Disbursements**Travel expenses**

Cabcharge Inv# 006448422012-12 Date: 10/12/2012 - Working late (this cab charge will be used either Mon or Tues next week) (25377) 28/11/12 20:39:04	\$24.22
Cabcharge Inv# 006448422012-12 Date: 10/12/2012 - Working late (25330) 29/11/12 23:31:18	\$98.89
Vendor: Kelly, Jack; Invoice#: CC8552A61AB98423D910; Date: 08/01/2013 Taxi working late (8.08pm) (18/12/2012)	\$85.56

GST Exempt**Official Registry Fees**

PAYEE: Australian Securities and Investments Commission; REQUEST#: 680150; DATE: 24/12/2012. - Fee for ASIC relief application	\$1,000.00
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Total

AU \$1,208.67

Other Charges

Document reproduction	\$39.90
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Total

AU \$39.90

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NORTON ROSE

TAX INVOICE

Invoice Number 1198471
Date/Tax Point 28 February 2013
Our ref 574369/2787923/PAS/105

Norton Rose Australia
ABN 32 720 868 049
Level 21
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111 Eagle Street
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DX114 Brisbane
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LM Investment Management Ltd
PO Box 485
SURFERS PARADISE QLD 4217

For the attention of: Francene Mulder

	Charges AU \$	GST Rate %
ASIC Investigation		
CHARGES FOR PROFESSIONAL SERVICES RENDERED to 18 February 2013.	11,895.00	10.00
DISBURSEMENTS		
Search fees	24.70	10.00
OTHER CHARGES		
Document reproduction	34.65	10.00
Net	11,954.35	
GST	1,195.44	
TOTAL AMOUNT NOW DUE AND PAYABLE	AU \$13,149.79	

Invoices are payable net when rendered. Payments may be made by cheque to GPO Box 407, Brisbane QLD 4001 or by credit transfer to the account of Norton Rose Australia, ANZ Banking Group Limited, 324 Queen Street, Brisbane, BSB Number 014-002, Account Number 8349-91656, Swift Code ANZBAU3M. Please advise us of your EFT payment by email to aucredit@nortonrose.com.

This invoice may include fees and disbursements of the constituent parts of Norton Rose Group.
Where applicable, exchange rates have been applied to this bill according to the date of each transaction.
Your attention is drawn to the notice on the reverse

We may charge interest at the rate equal to the Cash Target Rate specified from time to time by the Reserve Bank of Australia, increased by 2 percentage points, on legal costs unpaid 30 days or more after giving you this bill.

The following avenues are open to a client in the event of a dispute in relation to legal costs comprised in this bill:

- (i) costs assessment under Division 7 of Part 3.4 of Chapter 3 of the Legal Profession Act 2007 (QLD) ("the Act").
(An application for assessment must be made within 12 months after the bill was given.)
- (ii) the setting aside of a costs agreement under section 328 of the Act.

The file in this matter may be destroyed seven years from the date of our final account unless you write to us requesting retention for a longer period.

Zein El Hassan – Partner

Date	Description	Hours
06-Feb-2013	Considering redemption payments	0.30

John Moutsopoulos – Partner

Date	Description	Hours
31-Jan-2013	Confer J Kelly regarding further LM queries regarding hardship relief	1.20
01-Feb-2013	Confer J Kelly regarding hardship relief; conference call with LM regarding response to ASIC on Trilogy allegations	1.00
12-Feb-2013	Confer J Kelly regarding draft ASIC response	0.90
14-Feb-2013	Call to L Demary, ASIC; confer J Kelly	0.40
15-Feb-2013	Confer J Kelly regarding administration fee; confer F Mulder	1.20

Peter A Schmidt – Partner

Date	Description	Hours
01-Feb-2013	Preparing with John re various issues, and attending teleconference with LM re ASIC/Trilogy Audit Committee response	1.20
07-Feb-2013	Reviewing draft letter to ASIC, settling with Jack	0.50
14-Feb-2013	Telephone with Hickeys re Four Corners Programme investigation	0.30

Jack Kelly – Lawyer

Date	Description	Hours
31-Jan-2013	Preparing response to F Mulder queries regarding Trilogy. Considering queries from Trilogy to Compliance Committee	1.00
31-Jan-2013	Confer with J Moutsopoulos regarding further queries raised by LM, including response to ASIC concerning Compliance Committee and Trilogy as responsible entity of WFMIF	1.20
31-Jan-2013	Considering previous responses to ASIC regarding concerns raised by Trilogy	1.50
01-Feb-2013	Considering queries raised by Trilogy regarding Compliance Committee and preparing draft responses. Considering ASIC guidance, regulations and Corporations Act. Reviewing LM audited accounts.	2.80
01-Feb-2013	Confer with P Schmidt and J Moutsopoulos regarding Compliance Committee queries	0.20
01-Feb-2013	Confer with F Mulder, C Hodge and others of LM and J Moutsopoulos and P Schmidt of NRA regarding Compliance Committee queries and other outstanding legal issues	1.00
04-Feb-2013	Preparing letter to ASIC in response of Trilogy's email to the Compliance Committee. Confer with J Moutsopoulos of the same.	3.10
05-Feb-2013	Telephone conference with F Mulder, Dan and Eryn of LM regarding capital distributions	0.10
05-Feb-2013	Confer with J Moutsopoulos regarding query raised by F Mulder regarding capital distributions. Teleconference with F Mulder, Dan and Eryn regarding capital distributions. Confer with J Moutsopoulos following teleconference.	0.60
05-Feb-2013	Reviewing Corporations Act and applicable regulations regarding capital distributions post-liquid decision	0.50

Jack Kelly – Lawyer

Date	Description	Hours
05-Feb-2013	Confer with J Moutsopoulos and Z El Hassan regarding capital distributions and potential remediation issues	0.20
05-Feb-2013	Reviewing FMIF Constitution regarding capital distributions. Confer with J Moutsopoulos of the same	0.30
06-Feb-2013	Reviewing and amending LM response to ASIC regarding Compliance Committee questions. Confer with J Moutsopoulos of the same.	0.70
07-Feb-2013	Preparing edits to LM letter to ASIC regarding Compliance Committee from Trilogy	0.50
07-Feb-2013	Confer with J Moutsopoulos regarding management/administration fee issue regarding LMA	0.20
07-Feb-2013	Telephone with P Schmidt regarding Compliance Committee letter	0.10
08-Feb-2013	Considering emails from F Mulder regarding letter to ASIC	0.20
11-Feb-2013	Considering and revising letter to ASIC regarding Compliance Committee email from Trilogy. Inserting and reviewing edits. Confer with J Moutsopoulos and F Mulder of the same.	4.50
12-Feb-2013	Preparing edits to Compliance Committee letter to ASIC	1.50
12-Feb-2013	Reviewing Compliance Committee letter to ASIC. Confer with J Moutsopoulos and F Mulder of the same.	1.50
12-Feb-2013	Telephone conference with Z El Hassan, J Moutsopoulos, F Mulder, D Logan and S Tickner of LM regarding capital distributions and letter to ASIC	0.60
12-Feb-2013	Confer with J Moutsopoulos and Z El Hassan following teleconference	0.20
13-Feb-2013	Preparing edits to Compliance Committee letter. Confer with J Moutsopoulos of the same. Emailing to F Mulder for LM's instructions	1.60
13-Feb-2013	Confer with J Moutsopoulos regarding letter to ASIC. Settling letter. Emailing to ASIC	0.30
14-Feb-2013	Telephone with J Moutsopoulos and L Damary of ASIC regarding outstanding legal issues and date for meeting	0.20
14-Feb-2013	Preparing summary email to F Mulder regarding ASIC meeting and additional concerns	0.50
14-Feb-2013	Preparing edits and additional information to LMA advisor fee advice	2.60
14-Feb-2013	Telephone F Mulder, D Logan and others of LM and J Moutsopoulos regarding LM/LMA administration payments	0.40
15-Feb-2013	Confer with J Moutsopoulos and P Schmidt regarding NZ advice fee. Preparing email to NZ lawyers.	0.20
18-Feb-2013	Searching Word copies of documents to send to F Mulder	0.30

Disbursements

Search fees
Prime Legal - ASIC Doc Image Small: 028183433 \$24.70

Total **AU \$24.70**

Other Charges

Document reproduction \$34.65

Total **AU \$34.65**

COPY

NORTON ROSE

TAX INVOICE

Invoice Number 1187325
 Date/Tax Point 30 November 2012
 Our ref 574369/2789191/PAS/105

Norton Rose Australia
 ABN 32 720 868 049
 Level 21
 ONE ONE ONE
 111 Eagle Street
 BRISBANE QLD 4000
 AUSTRALIA

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 Fax +61 (0)7 3414 2999
 GPO Box 407, Brisbane Qld 4001
 DX114 Brisbane
www.nortonrose.com

LM Investment Management Ltd
 PO Box 485
 SURFERS PARADISE QLD 4217

For the attention of: Francene Mulder

	Charges AU \$	GST Rate %
Trilogy Funds Management Limited - Change of Responsible Entity		
CHARGES FOR PROFESSIONAL SERVICES RENDERED to 29 November 2012.	37,435.00	10.00
DISBURSEMENTS		
Courier fees	6.05	10.00
Search fees	27.00	10.00
Travel expenses	1,294.61	10.00
OTHER CHARGES		
Document reproduction	56.85	10.00
Net	38,819.51	
GST	3,881.95	
TOTAL AMOUNT NOW DUE AND PAYABLE	AU \$42,701.46	

Invoices are payable net when rendered. Payments may be made by cheque to GPO Box 4592SS Melbourne VIC 3001 or by credit transfer to the account of Norton Rose Australia, ANZ Banking Group Limited, 324 Queen Street, Brisbane, BSB Number 014-002, Account Number 8349-91656, Swift Code ANZBAU3M. Please advise us of your EFT payment by email to aucredit@nortonrose.com.

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The following avenues are open to a client in the event of a dispute in relation to legal costs comprised in this bill:

- (i) costs assessment under Division 7 of Part 3.4 of Chapter 3 of the Legal Profession Act 2007 (QLD) ("the Act").
(An application for assessment must be made within 12 months after the bill was given.)
- (ii) the setting aside of a costs agreement under section 328 of the Act.

The file in this matter may be destroyed seven years from the date of our final account unless you write to us requesting retention for a longer period.

Zein El Hassan – Partner

Date	Description	Hours
01-Nov-2012	Advising regarding change of RE and proposed letter to BT	0.50
02-Nov-2012	Advising regarding change of RE	0.30
02-Nov-2012	Considering issues regarding BT voting and rebates	0.20

John Moutsopoulos – Partner

Date	Description	Hours
31-Oct-2012	Confer J Kelly regarding body corporate representatives issues; Review draft responses to ASIC notices and confer with P Schmidt, Review draft script; Confer Clayton Utz meeting with Castle Partners and LM; Confer Clayton Utz, confer Castle Partners	5.10
01-Nov-2012	Preparing for unitholders meeting; attend meeting; post meeting discussion	2.50
08-Nov-2012	Confer M Asimus regarding ASIC response and winding up mechanism; Confer M Asimus regarding publishing estimated unit price; Confer M Asimus regarding handing over books and records, review draft note	2.30
16-Nov-2012	Confer M Asimus regarding Termination Deed; Review Deed; Confer P Schmidt regarding ASIC letter	0.80
20-Nov-2012	Confer M Asimus; confer C Hodge regarding handover; confer P Schmidt	1.20
21-Nov-2012	Confer LM regarding hand over of documents	0.60
22-Nov-2012	Confer C Hodge regarding handover; Confer P Schmidt.	0.70
28-Nov-2012	Confer C Hodge regarding handovers	0.30

Peter A Schmidt – Partner

Date	Description	Hours
08-Nov-2012	Reviewing emails and settling response to Tony, discussing Tax issues with Michelle.	0.50
08-Nov-2012	Settling email to LM re unit prices	0.40
08-Nov-2012	Reviewing email from Tony, responding and drafting email to John re issue of changes to Con	0.30
09-Nov-2012	Reviewing advice re handover and sending to LM	0.50
12-Nov-2012	Reviewing email from Tony and responding	0.10
21-Nov-2012	Reviewing Compliance Committee minutes and reports re provision to Trilogy	0.80
26-Nov-2012	re various issues in respect to handover and emails from Trilogy chasing documents, considering response required.	0.80
29-Nov-2012	Telephone call with Grant Fisher, reviewing Constitution and Corps law, researching cases on S601FS, drafting advice on lien and indemnity	1.50
29-Nov-2012	Settling advice re lien etc with John, finalising and sending advice.	0.40

Andrew Logan – Special Counsel

Date	Description	Hours
01-Nov-2012	Reviewing correspondence	0.30
09-Nov-2012	Conferring with J Moutsopoulos regarding proxy voting	0.20

Michelle Asimus – Senior Associate

Date	Description	Hours
31-Oct-2012	Meeting with Castle Partners prior to LM meeting	0.40
31-Oct-2012	Meeting with LM and Castle Partners to discuss Trilogy meeting and strategy of FMIF and feeder funds	1.20
31-Oct-2012	Meeting with J Moutsopoulos to discuss legal next steps for WFMIF following change of RE	0.50
31-Oct-2012	Telephone with Leanne Damary and Jenny Gentles of ASIC to discuss Trilogy AFSL authorisation issue and consequences for meeting and ASIC notices on Trilogy meeting	0.40
01-Nov-2012	Attending to legal issues for Trilogy meeting and potential legal issues to consider for CPAIF and FMIF meetings	0.90
01-Nov-2012	Reviewing statutory requirements to handover books to Trilogy as responsible entity of WFMIF, reviewing constitution for any obligations to handover books and provide assistance, reviewing case law on general law requirements to provide assistance and handover books, preparing note to LM on these matters	2.80
01-Nov-2012	Drafting email to Clayton Utz on WFMIF voting report and discuss with J Moutsopoulos	0.30
01-Nov-2012	Reviewing correspondence from Castle Partners on BT Asgard vote and whether NR should prepare a letter to BT Asgard, reviewing Trilogy press release regarding institutional investor vote, discussion with Z El Hassan on whether NR letter to BT Asgard issues relating to BT Asgard vote	0.70
01-Nov-2012	Discussion with P Schmidt on LM's proposal to sell down assets, reviewing previous correspondence between ASIC and LM on prior liquidity mechanism and relief applications, reviewing constitution for wind-up provisions and distribution provisions in terms of proposed wind up by LM	2.20
02-Nov-2012	Drafting note on hand over obligations following appointment of Trilogy as responsible entity of WFMIF and meeting with Z El Hassan to discuss what trust documents will need to be handed over to LM	1.90
02-Nov-2012	Reviewing email from Kensington Swan on lodgement of supplemental deeds with NZ registrar of companies and call with Kensington Swan to discuss email and lodgement requirements	0.30
02-Nov-2012	Telephone calls with D Ireland and T McLaughlin on NZ lodgement queries and opt-in to NZ 2008 Mutual Recognition regime, calls with J Moutsopoulos on lodgement requirements, reviewing additional emails from Kensington Swan on NZ lodgement requirements, email to F Mulder regarding whether LM "opt-in" to 2008 Mutual Recognition regime or whether it was still relying on 2003 securities act exemption	1.60
05-Nov-2012	Reviewing case law on trustee's obligation to disclose information and drafting note on LM's obligations to handover books of WFMIF to Trilogy	3.80
05-Nov-2012	Drafting emails to Castle Partners forwarding Poll Report provided by Clayton Utz, responding to Clayton Utz requesting Holder Report as requested by B Parsons of Castle Partners	0.30
06-Nov-2012	Considering F Mulder's query on publishing an estimated unit value and preparing response to F Mulder	1.20
07-Nov-2012	Reviewing additional information requested by J Moutsopoulos on estimated unit price query and drafting email on the same	0.60
07-Nov-2012	Telephone with Leanne Damary to discuss whether ASIC would have concerns with LM publishing an estimated unit value	0.30
08-Nov-2012	Drafting amendments to email to F responding to estimated unit value query	0.40
08-Nov-2012	Drafting amendments to note on consequences for LM on change of RE for Wholesale Fund	0.60
08-Nov-2012	Meeting with J Moutsopoulos on advice regarding estimated unit value and LM's requirement to hand over books and records to Trilogy	0.60

Michelle Asimus – Senior Associate

Date	Description	Hours
09-Nov-2012	Telephone with J Moutsopoulos and D Ireland of Kensington Swan to discuss lodgement of supplemental deeds, whether LM should opt-in to 2008 mutual recognition regulations if further changes to the constitution are made and requirements to lodge financial statements.	0.70
09-Nov-2012	Drafting amendment to note on consequences for LM following change of RE for Wholesale Fund	0.30
09-Nov-2012	Meeting with J Moutsopoulos and J Kelly to discuss legal issues for ASIC response and call with P Schmidt, J Moutsopoulos and J Kelly to discuss Norton Rose response to ASIC	2.00
09-Nov-2012	Considering legal issues for NR response to ASIC for redemptions	1.10
13-Nov-2012	Reviewing Carolyn Hodge's additional queries on the handover of documents and preparing a response for P Schmidt	0.50
15-Nov-2012	Drafting Deed of Partial Termination of the Service Level Agreement in respect of Wholesale Fund	1.20
15-Nov-2012	Reviewing advice from Kensington Swan on applicability of Mutual Recognition and Renewals and Variations Exemption Notice for amendments to the constitutions	0.50
16-Nov-2012	Drafting amendments to Deed of Partial Termination for Service Agreement, reviewing Service Agreement for provisions relating to handover/consequences of termination on termination of Service Agreement	0.40
19-Nov-2012	Drafting amendments to covering email to Deed of Partial Termination and drafting amendments to Deed of Partial Termination	0.40
20-Nov-2012	Drafting amendments to Notice of Termination for Service Agreement	0.40
20-Nov-2012	Discussion with J Moutsopoulos on termination of Service Agreement	0.40
20-Nov-2012	Discussion with J Moutsopoulos on NZ securities law email to LM	0.50
20-Nov-2012	Drafting email to LM on New Zealand law securities advice received and options if LM proposes to amend the constitutions going forward	0.90
22-Nov-2012	Reviewing Compliance Reports and Minutes provided by Carolyn Hodge and marking up suggested redactions from the minutes and reports	2.30
22-Nov-2012	Discussion with J Moutsopoulos on compliance minutes and reports and redaction of information from these documents	0.30
23-Nov-2012	Reviewing Onepath and BT/Asgard redemption query, reviewing constitutions for CPAIF and WFMIF and disclosures in relevant PDS on reinvestment if no withdrawal request was received. Discussion with J Kelly on query	1.60
23-Nov-2012	Considering requirement to pay outstanding fees before Service Agreement terminates, email to F Mulder regarding Service Agreement and call with Trevor	0.40

Georgia Hinds – Lawyer

Date	Description	Hours
02-Nov-2012	Drafting letter to C Hodge enclosing Supplemental Deeds and ASIC acknowledgement, creating certified copies of all documents, telephone call from M Asimus	0.30

Jack Kelly – Lawyer

Date	Description	Hours
01-Nov-2012	Considering NZ advice	1.20
01-Nov-2012	Preparing draft note regarding obligations of LM post WFMIF meeting	1.90
01-Nov-2012	Considering emails throughout the day. Confer with J Moutsopoulos of the same.	0.40

Jack Kelly – Lawyer

Date	Description	Hours
01-Nov-2012	Confer with J Moutsopoulos and M Asimus regarding outcome of meeting and legal issues going forward	0.70
02-Nov-2012	Telephone NZ lawyers regarding NZ advice. Confer with M Asimus and J Moutsopoulos of the same. Review WFMIF and CPAIF Constitutions.	2.50
02-Nov-2012	Researching trustees duties and obligations regarding changeover	2.00
05-Nov-2012	Preparing note on LM's obligations/liabilities following removal as responsible entity. Confer with M Asimus of the same.	1.60
05-Nov-2012	Preparing deed of termination	0.30
05-Nov-2012	Considering NZ advice	0.20
06-Nov-2012	Considering NZ mutual recognition query	0.30
07-Nov-2012	Considering NZ advice and email correspondence with Kensington Swan.	1.10
09-Nov-2012	Telephone NZ correspondent lawyer with J Moutsopoulos and M Asimus regarding NZ issues	0.70
20-Nov-2012	Telephone with J Moutsopoulos and C Hodge of LM regarding handover of documents to Trilogy Funds Management Limited	0.60

Disbursements

Courier fees	\$6.05
Search fees	
Prime Legal - ASIC Company Extract: LM WHOLESALE FIRST MORTGAGE INCOME FUND	\$13.50
Prime Legal - ASIC Company Extract: LM WHOLESALE FIRST MORTGAGE INCOME FUND	\$13.50
Travel expenses	
Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 Service Fee - Airfare	\$6.00
Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 Hotel - Sydney	\$292.51
Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 Travel Bris/Syd/Bris - Attending meeting	\$470.82
Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 Booking Fee	\$10.00
Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 To Airport - receipt lost (31/10/2012)	\$45.61
Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 Travel to Sydney Airport - receipt lost (02/11/2012)	\$57.92
(E) Amex; Invoice#: C78EE6C21628449F3921; Date: 19/11/2012 Qantas Valet Parking (Brisbane Airport) - lost (02/11/2012)	\$107.20
Vendor: Asimus, Michelle; Invoice#: CC8E62988FB1E437B9A8; Date: 20/11/2012 Working late(9.17pm) (25/10/2012)	\$71.64
Cabcharge Inv# 00644842-11 Date: 12/11/2012 - Working late (24977) 17/10/12 21:54:48	\$71.45
Cabcharge Inv# 00644842-11 Date: 12/11/2012 - Working late (24995) 23/10/12 21:32:00	\$80.55
Cabcharge Inv# 00644842-11 Date: 12/11/2012 - Working late (25016) 25/10/12 22:19:59	\$80.91

Total

AU \$1,327.66

Other Charges

Document reproduction	\$56.85
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Total

AU \$56.85

COPY

NORTON ROSE

TAX INVOICE

Invoice Number 1190420
 Date/Tax Point 21 December 2012
 Our ref 574369/2789191/PAS/105

Norton Rose Australia
 ABN 32 720 868 049
 Level 21
 ONE ONE ONE
 111 Eagle Street
 BRISBANE QLD 4000
 AUSTRALIA

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 GPO Box 407, Brisbane Qld 4001
 DX114 Brisbane
www.nortonrose.com

LM Investment Management Ltd
 PO Box 485
 SURFERS PARADISE QLD 4217

For the attention of: Francene Mulder

	Charges AU \$	GST Rate %
Trilogy Funds Management Limited - Change of Responsible Entity		
CHARGES FOR PROFESSIONAL SERVICES RENDERED to 19 December 2012.	13,453.50	10.00
DISBURSEMENTS		
Professional fees	4,085.89	10.00
OTHER CHARGES		
Document reproduction	84.00	10.00
Net	17,623.39	
GST	1,762.34	
TOTAL AMOUNT NOW DUE AND PAYABLE	AU \$19,385.73	

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- (i) costs assessment under Division 7 of Part 3.4 of Chapter 3 of the Legal Profession Act 2007 (QLD) ("the Act").
(An application for assessment must be made within 12 months after the bill was given.)
- (ii) the setting aside of a costs agreement under section 328 of the Act.

The file in this matter may be destroyed seven years from the date of our final account unless you write to us requesting retention for a longer period.

John Moutsopoulos – Partner

Date	Description	Hours
07-Dec-2012	Confer M Asimus regarding trustee obligation to hand over documents to a single beneficiary; confer C Hodge regarding hand over of documents to Trilogy	1.30
10-Dec-2012	Confer F Mulder regarding handover	0.60

Peter A Schmidt – Partner

Date	Description	Hours
07-Dec-2012	Reviewing email from Trilogy, and Francene proposed response, discussing with Tony and drafting changes to response	2.20
07-Dec-2012	Settling draft email to Trilogy with John, sending draft to LM	0.60
10-Dec-2012	Reviewing brief sent through by Hickeys re Trilogy actions	1.80
11-Dec-2012	Preparing for telcon with Hickeys and conference call with Tony and Partners re approach to ASIC	1.50
13-Dec-2012	Reviewing email from Francene and drafting response`	0.50

Michelle Asimus – Senior Associate

Date	Description	Hours
06-Dec-2012	Drafting response to F Mulder's additional queries on lodgement of Supplemental Deeds with NZ regulator	0.40
06-Dec-2012	Conferring with J Moutsopoulos on response to LM on additional queries relating to lodgement of Supplemental Deed with NZ regulator	0.30
06-Dec-2012	Reviewing and redacting Compliance Minutes and Compliance Reports	1.40
06-Dec-2012	Reviewing Trilogy request for documents and considering response	0.90
07-Dec-2012	Considering general law obligation to hand over certain documents to a beneficiary of a trust in light of Trilogy's request for certain documents of the Main Fund, discussion with J Moutsopoulos and P Schmidt on the obligation and reviewing and commenting on draft email to Philip Ryan responding to Trilogy's request for documents	2.40
18-Dec-2012	Confer with J Moutsopoulos to discuss Hickey lawyer draft letter to ASIC regarding Trilogy conduct	0.80
18-Dec-2012	Drafting amendments to Hickey lawyers draft letter to ASIC regarding Trilogy's conduct	1.20

Jack Kelly – Lawyer

Date	Description	Hours
07-Dec-2012	Preparing transaction bible relevant to LM First Mortgage Income Fund	5.00
10-Dec-2012	Preparing Trilogy transaction bundle	4.10
11-Dec-2012	Preparing Trilogy transaction bundle	3.50
19-Dec-2012	Preparing edits to Hickey Brief. Reviewing document. Confer with J Moutsopoulos of the same. Sending to ASIC.	2.00

Disbursements

Professional fees

VENDOR: Kensington Swan; INVOICE#: 339635; DATE:
29/11/2012 - Professional creditors

\$4,085.89

Total

AU \$4,085.89

Other Charges

Document reproduction

\$84.00

Total

AU \$84.00

16 October 2012

Francene Mulder
Director
LM Investment Management Ltd
PO Box 485
SURFERS PARADISE QLD 4217

 **NORTON ROSE**

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DX 114 Brisbane
www.nortonrose.com

Direct line
+61 7 3414 2930

Our reference
2789191

Email
peter.schmidt@nortonrose.com

Dear Francene

**Letter of engagement
Trilogy Funds Management Limited - (Trilogy) Change of Responsible Entity**

I am writing to confirm the basis on which we offer that we, Norton Rose Australia ABN 32 720 868 049 (and, where appropriate, other constituent parts of Norton Rose Group, as defined in paragraph 1 of the Appendix, to which work is referred by us pursuant to paragraph 10 of the Appendix) will act as set out in paragraph 3.1. These terms of engagement include provisions which might not all appear to be immediately relevant, but which I am required to draw to your attention under relevant laws.

In this letter **you** means LM Investment Management Ltd ACN 077 208 461 in its own right and as the responsible entity for the:

- (1) LM First Mortgage Income Fund ARSN 089 343 288;
 - (2) LM Wholesale First Mortgage Income Fund ARSN 099 857 511; and
 - (3) LM Currency Protected Australian Income Fund ARSN 110 247 875;
- (Funds).

2 Applicable law

- 2.1 If you accept this offer, then the laws of Queensland and in particular (but without limitation) the *Legal Profession Act 2007 (Qld)* (**LPA**) will apply to the costs agreement between you and us and all matters concerning our legal costs.

3 Scope of engagement

- 3.1 As discussed at the Board Meeting on 11 October 2012, we confirm our instructions to act for you as follows:
- (1) Advise you in respect to the attempt by Trilogy to replace you as responsible entity of the Funds;
 - (2) Work with Castle Partners in this respect.

APAC-#16330686-v1

Norton Rose Australia is a law firm as defined in the Legal Profession Acts of the Australian states and territory in which it practises. Norton Rose Australia together with Norton Rose LLP, Norton Rose Canada LLP, Norton Rose South Africa (incorporated as Deneys Reitz Inc) and their respective affiliates constitute Norton Rose Group, an international legal practice with offices worldwide, details of which, with certain regulatory information, are at nortonrose.com

- 3.2 We will not undertake work which falls outside this scope of work unless we agree to the additional work, in which case we will write to you describing the amended scope of work and assumptions on which it is based and any consequences for the fees, service charges and disbursements for this matter.
- 3.3 Save as otherwise agreed, we will be advising and acting at all times in respect of Australian law only and are not responsible for advising you as to the effect or enforceability of any documents or matters which may be subject to or governed by the laws of any other jurisdiction.
- 3.4 Our solicitor/client relationship is with, and our duty of care is owed to, you only. All advice provided by us (or any other constituent part of Norton Rose Group) relates to this matter only and is for the benefit of you alone. Unless we agree otherwise in writing, our advice does not extend to, and may not be relied upon by third parties, including your directors and employees in their private capacity.

4 Our team

- 4.1 I will be the responsible partner for this matter and the names of our key team members are set out below:

Name	Position
Peter Schmidt	Partner
John Moutsopoulos	Partner

- 4.2 In addition, we will involve other partners, consultants, special counsel, senior associates, associates, lawyers, graduate clerks and paralegals, if required, in a manner which avoids, so far as feasible, duplication of effort.
- 4.3 We always aim to avoid changing members of our team, but, if this is not possible, we will inform you promptly of the change and the reasons for it. We will use legal staff of an appropriate level of seniority for the work concerned.
- 4.4 You will have access to other experts, if required. They will be charged at rates equivalent to those below, depending on their experience.

5 How our fees are calculated

- 5.1 Under this agreement, we will charge according to the number of hours each person works on the matter (with periods of less than 1 hour charged proportionately on the basis of 6 minute units).

The hourly charge-out rates of the persons initially to be involved in the matter are:

Name	Hourly rate
Peter Schmidt	A\$635.00
John Moutsopoulos	A\$695.00
Michelle Asimus	A\$580.00
Jack Kelly	A\$250.00
Georgia Hinds	A\$250.00

- 5.2 The responsible partner may, however, be assisted by others to ensure that our services are delivered efficiently. If so, those people will be charged at their standard hourly rates. Our current standard hourly rates exclusive of GST are:

Partner	A\$550 – A\$950
Special Counsel / Consultant	A\$500 – A\$765
Senior Associate	A\$410 – A\$715
Associate	A\$295 – A\$525
Graduate / Lawyer	A\$220 – A\$315
Paralegal	A\$180 – A\$360

- 5.3 These rates will generally be grossed up for GST in Australia, except where we make a GST-free supply of legal services. Our fee will therefore be calculated to include the relevant amount of GST.
- 5.4 If our applicable charge-out rates change during the course of this matter, you have the right under the LPA to be notified of the change. If you are not specifically notified, our first bill following the change will reflect the change and will constitute notice to you of the change. This costs agreement will be taken to have been amended accordingly if you continue to instruct us.

6 Fee estimate

- 6.1 In this matter it is not reasonably practicable for us to estimate the total legal costs which will be payable. The range of our estimated fees is between A\$100,000.00 plus GST and A\$200,000.00 plus GST. The major variables which will affect the calculation of those costs are:

- (1) that any one or more of the assumptions set out below are not met;
- (2) the steps taken by Trilogy and what is required in response;
- (3) whether it is necessary to commence or defend Court proceedings.

- 6.2 You may, by giving us reasonable advance notice in writing, set an upper limit on the fees, disbursements and service charges for which you may be liable without further authority. It is important to note, however, that we reserve the right not to take any steps in the matter during any period in which we are awaiting your authority to exceed an upper fees limit, if taking those steps would result in fees, disbursements and service charges, exceeding the limit. That may be contrary to your best interests and so it is important that any fees, disbursements and service charges limit is sufficient. Also, there may be occasions when we have to commit to taking certain steps on your behalf in the future. Any upper limit set by you must be sufficient to cover commitments which we have already undertaken. Any GST will be chargeable at the applicable rate in addition to any such limit.

7 Monies on Account of Fees

- 7.1 We may request that you pay us funds into our trust account to be applied by us in payment of our fees, disbursements and service charges when they fall due. You may pay that sum to the credit of Norton Rose Australia trust account number 8349 88844 at ANZ Banking Group Ltd (branch 324 Queen Street, Brisbane), branch number 014 002, quoting 2789191. By entering into this costs agreement you authorise us to apply that sum, or any part of it, and any additions to that sum which you may pay in future, for that purpose.

8 Assumptions

- 8.1 In setting the fee structure outlined above, we have assumed that:
- (1) we will receive clear and timely instructions from you; and
 - (2) there will be no material change to the scope of services.

9 Disbursements and service charges

- 9.1 In addition to professional fees there will be a requirement to pay or to reimburse to us disbursements and service charges incurred or payable as mentioned in the attached Standard Terms. These we estimate will not exceed A\$2,000.00 made up as follows:
- (1) photocopying and document production charges, search fees, couriers, STD, ISD and mobile phone calls and faxing fees.
- 9.2 Our estimate of those disbursements and service charges may also be affected by any variables or changes to the assumptions referred to above. Obviously, if we need to engage Counsel in any litigation, those outlays will increase dramatically.
- 9.3 The basis for charging disbursements and service charges is set out in the attached schedule of disbursements and service charges.
- 9.4 If we change the way we calculate disbursements and service charges during the course of this matter we will notify you of the change and the costs agreement will be taken to have been amended accordingly if you continue to instruct us in this matter.
- 9.5 GST will apply to most disbursements and service charges such as barristers' fees and charges for searches and enquiries. These will be on-charged to you at the GST-exclusive cost to us, plus GST. However GST will not be passed on to you in respect of GST-exempt government fees, taxes and charges for which you are liable, such as stamp duty and registration fees, provided those fees, taxes or charges are paid by separate cheque drawn by you in favour of the proper payee.

10 Billing and reporting

- 10.1 Bills will provide a breakdown of time spent by each lawyer, together with costs and disbursements incurred.
- 10.2 Our bills will, at least initially, be sent weekly as discussed.
- 10.3 Our bills are payable when rendered. We reserve the right to charge interest on amounts overdue by 30 days or more at the rate equal to the Cash Target Rate stated as such by the Reserve Bank of Australia increased by 2 percentage points.

11 Responsibility for advice and services

- 11.1 Norton Rose Group is an international legal practice which carries on business, through its separate constituent parts, in a number of jurisdictions. In each jurisdiction, clients contract with a specific constituent part of Norton Rose Group and that constituent part alone is responsible for providing advice or services to that client and no other constituent part of Norton Rose Group has any responsibility for such advice or services. Some constituent parts of Norton Rose Group have limited liability. The name of any constituent part of Norton Rose Group providing advice or services from any jurisdiction is available on request. In relation to the matter the subject of this letter, you are contracting with Norton Rose Australia ABN 32 720 868 049 only.
- 11.2 Advice and services under this letter will be provided by Norton Rose Australia ABN 32 720 868 049 (or by another constituent part of Norton Rose Group to which work is referred by Norton Rose Australia in accordance with paragraph 10.4 of the Appendix) but only Norton Rose Australia (as the Contracting Party) is responsible for the provision of such advice or services. No other constituent part of Norton Rose Group nor any individual who is a member, partner, shareholder, employee or consultant of, in or to Norton Rose Australia or any other constituent part of Norton Rose Group accepts or assumes responsibility, or has any liability, to you or any third party for advice or services provided under or pursuant to these terms of engagement.
- 11.3 The term "partner" is a title and individuals described as "partners" are members, partners or shareholders, or employees or consultants with equivalent seniority of, in or to Norton Rose Australia or another constituent part of Norton Rose Group.

16 October 2012

NORTON ROSE

12 Standard Terms

12.1 I attach in the Appendix our Standard Terms which form part of this letter. I would draw your attention in particular to paragraphs 1 and 10 of the Appendix and to certain exclusions of, and limitations on, our liability which are principally to be found in paragraph 17 of the Appendix. These Standard Terms will apply to this and any other further engagements.

13 How to accept this offer

13.1 You may accept this offer by:

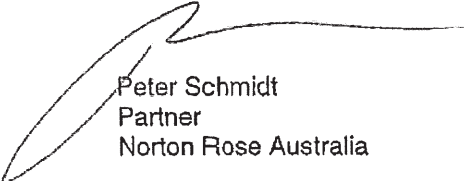
- (1) signing and returning to us the enclosed copy of this letter; or
- (2) continuing to instruct us (in writing or orally) to perform the work specified in this letter.

14 Your comments

14.1 We always appreciate your comments. If you have any comments or queries in relation to any matter or if you wish to discuss our legal costs, please contact either me or our Brisbane Head of Office, Craig Chapman.

We look forward to assisting you in this matter.

Yours sincerely



Peter Schmidt
Partner
Norton Rose Australia

Encl

We/I hereby agree to the above terms and conditions for this matter.

Signed

Francene Mulder
Name

Date: 19/10/ 2012

Matter number: 2789191
[Office use only]

Director
Title

LM Investment Management Limited
Company

Schedule of disbursements and service charges

Disbursement or service charge	Standard rate exclusive of GST
Telephone Local calls Mobile, STD and ISD calls	No charge At cost *
Document production, photocopying and printing Black and white copy Colour copy	A\$0.20 per page A\$1.00 per page
Document production finishing Binding Laminating Dividers	A\$4.00 per document A\$3.50 per document A\$5.00 per document
Document production folders Folders – lever arch Folders – 2 ring	A\$10.00 per folder A\$8.00 per folder
Scanning	No charge
Faxing Local fax STD fax ISD fax	A\$1.00 per page A\$1.50 per page A\$2.00 per page
Emails	No charge
Taxis	At cost *
Couriers – local, interstate and international	At cost * plus fuel surcharge
Court lodging	A\$22.00 per lodgment
Searches, online searches	Service provider fee plus 25% to defray cost of search time
Archive retrieval and delivery	At cost *
Postage – express, overseas, non-standard	At cost *

* "At cost" means the cost invoiced to Norton Rose Australia by the supplier, including any service fees but net of relevant input tax credits claimable by Norton Rose Australia.

Appendix – Norton Rose Australia

Standard Terms

1 Definitions

- 1.1 In these Standard Terms the following expressions have the following meanings:
- (1) **claim** means any such claim as is referred to in paragraph 17 of this Appendix;
 - (2) **constituent part of Norton Rose Group** means any partnership, limited liability partnership, body corporate or other entity comprised within Norton Rose Group;
 - (3) **Contracting Party** means Norton Rose Australia;
 - (4) **LOE** means the Letter of Engagement or other form of instruction confirmation we send you relating to a matter;
 - (5) **LPA** has the meaning in paragraph 2.2;
 - (6) **Norton Rose Australia** means the Australian partnership of that name with Australian Business Number 32 720 868 049 (generally called Norton Rose);
 - (7) **Norton Rose Group** means Norton Rose Australia, Norton Rose LLP and any other partnership, limited liability partnership, body corporate or other entity established or practising in any jurisdiction and authorised to include in its name "Norton Rose" or to describe itself as "in association with Norton Rose LLP";
 - (8) **these Standard Terms** means the terms in this Appendix, the letter of which this Appendix forms part and any document expressed to be supplemental to such letter;
 - (9) **we, our and us** refer to the Contracting Party;
 - (10) **you and your** refer to the addressee (jointly if more than one and not individually) of these Standard Terms, including, where relevant, any company or other entity which becomes subject to these Standard Terms; and
 - (11) the expressions **fixed cost provision** and **regulated client** in the definitions schedule in paragraph 26 have the meanings set against them respectively.
- 1.2 In these Standard Terms words importing the singular include the plural and vice versa and words importing a gender include every gender. Unless expressly stated to the contrary in the letter of which this Appendix forms part, if there shall be any conflict between the terms of this Appendix and the letter of which this Appendix forms part, the terms of this Appendix shall prevail.
- 1.3 Details of any constituent part of Norton Rose Group may be obtained on request.

2 Introduction

- 2.1 The costs agreement between us (which you have the right to negotiate with us prior to agreement being reached) for each matter in which you request our services consists of these Standard Terms and the LOE we send you relating to that matter.
- 2.2 One of the following Acts (including Regulations made under the Act) (each separately called the LPA) referred to expressly or by inference in the LOE we send you relating to the matter applies to the costs agreement for the matter:
- (1) *Legal Profession Act 2004* (New South Wales) (**NSW Act**);
 - (2) *Legal Profession Act 2004* (Victoria) (**VIC Act**);
 - (3) *Legal Profession Act 2006* (Australian Capital Territory) (**ACT Act**);
 - (4) *Legal Profession Act 2007* (Queensland) (**QLD Act**); or
 - (5) *Legal Profession Act 2008* (Western Australia) (**WA Act**).
- 2.3 If you are a regulated client you have the right to be notified (and we will notify you) of any substantial change to anything disclosed in a costs agreement:
- (1) to which the NSW Act, the ACT Act, the QLD Act or the WA Act applies, as soon as is reasonably practicable after we become aware of that change; or
 - (2) to which the VIC Act applies, as soon as is practicable after we become aware of that change.
- #### 3 Professional fees comprising costs, service charges and disbursements
- 3.1 We will charge you fees comprising our costs, service charges for non-professional services provided by our related service entity, and disbursements.
- 3.2 We calculate our costs on the basis of the time spent on your matters, at an agreed cost or in accordance with an agreed lump sum fee (in either such case together with any agreed percentage premium) or in accordance with any applicable fixed cost provision.
- 3.3 The basis of calculating our costs, service charges and disbursements for a particular matter will be set out in the relevant LOE. In addition to our charges in respect of particular matters, we will charge a fee for the preparation of every audit representation letter requested by you or your auditors for any purpose. The fee will be based on the amount of time which we spend in searching our records to obtain the requested information, and in preparing, settling and dispatching the representation letter and the reports which accompany it. According to the extent and complexity of the task, the fee is ordinarily between A\$250 and

A\$600 plus service charges, disbursements and GST. Should you or your auditors require substantial lawyer commentary on particular circumstances, our fee may be higher.

- 3.4 Our partners, other legally qualified staff, graduate clerks and paralegals (collectively **professional staff**) record their time in 6-minute units for any activity.
 - 3.5 Our professional staff have different charge out rates depending upon their level of experience and the practice group in which they work. The current standard hourly rates for work to be performed by our professional staff on each matter are detailed in the relevant LOE. They may be varied from time to time and we will notify you if any variation will substantially affect any lump sum quote or estimate provided to you.
 - 3.6 Disbursements and service charges we pay or incur on your behalf are additional to our professional costs. They may include photocopying, telephone calls, couriers, facsimiles, travel fares, desktop publishing services, document lodging and document service fees and document storage charges.
 - 3.7 Disbursements are charged at their cost to us. When our service entity provides substantial applied legal technology (document management services, D-room or eComply) or other special services, it may contract directly with you in relation to those services. In the case of other charges for services we or our service entity provide, such as photocopying, faxes and STD and IDD telephone calls, service charges at standard rates are charged. Details of our current standard rates for such services are set out in the relevant LOE.
 - 3.8 You agree to pay or to reimburse the following disbursements and service charges billed in each matter:
 - (1) those incurred with your prior authority;
 - (2) those incurred without your prior authority where:
 - (a) the amount of the disbursement or service charge is not significant having regard to the nature of the matter; or
 - (b) it was not reasonably practicable for us to seek your authority and we considered it desirable to incur the disbursement or service charge for the proper conduct of the matter.
 - 3.9 We may ask you in advance for payment on account of large disbursements such as stamp duty, registration fees, court fees and conveyancing enquiry fees.
 - 3.10 Our bills provide you with an itemised breakdown of disbursements and service charges and will constitute a tax invoice for GST purposes.
- 4 Support staff**
- 4.1 No charge is made for secretarial or administrative staff except in respect of audit representation letters and in circumstances where client requirements demand significant secretarial or support staff services out of normal office hours.

- 4.2 Support staff who are required to work overtime because of the special requirements of the matter are charged for additionally.
- 5 Quotes and estimates**
- 5.1 If you are a regulated client and it is reasonably practicable to do so, we will give you an estimate of the costs (including service charges and disbursements) you will incur on each matter. If it is not reasonably practicable to make an estimate, we will give you a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs. Estimates are based on the agreed scope of work and should not be regarded as a fixed quote.
 - 5.2 Unforeseen circumstances or new issues often arise during the course of a matter. If our estimate of costs becomes inaccurate, we will provide you with a revised estimate.
 - 5.3 We can provide a fixed quote on some matters such as some conveyancing work and the provision of shelf companies. The quote will be based on the scope of work but will not cover additional services that may be required as a result of any variation in the scope of work.
 - 5.4 When you instruct us in matters where the other party has a contractual liability to you to pay our costs, you will remain liable for payment until the costs are received by us.
- 6 Billing**
- 6.1 You have the right:
 - (1) to receive a bill from us for our costs, service charges and disbursements; and
 - (2) to request an itemised bill after receipt from us of a lump sum bill.
 - 6.2 We issue bills to you monthly during the course of each matter unless otherwise agreed.
 - 6.3 Unless other payment terms are agreed, bills are payable when rendered. If our bills are not paid 30 days after you have been provided with a bill we reserve the right to charge interest on the amount overdue. The rate of interest will not exceed the maximum amount permitted under the LPA. If you are a regulated client, the actual rate will be specified in the LOE we send you for each matter.
 - 6.4 We aim to give you accurate and understandable bills. If you have any questions about a bill, please contact the responsible partner or Head of Office named in the LOE to discuss them.
 - 6.5 Our bills are payable in the currency in which they are submitted.
 - 6.6 If any bill is not paid, we may, on giving written notice to you, cease work on the matter to which the bill relates and any of your other matters, and you will not make any claim against us, or any complaint, in respect of the consequential inactivity on the matter or any loss resulting from it. In these circumstances, we may also be entitled to exercise a lien for unpaid fees over any of

your deeds and documents which we are then holding and to engage another firm of lawyers to recover any sums owing. If the matter is litigious, we may also remove ourselves from the record.

- 6.7 Our bills are to be paid free of any withholding or deduction in respect of any taxes or duties. If you are required by law to withhold or deduct tax, the amount of each bill is to be treated as increased to the extent necessary to ensure that, after any withholding or deduction, we receive and retain a net sum equal to the amount of the bill.
- 6.8 If your payment of our bills or our receipt of such payment is subject to exchange or other similar control, you will use your best endeavours to obtain (or where appropriate help us to obtain) the necessary consents as soon as possible after each bill is rendered and then ensure we receive prompt payment.
- 6.9 If we agree with you that any costs, service charges or disbursements (and any GST thereon), which would otherwise be payable by you, are to be paid by another person, you will nevertheless remain liable for such costs, service charges and disbursements (and any GST thereon) to the extent that such person fails to pay them within a reasonable time.
- 6.10 Any money held by us on your behalf in connection with any matter will be deposited with a bank in accordance with the relevant LPA. We will not be liable for any loss resulting for any reason, including default by the bank concerned.
- 6.11 Any money provided on account of our costs, service charges and disbursements will be held on the following terms:
- (1) we will hold the money on your behalf, and will account to you for interest in accordance with the relevant LPA;
 - (2) principal and interest will be used to reduce or discharge (as the case may be) the final invoice which we render at the conclusion of the transaction;
 - (3) you may not require us to apply any part of the money in settlement of any interim bills submitted, although we may do so in our discretion;
 - (4) any part of the principal and interest which remains unused after our final bill has been paid will be returned to you;
 - (5) if you are an individual and an EU resident, we may inform HM Revenue and Customs (HMRC) of any interest we pay to you and they may inform the relevant tax authorities in the jurisdiction in which you are resident; and
 - (6) you will be responsible for paying any tax in respect of any interest, whether the interest is applied towards discharge of a bill or is paid to you.
- 6.12 Time, costs, service charges or disbursements may be recorded in our systems after the period during which they were spent or incurred, in which case they will be added to the next period's bill or we will raise a separate bill in respect of them. Costs, service charges

or disbursements may amount to a sum which it is appropriate to pay prior to submission of a regular periodic bill, in which case we will raise a separate bill in respect of those items.

7 Litigation costs

- 7.1 Whether our costs (including service charges and disbursements) for a litigation matter are charged on an estimated or fixed cost provision basis:

- (1) those costs exclude the costs (including service charges and disbursements) of recovery of any judgment or award or any appeal arising out of the litigation; and
- (2) an order for costs in your favour will not necessarily cover the whole of your legal expenses.

You will nevertheless remain responsible to pay our costs (including service charges and disbursements) in full, subject to your rights disclosed in these Standard Terms.

- 7.2 If costs are awarded to your opponent in the litigation, their court costs will be additional to those payable under your costs agreement with us and to your barrister. If the court awards costs of an unspecified amount in your favour or against you, you or the other party may apply to the court for those costs to be assessed or taxed by reference to the applicable court scale.

- 7.3 If we negotiate a settlement on your behalf, we will disclose to you, before the settlement is executed:

- (1) a reasonable estimate of the legal costs payable by you if the matter is settled including any legal costs of another party that you are to pay; and
- (2) a reasonable estimate of any contributions towards those costs likely to be received from another party.

In any event we will not commit you to a settlement unless we receive clear instructions from you.

- 7.4 You should seek our advice during the course of the action on the tax treatment of any amounts awarded to you.

- 7.5 The major variables that can affect the calculation of our costs in any litigation matter are:

- (1) if no proceeding has actually been issued at the time we make the calculation, in which court or tribunal the dispute is ultimately litigated (as both cost and procedures vary between different courts and tribunals);
- (2) whether the number of parties changes;
- (3) if you are the plaintiff, whether the defendant(s) contest the claim;
- (4) if you are the plaintiff, whether there is any opportunity to obtain default or summary judgment against the defendant(s) before the trial or the hearing;

- (5) whether, and if so at what stage, a settlement can be negotiated;
 - (6) whether, for some other reason, the case does not proceed as far as trial and judgment or hearing and decision;
 - (7) what pre-trial or pre-hearing steps are required by the other parties or the court or tribunal to be carried out, eg further particulars of pleadings, discovery, interrogation, mediation, court or tribunal books, witness statements, outlines of argument;
 - (8) whether there are disputes between any of the parties as to the adequacy of performance of any pre-trial or pre-hearing steps;
 - (9) whether any order or judgment made in the course of the case (including before the trial) is appealed by any of the parties;
 - (10) whether necessary witnesses for your case co-operate or not;
 - (11) whether it becomes necessary to obtain evidence, or reports or documents from one or more expert or other witnesses;
 - (12) what attitude and tactics are adopted by the other parties throughout the case;
 - (13) whether it becomes necessary to retain a Queen's Counsel or Senior Counsel or more than one barrister on your behalf at or before the trial or hearing;
 - (14) the complexity of the law involved in the case; and
 - (15) the length of any trial or other hearings or the number of witnesses that would be required at trial or the hearing, neither of which we are usually in a position to accurately estimate when we calculate our costs.
- 7.6 Apart from all of the above factors, you must also understand that litigation is a fluid process and that a lot of what will happen in the course of the case will result from the actions of the other parties and the court or tribunal, neither of which we control.
- 8 **Goods and services tax**
- 8.1 In this paragraph:
- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
 - (2) words or expressions used in this paragraph which have a particular meaning in the **GST** law (as defined in the **GST Act**, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (3) any reference to GST payable by a person includes any corresponding GST payable by the representative member of any GST group of which that person is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, that part of the supply is to be treated as a separate supply.
- 8.2 Unless GST is expressly included, the consideration to be paid or provided under any other paragraph of these Standard Terms or our LOE (including any variation of it) for a particular matter (together called **your costs agreement**) for any supply made under or in connection with your costs agreement does not include GST.
- 8.3 To the extent that any supply made under or in connection with your costs agreement is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided. A party's right to payment under this paragraph is subject to a valid tax invoice being delivered to the recipient of the taxable supply. You must also pay any penalties, fines, interest or statutory charges imposed in connection with the imposition of GST on the taxable supply.
- 8.4 To the extent that you are required to reimburse or indemnify us for a loss, cost or expense incurred by us, that loss, cost or expense does not include any amount in respect of GST for which we are entitled to claim an input tax credit.
- 8.5 If, based on the information available to us at a relevant time, including representations made by you, we assess that no GST should be payable in respect of any supply made under or in connection with your costs agreement, our costs (including service charges and disbursements) will be calculated on this basis. If we change our assessment or if the Australian Tax Office assesses that GST is payable, then it will be added to and form part of our costs at the prevailing GST rate. We reserve the right to recover from you at any time, any GST payable by us on the provision of any supply made under or in connection with your costs agreement.
- 9 **Review of costs**
- 9.1 If there is a dispute in relation to our legal costs on any matter we perform for you, you have the right, unless you are within the LPA definition of **sophisticated client** and have agreed with us otherwise:
- (1) if the NSW Act, the QLD Act or the WA Act applies to the costs agreement – to apply for a costs assessment of all or part of the costs in any of our bills, or if the VIC Act or ACT Act applies to the costs agreement – to apply for a costs review of all or part of the costs in any of our bills; or

- (2) if the NSW Act or the VIC Act applies – in cases where the legal costs in dispute are less than A\$10,000, to refer the costs dispute for mediation; or
 - (3) if the VIC Act applies – in cases where the legal costs in dispute do not exceed A\$25,000, to make a complaint to the Legal Services Commissioner; or
 - (4) if the ACT Act applies – to refer the costs dispute for mediation, whatever the amount of the legal costs in dispute.
- 9.2 Your rights in paragraph 9.1 apply regardless of whether the bill has been paid.
- 9.3 An application in accordance with paragraph 9.1 must be made:
- (1) if the NSW Act or the QLD Act applies to the costs agreement – within 12 months after you were given the bill concerned or, if you have paid any legal costs without a bill, within 12 months after our request for payment; or
 - (2) if the VIC Act, the ACT Act or the WA Act applies to the costs agreement – within 12 months after the bill was given or the request was made or the costs were paid (whichever occurs first).
- 9.4 A referral in accordance with paragraph 9.1(2) may be made at any time before an application for a costs assessment is accepted in accordance with the LPA.
- 9.5 A complaint in accordance with paragraph 9.1(3) must be made within 60 days after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within 30 days after the request was complied with.
- 9.6 A referral in accordance with paragraph 9.1(4) may be made at any time unless we have started a proceeding for recovery of the disputed amount.
- 9.7 You have the right if the NSW Act, the QLD Act or the WA Act applies to the costs agreement, to apply for the costs agreement to be set aside on the grounds that it is not fair, or reasonable, or if the VIC Act or the ACT Act applies to the costs agreement, to apply for the costs agreement to be set aside on the grounds that it is not fair, just or reasonable.
- 9.8 As noted in paragraph 2.3, the LPA that applies to a matter is the LPA specified in the relevant LOE. You have the right:
- (1) to sign, under a law in another state or territory corresponding to that LPA, a written agreement with us that the corresponding provisions of that other corresponding law apply to the matter; or
 - (2) to notify us under the provisions of such corresponding law (and within the time allowed by that corresponding law) that you require the provisions of that corresponding law to apply to a matter.
- 10 **You engage only us, and not other parts of Norton Rose Group**
- 10.1 It is the Contracting Party alone (and not any other constituent part of Norton Rose Group) which is responsible for providing advice and services to you, has the solicitor/client relationship with you and is responsible for the performance of the contract with you.
- 10.2 If the Contracting Party is a partnership (and not a separate entity such as a company or limited liability partnership), and it will be that partnership alone (and not the partners, employees or consultants of or to that partnership or the partners, members, shareholders, employees or consultants of or to any other constituent part of Norton Rose Group) which is responsible for providing advice and services to you, has the solicitor/client relationship with you and is responsible for the performance of the contract with you.
- 10.3 You agree that, except to the extent that the law prevents exclusion of liability, none of such partners, members, shareholders, employees or consultants accepts, assumes or has personal responsibility or any liability whatsoever to you or anyone else for advice and services provided under or pursuant to these Standard Terms or in any other respect.
- 10.4 There may be occasions when we consider it to be in your interests that we refer all or some of your instructions to another constituent part of Norton Rose Group or to draw on its services – for example, in another jurisdiction. You agree that, in these circumstances, we are authorised by you to obtain advice and services from, and to disclose all relevant information to, that other constituent part of Norton Rose Group. In each case when we obtain advice and services for you from another constituent part of Norton Rose Group, we will do so, and you agree that we will do so, on the basis that we, and not such (or any) other constituent part of Norton Rose Group, are responsible for such advice and services and for the performance of the contract with you; no such other constituent part of Norton Rose Group will have any responsibility or liability whatsoever to you or anyone else as regards such advice and services, whether or not provided by us or any other such constituent part.
- 11 **Communications and concerns**
- 11.1 You will provide us, and will instruct your other advisers and other participants in any matter on which we are instructed, to provide us promptly with all information relevant to that matter. We are entitled to rely, without verification, on such information, unless instructed otherwise. You agree that all such information provided is properly obtained and may be properly provided to us.
- 11.2 We may monitor communications in accordance with applicable laws and regulations in order to establish facts or to determine that communications using our systems are relevant to our business or comply with laws or regulatory practices or procedures.
- 11.3 Normally, we nominate a supervising partner in a LOE who will maintain control of each particular matter. You authorise the supervising partner to use the resources of the firm as required. The supervising partner named in the LOE is available to discuss any issues you want to raise including but not limited to costs.

- 11.4 If you have a complaint, you should contact the supervising partner named in the LOE or the Head of Office where the particular matter is conducted as named in the LOE. Any complaint will be promptly discussed with you and with the person concerned. Following this and after reviewing the file, we will endeavour to resolve the complaint fairly and sympathetically.
- 11.5 We will provide to you, after a reasonable request from you:
- (1) a written report of the progress of each matter on which we are retained by you; and
 - (2) a written report of the legal costs incurred by you to the date of your request or since our last bill (if any), in the matter.
- 11.6 We may charge you a reasonable amount for a report under paragraph 11.5(1) but we will not charge you for a report under paragraph 11.5(2).
- 11.7 We use email and other electronic means of sending out information in order to enhance the quality and speed of our service to clients.
- 11.8 By entering into your costs agreement, you consent to us using electronic means for communicating with you or on your behalf. You also release us from liability for any loss which you may incur if an electronic communication is intercepted or corrupted during transmission or if a document which we prepare on your behalf and send to you electronically is altered by you without our written authority or if any electronic communication is virus affected.
- 11.9 You are responsible for protecting your own systems and interests in relation to electronic communications between you and third parties, including us.
- 11.10 The nature of email and other electronic means of communication means that we cannot guarantee preservation after transmission of the security or confidentiality of those communications.
- 11.11 The content of each Norton Rose Group email (which includes any attachments) is confidential and may be subject to legal professional privilege.
- 11.12 If a Norton Rose Group email is sent to you by mistake please inform us by reply email and then delete the email, destroy any printed copy and do not disclose or use the information in it. There is no warranty that any email is error or virus free. If an email from Norton Rose Group is a private communication it does not represent the views of any member of Norton Rose Group.
- 11.13 Each Norton Rose Group email is copyright. No member of Norton Rose Group is liable if an email or an attachment is altered without Norton Rose Group's written consent. If, for any reason, we suspect that an incoming email may be virus-infected, it will be quarantined and may not reach its intended recipient.
- 11.14 If you are concerned that your email may not reach the intended recipient at Norton Rose Group, please request confirmation of receipt within the body of your email and resend the email if the confirmation is not received within a reasonable time.

12 Confidentiality and relationship with other clients

- 12.1 Norton Rose Group will keep all information obtained from you, which is not in the public domain, confidential and will only disclose it with your authority or if required to do so by law or a regulatory, competition or governmental authority. There may be occasions when we have to outsource work to translators and other service providers. Should this be necessary, we will protect the confidentiality of your information by ensuring that the providers of these services sign a confidentiality agreement. We are entitled to assume that we may disclose any relevant aspect of your affairs to your other professional advisers, unless you advise us otherwise in writing.
- 12.2 Both these Standard Terms and all advice provided by us to you are strictly confidential and may not be disclosed outside Norton Rose Group without your and our prior written consent, unless you or we or another Norton Rose Group entity are required to do so by law or a regulatory, competition or governmental authority.
- 12.3 You agree that we may disclose, transfer and process your confidential information, including to other members of Norton Rose Group or subcontractors:
- (1) as required for the proper performance of services to you;
 - (2) in the conduct of our independence, risk management or quality reviews; and
 - (3) as reasonably required for legitimate business purposes including client relationship management, account management, internal financial reporting and information technology support (such as storage, hosting, maintenance, support, etc) including outsourcing of the same.
- In so agreeing you do not waive your rights to legal privilege in relation to that confidential information. Your agreement is not a waiver of privilege, cannot have the consequence of waiving privilege and is not inconsistent with the maintenance of confidentiality which the privilege is designed to protect.
- 12.4 Unless advised by you in writing to the contrary, we are entitled to assume that you consent to the disclosure of our involvement as legal advisers in any matter on which we are instructed, for the purposes of publicity following its completion.
- 12.5 Norton Rose Group advises a large number of clients and may be in a position where member entities are advising entities with competing interests to your own. Whilst we will do our best to ensure that we do not accept instructions where there is, or is a significant risk of, a conflict with your interests in the matter on which we are instructed or related matters, we may not be able to anticipate all such situations. If you become aware of a situation which you perceive could involve a conflict, you should inform us of it promptly.
- 12.6 We shall not be under any obligation to disclose to you or use on your behalf any information in respect of which we or other Norton Rose Group entities owe a duty of confidentiality to another client (or any other person). We and other Norton Rose Group entities may act for another client, notwithstanding that we or they hold confidential information relating to you and which may be material to that client, provided that such client has waived disclosure of such information and proper

arrangements have been put in place to ensure that such information is not disclosed to that client or those advising it.

- 12.7 You should also be aware that under some legislation and in certain circumstances, client legal privilege cannot be claimed to prevent information and documents being made available to third parties such as the Australian Taxation Office and the Australian Securities & Investments Commission.

13 Documentation

- 13.1 You are free to use and copy (for your use only) all documentation created by us in the course of any matter in which we represent you, but all copyright and other intellectual property rights in the documentation and all original ideas created by us in the course of the matter will remain our property and shall be kept confidential by you. We may use any of the documentation, created either by us or by any parties we instruct on your behalf, for research purposes or to form the basis of advice to our clients, provided we do not breach our duty of confidentiality to you. This documentation may be held in hard copy, electronic format and/or in our know-how database.
- 13.2 Save as required by the applicable law and professional rules, we do not undertake to retain your files for any particular period of time but we generally keep all files for a minimum of 7 years from the date of final invoice. We may destroy files, without further reference to you, at any time after the expiry of such period, except those you ask us to keep in safe custody. We may retain your files until you have paid all money which you owe us.
- 13.3 We reserve the right to keep your files and documents if there is money owing to us for costs, service charges or disbursements, even if your costs agreement is terminated by us.
- 13.4 We are authorised by you to destroy or to dispose of your files and documents in a matter after a period of 7 years from the date of completion of the matter. For this purpose we will take the matter to have been completed when we provide you with our final bill in the matter. We do not accept liability in the event of the earlier loss of stored files or documents although reasonable care will be taken to avoid loss.
- 13.5 References to files and documents include electronic as well as paper files and documents.

14 Correspondent lawyers, Counsel, etc

- 14.1 Where we consider it to be the most effective way of dealing with a matter, we will instruct Counsel or engage correspondent lawyers, experts or others on your behalf and at your expense. We shall, however, consult you before instructing Counsel or engaging correspondent lawyers, experts or others for whose fees you will be responsible. We are authorised by you to discharge any fees which we consider necessary or desirable to achieve your objective.
- 14.2 We will not be responsible for the advice given, services provided by, or default of, Counsel, correspondent lawyers, experts or others instructed by us on your behalf, but we will use all reasonable care in our selection of such persons.

15 Compliance and regulation

- 15.1 As with other professional services practices, we are under stringent requirements to identify our clients for the purposes of the anti-money laundering legislation. We are likely to request from you, and must retain, some information and documentation for these purposes and/or to make searches of appropriate databases. If satisfactory evidence of your identity is not provided within a reasonable time, there may be circumstances in which we are not able to act or may cease to act. Where we instruct Counsel or correspondent lawyers on your behalf, we may provide copies of this information to them, if requested, for their anti-money laundering procedures.
- 15.2 We are subject to various laws which require partners and staff in legal practices to report all knowledge or suspicion, or reasonable grounds to know or suspect, that a criminal offence giving rise to any direct or indirect benefit from criminal conduct has been committed, regardless of whether that offence has been committed by their client or by a third party. If in the course of our engagement we have knowledge or suspicion, or have reasonable grounds to know or suspect, that such offences have been committed, we are required to make a report to the relevant authority. In some circumstances, we may not be able to discuss such reports with you because of the restrictions imposed by the tipping-off provisions of the anti-money laundering legislation. We will not be liable to you for any loss or damage which you may suffer or incur as a result of our making such a report, including, without limitation, as a result of any delay to any stage of a matter or as a result of completion being prohibited by the relevant authority. The obligation to report has, however, been held not to apply to information we acquire in the course of, or in settlement discussions in, litigation matters.
- 15.3 We are retained only to provide legal and (where applicable) tax advice to you. In particular, it is not part of our role to give advice on the merits of investment transactions, and nothing we say or do should be construed as an invitation or inducement to engage in investment activity.

16 Client legal professional privilege

- 16.1 When you seek and receive legal advice from us on your rights and obligations (legal advice privilege) or if we act for you in contemplated or actual legal proceedings (litigation privilege), client legal privilege will attach to such communication.
- 16.2 Where it is necessary for us to communicate with third parties (unless litigation privilege applies) such as your other advisers or government or regulatory agencies or with fiscal authorities, such communication is unlikely to be privileged and, to the extent that it is, privilege may be lost or waived by such communication with a third party.
- 16.3 You should also be aware that third parties, where legal advice privilege is concerned, can include people in your organisation who are not involved in the giving of instructions to or in the seeking, obtaining or receipt of advice from us. Accordingly, in the event that you disseminate documents which are the subject of client legal privilege, either internally or externally, such privilege may be lost or waived and you should discuss this with us before you do so.

17 Limitation of liability, indemnity and force majeure

- 17.1 You agree that, as regards any claim on any matter (whether on the basis of contract, negligence or other tort, breach of duty, misrepresentation or otherwise whatsoever):
- (1) the claim may be made only by you and only against us, namely the Contracting Party; it may not be made against any other constituent part of Norton Rose Group or against any member, shareholder, partner, employee or consultant of, in or to any constituent part of Norton Rose Group whether on the basis of the existence of a special or similar relationship or on any other basis whatsoever;
 - (2) the claim may be enforced only against our available assets, and not against any other assets whatsoever, including, without limitation, the assets of any other constituent part of Norton Rose Group or any member, shareholder, partner, employee or consultant of, in or to any constituent part of Norton Rose Group;
 - (3) we shall have no liability to you for calculations, formulae, or other material which you or your other advisers supply to us for inclusion in any documents;
 - (4) if, in relation to the matter giving rise to the claim, persons in addition to us have liability in respect of work undertaken by them on that matter (whether that be joint and several or otherwise), our liability shall be limited to so much of the total liability of all persons (including us) as have liability in relation to that matter as shall be equal to the amount of our proportionate liability taken into account in ascertaining that total liability;
 - (5) without prejudice to, but in the circumstances contemplated by, paragraph 17.1(4), our proportionate liability to you under that paragraph shall not be increased by reason of:
 - (a) you agreeing with a person referred to in that paragraph a limitation on, or an exclusion of, the liability of that person; or
 - (b) any inability to recover from that or any other person;
 - (6) if, in circumstances contemplated by paragraph 17.1(4) but, notwithstanding paragraph 17.1(5), our liability in respect of the claim exceeds our proportionate liability referred to in those paragraphs, then if we have a right to contribution from another person and as a result of any agreement between you and that person our right to contribution is reduced, our liability to you shall be reduced to the same extent; and
 - (7) the foregoing provisions shall continue to apply notwithstanding any termination of our engagement by you.
- 17.2 Our services are provided for your benefit alone. Should you make our work product available to a third party other than by prior agreement with us, then you agree to indemnify Norton Rose Group in respect of any claim that that third party makes against a member of Norton Rose Group in relation to that work product.

- 17.3 Subject as stated in this paragraph 17, you agree that you will not make or seek to make, or procure or seek to procure that any other person makes, any claim in relation to any advice given, or service provided, in relation to any matter against any constituent part of Norton Rose Group (other than the Contracting Party) or against any member, shareholder, partner, employee or consultant of, in or to any constituent part of Norton Rose Group.
- 17.4 Neither you nor we will be liable in any way for failure to perform our respective obligations in respect of any matter in which we represent you (save for your liability for our fees, costs and disbursements) if the failure is due to causes outside the reasonable control of the party which has failed to perform.
- 17.5 Nothing in these Standard Terms excludes liability for any act or omission by us or any other constituent part of Norton Rose Group for which liability may not be excluded under any applicable law or regulation or to an extent which is less than the minimum sum per claim (for which we have liability) for the time being prescribed by any law or regulation applicable to our engagement by you.
- 17.6 Norton Rose Group maintains professional indemnity insurance as required by the Solicitors' Indemnity Insurance Rules (England and Wales) on a world wide basis. Norton Rose Australia complies with Australian laws requiring professional indemnity insurance. Please refer to our Australian General Counsel for details of the insurance cover and how to contact the insurers.
- 18 Termination**
- 18.1 You may terminate our engagement at any time by giving notice in writing. We may stop acting for you if we believe we have a good reason to do so, but only upon reasonable notice.
- 18.2 If our engagement is terminated by you or us, you will be responsible for paying our fees, costs and disbursements up to the time of our ceasing to act.
- 18.3 During the course of any matter, we will maintain regular contact with you. However we are entitled to assume, in the absence of instructions from you, that you no longer wish to instruct us, and having notified you in accordance with paragraph 18.1 we will then be free to accept other instructions to act in respect of the subject matter of your original instructions.
- 18.4 You have the right to end your costs agreement at any time by requesting us in writing to cease acting. If you do so, all costs, service charges and disbursements incurred prior to the date of termination are immediately due and payable together with any related GST.
- 18.5 We also have a right to end your costs agreement and cease acting for you or suspend our services if you do not pay our bills as agreed, you do not meet our requirement to pay money on account of costs, service charges and disbursements, if in our view, the necessary relationship of confidence no longer exists between us or if we think it appropriate, having regard to the professional conduct rules and ethical standards under which we practise.

19 Entire agreement

- 19.1 These Standard Terms supersede any earlier agreement with you.
- 19.2 Unless you and we agree otherwise these Standard Terms will constitute the entire agreement between us in relation to our engagement.

20 Amendments

- 20.1 From time to time, it may be necessary for us to amend these Standard Terms.
- 20.2 Where this is the case, we will notify you of the proposed changes, and, unless we hear from you in writing to the contrary within 21 days, such amendments will be deemed to come into effect from the end of that period.

21 Laws and regulations

- 21.1 These Standard Terms will be governed by, and construed in accordance with the law of the place where our costs agreement is made.
- 21.2 Any claim by you in relation to the services provided to you by us will be determined by the courts of the state or territory in which the costs agreement is regulated which will have exclusive jurisdiction in relation to any such claim.
- 21.3 If the validity or enforceability of any provision of these Standard Terms is in any way limited by any applicable law or regulation, such provision shall be valid and enforceable to the fullest extent permitted by such law or regulation. The invalidity or unenforceability of any provision of these Standard Terms shall not affect the validity or enforceability of any other provision.

22 Provision of information

- 22.1 If during or after the completion of a matter we are required by law or a competent authority to provide information (including producing documents or giving evidence) in relation to any matter handled for you by us or in respect of which we hold files or documents, we will notify you of that requirement.
- 22.2 If this occurs we may bill you for the work involved in providing that information and you will pay our costs, service charges and disbursements at our then standard charge out rates on the basis that the work is specified in our costs agreement with you.

23 Conflict of interest

- 23.1 Before accepting a new matter, we try to ensure it does not create a conflict of interest for us or that, if it does, proper steps are taken to manage the conflict.
- 23.2 We cannot always identify all actual or potential conflicts of interest at the outset of a new matter. If you use other names or have associated entities whose names should be included in our conflict checking procedures, or if you learn the names of entities associated with other parties to your matter, please inform us of those names. If you become aware during the course of a matter that your interests are or may become opposed to those of another person or entity, you should advise us immediately.

- 23.3 If a conflict of interest is identified during the course of a matter, we will endeavour to resolve the conflict. Where appropriate, we will discuss it with you and with the other party to the conflict to try to achieve a speedy and satisfactory resolution. We will keep your details confidential during those discussions unless you agree otherwise.

- 23.4 If a conflict of interest is not in our opinion capable of resolution except by our ceasing to act for one or more parties, we reserve the right to cease acting for you in your matter.

- 23.5 We provide services to many other clients, some of which may be in competition with you or have interests which conflict with your own. These circumstances alone will not prevent us from acting for other clients as well as for you.

24 Privacy

- 24.1 Under the *Privacy Act 1988* (Cth) (*Privacy Act*), we are required to tell you that we collect information about you to assist in performing legal services you have requested and in promoting our legal services. We collect this information mainly through our communications with you but we may do so also from other sources in the course of providing our services to you. We generally do not disclose information about you to any person except as required in the course of providing legal services to you or for the ordinary administration of our business. In certain circumstances, we may disclose information about you where permitted or authorised under the *Privacy Act* or other applicable law.

- 24.2 We take reasonable measures to ensure your personal information is accurate and protected from unauthorised access or disclosure.

- 24.3 If you would like to:

- (1) inform us that you do not wish to receive promotional material from us;
- (2) request access to, or correction of, information we hold about you;
- (3) make a complaint about our treatment of your privacy; or
- (4) view our complete personal information management policy;

please make a written request to our Privacy Officer by visiting www.nortonrose.com and following the prompts under "Contact Us" or by mail to Head of Compliance, Norton Rose Australia, GPO Box 4592SS, Melbourne, Victoria 3001.

25 Your obligation to retain documents where litigation may arise

- 25.1 You have a general obligation to retain documents that are reasonably likely to be required in any litigation that may arise. In some cases it may be an offence to destroy a document that is, or is reasonably likely to be, required in evidence in legal proceedings.

- 25.2 If a document is unavailable for the purpose of litigation, and the unavailability is likely to cause unfairness to a

party, typically a court may make a ruling to correct that unfairness. Such a ruling may include, in some circumstances, an order striking out a party's defence or statement of claim.

25.3 If there is any possibility that legal proceedings may be commenced and that documents may be relevant to those proceedings, those documents should be retained until we advise you they can be safely disposed of.

25.4 Should litigation in Victoria be a possibility in your case you must bear in mind the *Crimes Act 1958* (Vic) which makes it a criminal offence to destroy a document that is, or is reasonably likely to be, required in evidence in legal proceedings. In Victoria the *Evidence Act 1958* (Vic) gives the court specific powers to penalise a party to litigation whose relevant documents are unavailable.

26 Definitions schedule

26.1 In these Standard Terms:

- (1) **fixed cost provision** means a determination, scale, arrangement, or other provision fixing the costs or maximum costs of any legal services that is made by or under legislation and includes any practitioner remuneration order or scale of costs;
- (2) a **regulated client** is a client which is entitled to the benefit of all the consumer protection provisions of the relevant LPA; and
- (3) you will not be a **regulated client**:
 - (a) if the total legal costs in a matter, including service charges but excluding disbursements, are not likely to exceed A\$750 (New South Wales and Victoria) or A\$1,500 (Queensland, Western Australia and the Australian Capital Territory); or
 - (b) if:
 - (i) you have received one or more copies of these Standard Terms (or any similar document) and one or more Letters of Engagement (together **previous disclosure**) from us in the 12 months period before the commencement of any engagement; and
 - (ii) you have agreed in writing to waive the right to receive further disclosure of the matters covered by the previous disclosure; and
 - (iii) a partner of Norton Rose Australia has decided on reasonable grounds that, having regard to the nature of the previous disclosure and the relevant circumstances, the further disclosure is not warranted; or

(c) if you are:

- (i) an Australian or foreign law practice or legal practitioner;
 - (ii) a public company, a subsidiary of a public company, a foreign company, a subsidiary of a foreign company, a registered Australian body (within the meaning given to those terms in the *Corporations Act 2001* of the Commonwealth), or (except in the Australian Capital Territory) a large proprietary company (within the meaning given to that term in that Act);
 - (iii) a financial services licensee (within the meaning of that Act);
 - (iv) (except in the Australian Capital Territory) a liquidator, administrator or receiver (as respectively referred to in that Act);
 - (v) (except in the Australian Capital Territory) a partnership that carries on the business of providing professional services if the partnership consists of 20 or more members or if the partnership would be a large proprietary company (within the meaning of that Act) if it were a company;
 - (vi) (except in the Australian Capital Territory) a proprietary company (within the meaning of that Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required;
 - (vii) (except in the Australian Capital Territory) an unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other members of the group who are not such persons have indicated that they waive their right to disclosure; or
 - (viii) a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth;
- (d) if our legal costs or the basis on which they will be calculated have or has been agreed with you as a result of a tender process; or
- (e) if you will not be required to pay our legal costs (for example, if the matter is dealt with on a pro bono basis) or they will not otherwise be recovered by us.

24 September 2012

Francene Mulder
Director
LM Investment Management Ltd
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peter.schmidt@nortonrose.com

Dear Francene

**Letter of engagement
ASIC Investigation**

I am writing to confirm the basis on which we offer that we, Norton Rose Australia ABN 32 720 868 049 (and, where appropriate, other constituent parts of Norton Rose Group, as defined in paragraph 1 of the Appendix, to which work is referred by us pursuant to paragraph 10 of the Appendix) will act as set out in paragraph 1.2. These terms of engagement include provisions which might not all appear to be immediately relevant, but which I am required to draw to your attention under relevant laws.

In this letter **you** means LM Investment Management Ltd ACN 077 208 461 in its own right and as the responsible entity for the LM First Mortgage Income Fund ARSN 089 343 288 (**Fund**).

1 Applicable law

- 1.1 If you accept this offer, then the laws of Queensland and in particular (but without limitation) the *Legal Profession Act 2007 (Qld) (LPA)* will apply to the costs agreement between you and us and all matters concerning our legal costs.
- 1.2 As discussed at the Board Meeting on 14 September 2012, we confirm our instructions to act for you as follows:
 - (1) Assist you with the ongoing Australian Securities & Investment Commission investigation enquiry (**ASIC**) including advising on any notices issued by ASIC and the appropriate response;
 - (2) Undertaking any investigations required to respond to ASIC;
 - (3) Advise on an appropriate strategy to sell down or managed redemption of the Fund in consultation with ASIC.
- 1.3 We will not undertake work which falls outside this scope of work unless we agree to the additional work, in which case we will write to you describing the amended scope of work and assumptions on which it is based and any consequences for the fees, service charges and disbursements for this matter.

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- 1.4 Save as otherwise agreed, we will be advising and acting at all times in respect of Australian law only and are not responsible for advising you as to the effect or enforceability of any documents or matters which may be subject to or governed by the laws of any other jurisdiction.
- 1.5 Our solicitor/client relationship is with, and our duty of care is owed to, you only. All advice provided by us (or any other constituent part of Norton Rose Group) relates to this matter only and is for the benefit of you alone. Unless we agree otherwise in writing, our advice does not extend to, and may not be relied upon by third parties, including your directors and employees in their private capacity.

2 Our team

- 2.1 I will be the responsible partner for this matter and the names of our key team members are set out below:

Name	Position
Peter Schmidt	Partner
John Moutsopoulos	Partner

- 2.2 In addition, we will involve other partners, consultants, special counsel, senior associates, associates, lawyers, graduate clerks and paralegals, if required, in a manner which avoids, so far as feasible, duplication of effort.
- 2.3 We always aim to avoid changing members of our team, but, if this is not possible, we will inform you promptly of the change and the reasons for it. We will use legal staff of an appropriate level of seniority for the work concerned.
- 2.4 You will have access to other experts, if required. They will be charged at rates equivalent to those below, depending on their experience.

3 How our fees are calculated

- 3.1 Under this agreement, we will charge according to the number of hours each person works on the matter (with periods of less than 1 hour charged proportionately on the basis of 6 minute units).

The hourly charge-out rates of the persons initially to be involved in the matter are:

Name	Hourly rate
Peter Schmidt	A\$635.00
John Moutsopoulos	A\$695.00
Michelle Asimus	A\$580.00

- 3.2 The responsible partner may, however, be assisted by others to ensure that our services are delivered efficiently. If so, those people will be charged at their standard hourly rates. Our current standard hourly rates exclusive of GST are:

Partner	A\$550 – A\$950
Special Counsel / Consultant	A\$500 – A\$765
Senior Associate	A\$410 – A\$715
Associate	A\$295 – A\$525
Graduate / Lawyer	A\$220 – A\$315
Paralegal	A\$180 – A\$360

- 3.3 These rates will generally be grossed up for GST in Australia, except where we make a GST-free supply of legal services. Our fee will therefore be calculated to include the relevant amount of GST.

- 3.4 If our applicable charge-out rates change during the course of this matter, you have the right under the LPA to be notified of the change. If you are not specifically notified, our first bill following the change will reflect the change and will constitute notice to you of the change. This costs agreement will be taken to have been amended accordingly if you continue to instruct us.

4 Fee estimate

- 4.1 In this matter it is not reasonably practicable for us to estimate the total legal costs which will be payable. The range of our estimated fees is between A\$50,000.00 plus GST and A\$100,000.00 plus GST. The major variables which will affect the calculation of those costs are:

- (1) that any one or more of the assumptions set out below are not met;
- (2) the ongoing views taken by ASIC as a result of further investigation and;
- (3) the steps required to comply with ASIC's requirements.

- 4.2 You may, by giving us reasonable advance notice in writing, set an upper limit on the fees, disbursements and service charges for which you may be liable without further authority. It is important to note, however, that we reserve the right not to take any steps in the matter during any period in which we are awaiting your authority to exceed an upper fees limit, if taking those steps would result in fees, disbursements and service charges, exceeding the limit. That may be contrary to your best interests and so it is important that any fees, disbursements and service charges limit is sufficient. Also, there may be occasions when we have to commit to taking certain steps on your behalf in the future. Any upper limit set by you must be sufficient to cover commitments which we have already undertaken. Any GST will be chargeable at the applicable rate in addition to any such limit.

- 4.3 Depending on the extent of work required to the undertaken following our initial meeting with ASIC, we may request that you pay us money to be held in our trust account and applied by us in payment of our fees, disbursements and service charges when they fall due. You may pay that sum to the credit of Norton Rose Australia trust account number 8349 88844 at ANZ Banking Group Ltd (branch 324 Queen Street, Brisbane), branch number 014 002, quoting 2787923. By entering into this costs agreement you authorise us to apply that sum, or any part of it, and any additions to that sum which you may pay in future, for that purpose.

5 Assumptions

- 5.1 In setting the fee structure outlined above, we have assumed that:

- (1) we will receive clear and timely instructions from you; and
- (2) there will be no material change to the scope of services.

6 Disbursements and service charges

- 6.1 In addition to professional fees there will be a requirement to pay or to reimburse to us disbursements and service charges incurred or payable as mentioned in the attached Standard Terms. These we estimate will not exceed A\$500.00 made up as follows:

- (1) photocopying and document production charges, couriers, STD, ISD and mobile phone calls and faxing fees.

- 6.2 Our estimate of those disbursements and service charges may also be affected by any variables or changes to the assumptions referred to above.

- 6.3 The basis for charging disbursements and service charges is set out in the attached schedule of disbursements and service charges.

6.4 If we change the way we calculate disbursements and service charges during the course of this matter we will notify you of the change and the costs agreement will be taken to have been amended accordingly if you continue to instruct us in this matter.

6.5 GST will apply to most disbursements and service charges such as barristers' fees and charges for searches and enquiries. These will be on-charged to you at the GST-exclusive cost to us, plus GST. However GST will not be passed on to you in respect of GST-exempt government fees, taxes and charges for which you are liable, such as stamp duty and registration fees, provided those fees, taxes or charges are paid by separate cheque drawn by you in favour of the proper payee.

7 Billing and reporting

7.1 Bills will provide a breakdown of time spent by each lawyer, together with costs and disbursements incurred.

7.2 Our bills are payable when rendered. We reserve the right to charge interest on amounts overdue by 30 days or more at the rate equal to the Cash Target Rate stated as such by the Reserve Bank of Australia increased by 2 percentage points.

8 Responsibility for advice and services

8.1 Norton Rose Group is an international legal practice which carries on business, through its separate constituent parts, in a number of jurisdictions. In each jurisdiction, clients contract with a specific constituent part of Norton Rose Group and that constituent part alone is responsible for providing advice or services to that client and no other constituent part of Norton Rose Group has any responsibility for such advice or services. Some constituent parts of Norton Rose Group have limited liability. The name of any constituent part of Norton Rose Group providing advice or services from any jurisdiction is available on request. In relation to the matter the subject of this letter, you are contracting with Norton Rose Australia ABN 32 720 868 049 only.

8.2 Advice and services under this letter will be provided by Norton Rose Australia ABN 32 720 868 049 (or by another constituent part of Norton Rose Group to which work is referred by Norton Rose Australia in accordance with paragraph 10.4 of the Appendix) but only Norton Rose Australia (as the Contracting Party) is responsible for the provision of such advice or services. No other constituent part of Norton Rose Group nor any individual who is a member, partner, shareholder, employee or consultant of, in or to Norton Rose Australia or any other constituent part of Norton Rose Group accepts or assumes responsibility, or has any liability, to you or any third party for advice or services provided under or pursuant to these terms of engagement.

8.3 The term "partner" is a title and individuals described as "partners" are members, partners or shareholders, or employees or consultants with equivalent seniority of, in or to Norton Rose Australia or another constituent part of Norton Rose Group.

9 Time for claims

9.1 Without prejudice to the provisions of paragraph 17 of the Appendix, there shall be no liability in respect of any claim in connection with your matters unless you give us written notice of the claim, stating in reasonable detail the nature of the claim and your best estimate of the amount claimed by you, within 24 months after the date of completion of the matter in question.

10 Standard Terms

10.1 I attach in the Appendix our Standard Terms which form part of this letter. I would draw your attention in particular to paragraphs 1 and 10 of the Appendix and to certain exclusions of, and limitations on, our liability which are principally to be found in paragraph 17 of the Appendix. These Standard Terms will apply to this and any other further engagements.

24 September 2012

 NORTON ROSE

11 How to accept this offer

11.1 You may accept this offer by:


- (1) signing and returning to us the enclosed copy of this letter; or
- (2) continuing to instruct us (in writing or orally) to perform the work specified in this letter.

12 Your comments

12.1 We always appreciate your comments. If you have any comments or queries in relation to any matter or if you wish to discuss our legal costs, please contact either me or our Brisbane Head of Office, Craig Chapman.

We look forward to assisting you in this matter.

Yours sincerely



Peter Schmidt
Partner
Norton Rose Australia

Encl

We/I hereby agree to the above terms and conditions for this matter.

.....
Signed

.....
Title

.....
Name

.....
Company

Date:..... 2012

Matter number: 2787923
[Office use only]

Schedule of disbursements and service charges

Disbursement or service charge	Standard rate exclusive of GST
Telephone Local calls Mobile, STD and ISD calls	No charge At cost *
Document production, photocopying and printing Black and white copy Colour copy	A\$0.20 per page A\$1.00 per page
Document production finishing Binding Laminating Dividers	A\$4.00 per document A\$3.50 per document A\$5.00 per document
Document production folders Folders – lever arch Folders – 2 ring	A\$10.00 per folder A\$8.00 per folder
Scanning	No charge
Faxing Local fax STD fax ISD fax	A\$1.00 per page A\$1.50 per page A\$2.00 per page
Emails	No charge
Taxis	At cost *
Couriers – local, interstate and international	At cost * plus fuel surcharge
Court lodging	A\$22.00 per lodgment
Searches, online searches	Service provider fee plus 25% to defray cost of search time
Archive retrieval and delivery	At cost *
Postage – express, overseas, non-standard	At cost *

* "At cost" means the cost invoiced to Norton Rose Australia by the supplier, including any service fees but net of relevant input tax credits claimable by Norton Rose Australia.

Appendix – Norton Rose Australia

Standard Terms

1 Definitions

- 1.1 In these Standard Terms the following expressions have the following meanings:
- (1) **claim** means any such claim as is referred to in paragraph 17 of this Appendix;
 - (2) **constituent part of Norton Rose Group** means any partnership, limited liability partnership, body corporate or other entity comprised within Norton Rose Group;
 - (3) **Contracting Party** means Norton Rose Australia;
 - (4) **LOE** means the Letter of Engagement or other form of instruction confirmation we send you relating to a matter;
 - (5) **LPA** has the meaning in paragraph 2.2;
 - (6) **Norton Rose Australia** means the Australian partnership of that name with Australian Business Number 32 720 868 049 (generally called Norton Rose);
 - (7) **Norton Rose Group** means Norton Rose Australia, Norton Rose LLP and any other partnership, limited liability partnership, body corporate or other entity established or practising in any jurisdiction and authorised to include in its name "Norton Rose" or to describe itself as "in association with Norton Rose LLP";
 - (8) **these Standard Terms** means the terms in this Appendix, the letter of which this Appendix forms part and any document expressed to be supplemental to such letter;
 - (9) **we, our and us** refer to the Contracting Party;
 - (10) **you and your** refer to the addressee (jointly if more than one and not individually) of these Standard Terms, including, where relevant, any company or other entity which becomes subject to these Standard Terms; and
 - (11) **the expressions fixed cost provision and regulated client** in the definitions schedule in paragraph 26 have the meanings set against them respectively.
- 1.2 In these Standard Terms words importing the singular include the plural and vice versa and words importing a gender include every gender. Unless expressly stated to the contrary in the letter of which this Appendix forms part, if there shall be any conflict between the terms of this Appendix and the letter of which this Appendix forms part, the terms of this Appendix shall prevail.
- 1.3 Details of any constituent part of Norton Rose Group may be obtained on request.

2 Introduction

- 2.1 The costs agreement between us (which you have the right to negotiate with us prior to agreement being reached) for each matter in which you request our services consists of these Standard Terms and the LOE we send you relating to that matter.
- 2.2 One of the following Acts (including Regulations made under the Act) (each separately called the LPA) referred to expressly or by inference in the LOE we send you relating to the matter applies to the costs agreement for the matter:
- (1) *Legal Profession Act 2004* (New South Wales) (NSW Act);
 - (2) *Legal Profession Act 2004* (Victoria) (VIC Act);
 - (3) *Legal Profession Act 2006* (Australian Capital Territory) (ACT Act);
 - (4) *Legal Profession Act 2007* (Queensland) (QLD Act); or
 - (5) *Legal Profession Act 2008* (Western Australia) (WA Act).
- 2.3 If you are a regulated client you have the right to be notified (and we will notify you) of any substantial change to anything disclosed in a costs agreement:
- (1) to which the NSW Act, the ACT Act, the QLD Act or the WA Act applies, as soon as is reasonably practicable after we become aware of that change; or
 - (2) to which the VIC Act applies, as soon as is practicable after we become aware of that change.
- #### 3 Professional fees comprising costs, service charges and disbursements
- 3.1 We will charge you fees comprising our costs, service charges for non-professional services provided by our related service entity, and disbursements.
- 3.2 We calculate our costs on the basis of the time spent on your matters, at an agreed cost or in accordance with an agreed lump sum fee (in either such case together with any agreed percentage premium) or in accordance with any applicable fixed cost provision.
- 3.3 The basis of calculating our costs, service charges and disbursements for a particular matter will be set out in the relevant LOE. In addition to our charges in respect of particular matters, we will charge a fee for the preparation of every audit representation letter requested by you or your auditors for any purpose. The fee will be based on the amount of time which we spend in searching our records to obtain the requested information, and in preparing, settling and dispatching the representation letter and the reports which accompany it. According to the extent and complexity of the task, the fee is ordinarily between A\$250 and

A\$600 plus service charges, disbursements and GST. Should you or your auditors require substantial lawyer commentary on particular circumstances, our fee may be higher.

- 3.4 Our partners, other legally qualified staff, graduate clerks and paralegals (collectively **professional staff**) record their time in 6-minute units for any activity.
 - 3.5 Our professional staff have different charge out rates depending upon their level of experience and the practice group in which they work. The current standard hourly rates for work to be performed by our professional staff on each matter are detailed in the relevant LOE. They may be varied from time to time and we will notify you if any variation will substantially affect any lump sum quote or estimate provided to you.
 - 3.6 Disbursements and service charges we pay or incur on your behalf are additional to our professional costs. They may include photocopying, telephone calls, couriers, facsimiles, travel fares, desktop publishing services, document lodging and document service fees and document storage charges.
 - 3.7 Disbursements are charged at their cost to us. When our service entity provides substantial applied legal technology (document management services, D-room or eComply) or other special services, it may contract directly with you in relation to those services. In the case of other charges for services we or our service entity provide, such as photocopying, faxes and STD and IDD telephone calls, service charges at standard rates are charged. Details of our current standard rates for such services are set out in the relevant LOE.
 - 3.8 You agree to pay or to reimburse the following disbursements and service charges billed in each matter:
 - (1) those incurred with your prior authority;
 - (2) those incurred without your prior authority where:
 - (a) the amount of the disbursement or service charge is not significant having regard to the nature of the matter; or
 - (b) it was not reasonably practicable for us to seek your authority and we considered it desirable to incur the disbursement or service charge for the proper conduct of the matter.
 - 3.9 We may ask you in advance for payment on account of large disbursements such as stamp duty, registration fees, court fees and conveyancing enquiry fees.
 - 3.10 Our bills provide you with an itemised breakdown of disbursements and service charges and will constitute a tax invoice for GST purposes.
- 4 Support staff**
- 4.1 No charge is made for secretarial or administrative staff except in respect of audit representation letters and in circumstances where client requirements demand significant secretarial or support staff services out of normal office hours.

- 4.2 Support staff who are required to work overtime because of the special requirements of the matter are charged for additionally.

5 Quotes and estimates

- 5.1 If you are a regulated client and it is reasonably practicable to do so, we will give you an estimate of the costs (including service charges and disbursements) you will incur on each matter. If it is not reasonably practicable to make an estimate, we will give you a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs. Estimates are based on the agreed scope of work and should not be regarded as a fixed quote.
- 5.2 Unforeseen circumstances or new issues often arise during the course of a matter. If our estimate of costs becomes inaccurate, we will provide you with a revised estimate.
- 5.3 We can provide a fixed quote on some matters such as some conveyancing work and the provision of shelf companies. The quote will be based on the scope of work but will not cover additional services that may be required as a result of any variation in the scope of work.
- 5.4 When you instruct us in matters where the other party has a contractual liability to you to pay our costs, you will remain liable for payment until the costs are received by us.

6 Billing

- 6.1 You have the right:
 - (1) to receive a bill from us for our costs, service charges and disbursements; and
 - (2) to request an itemised bill after receipt from us of a lump sum bill.
- 6.2 We issue bills to you monthly during the course of each matter unless otherwise agreed.
- 6.3 Unless other payment terms are agreed, bills are payable when rendered. If our bills are not paid 30 days after you have been provided with a bill we reserve the right to charge interest on the amount overdue. The rate of interest will not exceed the maximum amount permitted under the LPA. If you are a regulated client, the actual rate will be specified in the LOE we send you for each matter.
- 6.4 We aim to give you accurate and understandable bills. If you have any questions about a bill, please contact the responsible partner or Head of Office named in the LOE to discuss them.
- 6.5 Our bills are payable in the currency in which they are submitted.
- 6.6 If any bill is not paid, we may, on giving written notice to you, cease work on the matter to which the bill relates and any of your other matters, and you will not make any claim against us, or any complaint, in respect of the consequential inactivity on the matter or any loss resulting from it. In these circumstances, we may also be entitled to exercise a lien for unpaid fees over any of

your deeds and documents which we are then holding and to engage another firm of lawyers to recover any sums owing. If the matter is litigious, we may also remove ourselves from the record.

- 6.7 Our bills are to be paid free of any withholding or deduction in respect of any taxes or duties. If you are required by law to withhold or deduct tax, the amount of each bill is to be treated as increased to the extent necessary to ensure that, after any withholding or deduction, we receive and retain a net sum equal to the amount of the bill.
- 6.8 If your payment of our bills or our receipt of such payment is subject to exchange or other similar control, you will use your best endeavours to obtain (or where appropriate help us to obtain) the necessary consents as soon as possible after each bill is rendered and then ensure we receive prompt payment.
- 6.9 If we agree with you that any costs, service charges or disbursements (and any GST thereon), which would otherwise be payable by you, are to be paid by another person, you will nevertheless remain liable for such costs, service charges and disbursements (and any GST thereon) to the extent that such person fails to pay them within a reasonable time.
- 6.10 Any money held by us on your behalf in connection with any matter will be deposited with a bank in accordance with the relevant LPA. We will not be liable for any loss resulting for any reason, including default by the bank concerned.
- 6.11 Any money provided on account of our costs, service charges and disbursements will be held on the following terms:
- (1) we will hold the money on your behalf, and will account to you for interest in accordance with the relevant LPA;
 - (2) principal and interest will be used to reduce or discharge (as the case may be) the final invoice which we render at the conclusion of the transaction;
 - (3) you may not require us to apply any part of the money in settlement of any interim bills submitted, although we may do so in our discretion;
 - (4) any part of the principal and interest which remains unused after our final bill has been paid will be returned to you;
 - (5) if you are an individual and an EU resident, we may inform HM Revenue and Customs (HMRC) of any interest we pay to you and they may inform the relevant tax authorities in the jurisdiction in which you are resident; and
 - (6) you will be responsible for paying any tax in respect of any interest, whether the interest is applied towards discharge of a bill or is paid to you.
- 6.12 Time, costs, service charges or disbursements may be recorded in our systems after the period during which they were spent or incurred, in which case they will be added to the next period's bill or we will raise a separate bill in respect of them. Costs, service charges

or disbursements may amount to a sum which it is appropriate to pay prior to submission of a regular periodic bill, in which case we will raise a separate bill in respect of those items.

7 Litigation costs

- 7.1 Whether our costs (including service charges and disbursements) for a litigation matter are charged on an estimated or fixed cost provision basis:
- (1) those costs exclude the costs (including service charges and disbursements) of recovery of any judgment or award or any appeal arising out of the litigation; and
 - (2) an order for costs in your favour will not necessarily cover the whole of your legal expenses.
- You will nevertheless remain responsible to pay our costs (including service charges and disbursements) in full, subject to your rights disclosed in these Standard Terms.
- 7.2 If costs are awarded to your opponent in the litigation, their court costs will be additional to those payable under your costs agreement with us and to your barrister. If the court awards costs of an unspecified amount in your favour or against you, you or the other party may apply to the court for those costs to be assessed or taxed by reference to the applicable court scale.
- 7.3 If we negotiate a settlement on your behalf, we will disclose to you, before the settlement is executed:
- (1) a reasonable estimate of the legal costs payable by you if the matter is settled including any legal costs of another party that you are to pay; and
 - (2) a reasonable estimate of any contributions towards those costs likely to be received from another party.
- In any event we will not commit you to a settlement unless we receive clear instructions from you.
- 7.4 You should seek our advice during the course of the action on the tax treatment of any amounts awarded to you.
- 7.5 The major variables that can affect the calculation of our costs in any litigation matter are:
- (1) if no proceeding has actually been issued at the time we make the calculation, in which court or tribunal the dispute is ultimately litigated (as both cost and procedures vary between different courts and tribunals);
 - (2) whether the number of parties changes;
 - (3) if you are the plaintiff, whether the defendant(s) contest the claim;
 - (4) if you are the plaintiff, whether there is any opportunity to obtain default or summary judgment against the defendant(s) before the trial or the hearing;

- (5) whether, and if so at what stage, a settlement can be negotiated;
 - (6) whether, for some other reason, the case does not proceed as far as trial and judgment or hearing and decision;
 - (7) what pre-trial or pre-hearing steps are required by the other parties or the court or tribunal to be carried out, eg further particulars of pleadings, discovery, interrogation, mediation, court or tribunal books, witness statements, outlines of argument;
 - (8) whether there are disputes between any of the parties as to the adequacy of performance of any pre-trial or pre-hearing steps;
 - (9) whether any order or judgment made in the course of the case (including before the trial) is appealed by any of the parties;
 - (10) whether necessary witnesses for your case co-operate or not;
 - (11) whether it becomes necessary to obtain evidence, or reports or documents from one or more expert or other witnesses;
 - (12) what attitude and tactics are adopted by the other parties throughout the case;
 - (13) whether it becomes necessary to retain a Queen's Counsel or Senior Counsel or more than one barrister on your behalf at or before the trial or hearing;
 - (14) the complexity of the law involved in the case; and
 - (15) the length of any trial or other hearings or the number of witnesses that would be required at trial or the hearing, neither of which we are usually in a position to accurately estimate when we calculate our costs.
- 7.6 Apart from all of the above factors, you must also understand that litigation is a fluid process and that a lot of what will happen in the course of the case will result from the actions of the other parties and the court or tribunal, neither of which we control.
- 8 **Goods and services tax**
- 8.1 In this paragraph:
- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (GST Act) or any replacement or other relevant legislation and regulations;
 - (2) words or expressions used in this paragraph which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (3) any reference to GST payable by a person includes any corresponding GST payable by the representative member of any GST group of which that person is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, that part of the supply is to be treated as a separate supply.
- 8.2 Unless GST is expressly included, the consideration to be paid or provided under any other paragraph of these Standard Terms or our LOE (including any variation of it) for a particular matter (together called your costs agreement) for any supply made under or in connection with your costs agreement does not include GST.
- 8.3 To the extent that any supply made under or in connection with your costs agreement is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided. A party's right to payment under this paragraph is subject to a valid tax invoice being delivered to the recipient of the taxable supply. You must also pay any penalties, fines, interest or statutory charges imposed in connection with the imposition of GST on the taxable supply.
- 8.4 To the extent that you are required to reimburse or indemnify us for a loss, cost or expense incurred by us, that loss, cost or expense does not include any amount in respect of GST for which we are entitled to claim an input tax credit.
- 8.5 If, based on the information available to us at a relevant time, including representations made by you, we assess that no GST should be payable in respect of any supply made under or in connection with your costs agreement, our costs (including service charges and disbursements) will be calculated on this basis. If we change our assessment or if the Australian Tax Office assesses that GST is payable, then it will be added to and form part of our costs at the prevailing GST rate. We reserve the right to recover from you at any time, any GST payable by us on the provision of any supply made under or in connection with your costs agreement.
- 9 **Review of costs**
- 9.1 If there is a dispute in relation to our legal costs on any matter we perform for you, you have the right, unless you are within the LPA definition of **sophisticated client** and have agreed with us otherwise:
- (1) if the NSW Act, the QLD Act or the WA Act applies to the costs agreement – to apply for a costs assessment of all or part of the costs in any of our bills, or if the VIC Act or ACT Act applies to the costs agreement – to apply for a costs review of all or part of the costs in any of our bills; or

11 November 2014

Mr Peter Schmidt
Partner
Norton Rose Fulbright
Level 21
111 Eagle Street
BRISBANE QLD 4000

Dear Peter,

RE: LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS & MANAGERS APPOINTED) ("LMIM") AS RESPONSIBLE ENTITY FOR THE LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED) ARSN 089 343 288 ("THE FUND")

Thank you for your letter of 30 September 2014.

Norton Rose Fulbright claims to be a creditor of the Fund, for work undertaken prior to the administration of LMIM.

Having considered your letter, and the letters of engagement and invoices, I do not consider that I am, as the court appointed receiver of the Fund, in a position to determine to pay the amount claimed by Norton Rose Fulbright ("Norton Rose") or, indeed, any amount in respect of that claim, at this time. That is not to say that I have determined that Norton Rose is not a creditor of the Fund, but rather that I do not consider that I am presently in a position to make any determination about that, and if I were, I am not presently in a position to pay any amount from the assets of the Fund to Norton Rose.

A brief explanation as to my reasons for that view, are set out below.

The Norton Rose Retainers

You have provided copies of two letters of engagement, namely:-

1. A letter dated 24 September 2012, relating to instructions to Norton Rose to assist with an ASIC investigation and to advise on an appropriate strategy in relation to the Fund ("the ASIC Investigation Retainer"); and
2. A letter dated 16 October 2012, regarding advice in respect of an attempt by Trilogy Funds Management Limited to replace LMIM as responsible entity of three funds ("the Trilogy Challenge Retainer").

The ASIC Investigation Retainer letter defines “you” (that is, the client) to mean LMIM “in its own right and as the responsible entity for the...” Fund.

The Trilogy Challenge Retainer letter defines “you” (the client) to mean LMIM “in its own right and as the responsible entity for...” three funds, namely the Fund, the LM Wholesale First Mortgage Income Fund and the LM Currency Protected Australian Income Fund.

It appears that each of the invoices was issued to LMIM - the invoices are not addressed, at least expressly to LMIM in its capacity as responsible entity for any fund.

It seems clear that the work in relation to the Trilogy Challenge Retainer was for the benefit of LMIM, but not necessarily in its capacity as responsible entity for the Fund. Your letter advances certain arguments as to why the retainer was for the benefit of members of the Fund (and presumably for the benefit of members of the other funds).

The Norton Rose claim relates to work undertaken and billed in the period from about November 2012 to 18 February 2013. The invoices you have provided to me date from 30 November 2012.

Relevant Circumstances of the Fund

LMIM is the responsible entity of the Fund. As such, LMIM is entitled to indemnity under the Constitution of the Fund for expenses properly incurred for the Fund.

Mr Park and Ms Muller were appointed the voluntary administrators of LMIM on 19 March 2013; those administrators were subsequently appointed the liquidators of LMIM on 1 August 2013.

Deutsche Bank AG, Sydney Branch (“DB”) hold security over the whole of the assets and undertaking of LMIM and of the Fund.

On 11 July 2013, DB appointed Messrs Hayes and Connelly of McGrathNicol as the receivers and managers of the assets and undertaking of LMIM as responsible entity of the Fund. They remain appointed as receivers and managers of the Fund assets.

I was appointed by the Court as the person responsible for ensuring the winding up of the Fund, and as receiver of the Fund, by orders first pronounced on 8 August 2013, and which orders were perfected and sealed by the Court on 21 August 2013.

Consideration of the claim

As the responsible entity of the Fund, LMIM was and continues to be in the position of a trustee in respect of the Fund. Of course, any liabilities incurred by LMIM in that capacity are liabilities of LMIM personally, but for which LMIM may be entitled to an indemnity from the Fund assets.

Although as a general statement of principle, an insolvent trustee in possession of the trust assets may be entitled to apply trust assets in discharge of ‘trust liabilities’, the position is likely to be different where the trustee is not in possession of the trust assets. In those circumstances, the trustee may still be entitled to an indemnity from the trust assets, but that indemnity cannot be exercised or enforced by a simple application of trust assets.

It is the latter situation in which LMIM finds itself. LMIM is an insolvent trustee, but is not in possession of the assets of the Fund. It is presently McGrathNicol, as the receivers and managers of LMIM and of the assets of the Fund, who are in possession of the Fund property. Once McGrathNicol retire, I will

take complete possession and control of the Fund assets in pursuance of the Order appointing me as receiver of the Fund property.

It is presently my role to ensure the proper winding up of the Fund in accordance with its constitution. When the time comes for me to take possession of the Fund assets upon the retirement of McGrathNicol, I presently consider that it will likely be appropriate for me to seek directions as to dealing with liabilities incurred as 'Fund liabilities' before my appointment, and as to a final distribution of the property of the Fund.

There is, too, the uncertainty that, to my mind, surrounds the question of whether any amount due to Norton Rose is payable by LMIM in its personal capacity alone, or whether any part of the expense incurred by LMIM should be considered to be an expense properly incurred on behalf of the Fund. In so far as the expense was properly incurred on behalf of the Fund, there is clearly an issue as to what proportion of the expense is appropriately attributable to the Fund, as distinct from the other funds of which LMIM was the responsible entity, or to LMIM in its personal capacity.

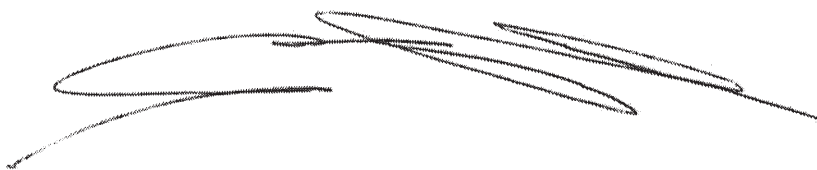
Conclusion

In the circumstances, I consider that the appropriate course would presently be for Norton Rose to make its claim by lodging a proof of debt with the liquidators of LMIM, who will then be in a position to assess the claim. To the extent that they consider that LMIM is entitled to be indemnified from the Fund for the expense, the liquidators of LMIM will then no doubt make a claim on the indemnity from the Fund assets.

In due course, I consider it likely that it will be appropriate for me to make an application to the court for directions as to the process of winding up the Fund, including as to the distribution of the property of the Fund among creditors of LMIM who may properly be considered to be 'trust creditors'. That will, however, likely not be for some time yet.

In the meantime, I would be pleased to discuss this further should you wish.

Yours faithfully



David Whyte
Receiver