

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

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

First Applicant: JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

AND

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

AND

First Respondent: 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

AND

Second Respondent: SAID JAHANI IN HIS CAPACITY AS RECEIVER AND MANAGER OF THE ASSETS, UNDERTAKINGS, RIGHTS AND INTERESTS OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 AS THE RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 AND THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868

INDEX OF EXHIBITS

Volume 2 of 3

No.	Index to "DW-130"	Date	Page No.
VOLUME 2			
5.	FMIF financials for the year ending 30 June 2018	27.09.2018	207 – 232
6.	Letter from Minter Ellison to Clayton Utz	17.10.2018	233
7.	Letter from Russells to Tucker & Cowen	07.12.2018	234 – 235

CERTIFICATE OF EXHIBIT:

Form 47, R.435

Filed on behalf of the First Respondent

TUCKER & COWEN
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8.	Letter from Tucker & Cowen to Russells	19.12.2018	236 – 237
9.	Letter from Mr Park to Mr Whyte	20.12.2018	238 – 313
10.	Email from David Whyte to Kelly Trenfield and others	2.1.2019	314 – 319
11.	Letter from John Park to David Whyte	16.1.2019	320 – 331
12.	Email from Renee Lobb to David Whyte	24.1.2019	332 – 341
13.	Letter from John Park to David Whyte attaching proof of debt lodged by EY for the sum of approximately \$180 million (excluding annexures)	25.1.2019	342 – 345
14.	Letter from David Whyte to John Park	31.1.2019	346 – 348
15.	Letter from Russells to Tucker & Cowen	4.2.2019	349 – 350
16.	Letter from Tucker & Cowen to Russells	4.2.2019	351
17.	Letter from Tucker & Cowen to King & Wood Mallesons	6.2.2019	352 – 361
18.	Letter from John Park to David Whyte	7.2.2019	362 – 366
19.	Email from Renee Lobb to David Whyte	7.2.2019	367 – 374
20.	Letter from David Whyte to John Park regarding EY Proof	14.2.2019	375 – 377
21.	Letter from David Whyte to John Park rejecting Norton Rose Proof	14.2.2019	378 – 383
22.	Letter from Tucker & Cowen to Russells	14.2.2019	384 – 385
23.	Pages containing paragraphs 12 to 16 of Affidavit of John Park filed in proceeding 3508/15	5.9.2018	386 – 387
24.	ASIC Instrument 16-0959	15.03.2018	388 – 389
25.	Second Further Amended Statement of Claim filed in Feeder Fund Proceeding	21.6.2018	390 – 422
26.	Pages 1, 2 and 10-12 of the Deed of Settlement in Feeder Fund Proceeding	7.12.2018	423 - 427

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CERTIFICATE OF EXHIBIT

VOLUME 2 OF 3

Exhibit "DW-130" (pages 207 to 427) to the Affidavit of DAVID WHYTE sworn this 18th day of February 2019


Deponent


Solicitor/A Justice of the Peace

CERTIFICATE OF EXHIBIT:

Form 47, R.435

Filed on behalf of the First Respondent

TUCKER & COWEN

Solicitors

Level 15, 15 Adelaide Street

Brisbane, Qld, 4000

Tel: (07) 300 300 00

Fax: (07) 300 300 33



27 September 2018

TO INVESTORS

Dear Member

**LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVERS AND MANAGERS APPOINTED)
(RECEIVER APPOINTED) ("THE FUND")**

I attach the unaudited accounts for the Fund for the year ending 30 June 2018.

The accounts have been prepared by collating the records maintained by the Fund and receipts and payments and other records of FTI and McGrathNicol.

The accounts have been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The accounts have been reviewed by the BDO audit team. However, their work does not constitute a full audit and therefore, the accounts are provided on an unaudited basis.

Should members require further information, please contact BDO on the details provided below.

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely

David Whyte
Court Appointed Receiver

Disclaimer:

The 30 June 2108 financial statements were compiled by BDO Business Restructuring Pty Ltd however we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Report for the year ended 30 June 2018

Disclaimer

The 30 June 2018 financial statements were compiled by BDO Business Restructuring Pty Ltd but we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Financial Statements for the year ended 30 June 2018

CONTENTS

Statement of comprehensive income	3
Statement of financial position	4
Statement of changes in net assets attributable to unitholders	5
Statement of cash flows	6
Notes to the financial statements for the year ended 30 June 2018	7

The Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) is LM Investment Management Limited (ABN 68 077 208 461) (in Liquidation) (Receivers and Managers Appointed).

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

STATEMENT OF COMPREHENSIVE INCOME

For the year ended 30 June 2018

	Note	30 June 2018 \$	30 June 2017 \$
Income			
Interest revenue - cash assets	12	1,508,456	1,506,468
Other Income	3 (a)	1,687,695	-
		3,196,151	1,506,468
Expenses			
Custodian fees & legal fees	9	(113,573)	86,709
Net Impairment losses on mortgage loans	6 (a)	614,117	120,542
Adjustment on foreign exchange accounts		(4,129)	3,548
Other expenses	4	4,625,299	4,384,080
Total expenses excluding distributions to unitholders		5,121,714	4,594,879
Net profit (loss) before distributions to unitholders		(1,925,563)	(3,088,411)
Distributions paid/payable to unitholders			-
Net profit (loss) after distributions to unitholders		(1,925,563)	(3,088,411)
Other comprehensive income			-
Net profit (loss) after distributions to unitholders		(1,925,563)	(3,088,411)
Income tax expense			-
Changes in net assets attributable to unitholders after income tax expense		(1,925,563)	(3,088,411)

The Statement of Comprehensive Income is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

STATEMENT OF FINANCIAL POSITION

As at 30 June 2018

	Note	30 June 2018	30 June 2017
ASSETS		\$	\$
Cash and cash equivalents	11	70,194,328	73,094,783
Receivables	10	469,030	351,024
Loans & Receivables	6	44,235	3,620,167
TOTAL ASSETS		70,707,593	77,065,974
LIABILITIES			
Payables	7	2,451,143	6,883,961
Distributions payable	3 (b)	1,372,036	1,372,036
Total liabilities excluding net assets attributable to unitholders		3,823,179	8,255,997
NET ASSETS		66,884,414	68,809,977
Represented by:			
Net assets attributable to unitholders	5	66,884,414	68,809,977
(calculated in accordance with IFRS)			

The Statement of Financial Position is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

STATEMENT OF CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

For the year ended 30 June 2018

	Note	30 June 2018	30 June 2017
		\$	\$
TOTAL			
Opening balance		68,809,977	71,898,388
Units issued during the year	5	-	-
Units redeemed during the year	5	-	-
Units issued on reinvestment of distributions		-	-
Changes in net assets attributable to unitholders		(1,925,563)	(3,088,411)
Closing Balance		66,884,414	68,809,977

The Statement of Changes in Net Assets Attributable to Unitholders is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

STATEMENT OF CASH FLOWS

For the year ended 30 June 2018

	Note	30 June 2018	30 June 2017
		\$	\$
Cash flows from operating activities			
Interest and distributions received		1,508,456	1,506,468
Other operating expenses		(7,252,721)	(5,412,855)
GST and withholding tax (paid)/received		(118,005)	39,947
Net cash inflow/(outflow) from operating activities	11 (b)	(5,862,270)	(3,866,440)
Cash flows from investing activities			
Payments for secured mortgage loans	6 (b)	(117,090)	(248,453)
Receipts from settled mortgage loans	6 (b)	3,078,905	1,983,280
Net cash inflow/(outflow) from investing activities		2,961,815	1,734,827
Cash flows from financing activities			
		-	-
Net increase/(decrease) in cash and cash equivalents		(2,900,455)	(2,131,613)
Cash and cash equivalents at beginning of year		73,094,783	75,226,396
Cash and cash equivalents at end of year	11 (a)	70,194,328	73,094,783

The Statement of Cashflows is to be read in conjunction with the notes to the financial statements.

1. CORPORATE INFORMATION

During the period March 2013 to August 2013, a series of insolvency events occurred in respect of both the Fund and the Responsible Entity for the Fund, these are detailed in the table below:

Date	Appointment
19 March 2013	John Park and Ginette Muller of FTI Consulting appointed as Administrators of LM Investment Management Ltd ("LMIM") being the Responsible Entity for the Fund.
11 July 2013	Joseph Hayes and Anthony Connelly of McGrathNicol appointed as Receivers and Managers of LMIM as the Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ('LMFMIF', 'Scheme' or the 'Fund') by Deutsche Bank.
1 August 2013	John Park and Ginette Muller of FTI Consulting appointed as liquidators of LMIM.
8 August 2013	David Whyte of BDO appointed by the Court as Receiver of the assets of the Fund and as the person responsible for ensuring the Fund is wound up in accordance with its Constitution.

The Scheme is an Australian registered Scheme, constituted on 13 April 1999.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all periods presented, unless otherwise stated in the following text.

(a) Basis of accounting

This financial report has been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The financial report has also been prepared on a historical cost basis, except for financial assets and financial liabilities held at fair value through profit or loss, that have been measured at fair value.

The Statement of financial position is presented in decreasing order of liquidity and does not distinguish between current and non-current items. The amount expected to be recovered or settled within twelve months in relation to the balances cannot be reliably determined.

The financial report is presented in Australian Dollars (\$).

Statement of compliance

The financial statements have been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards as issued by the Australian Accounting Standards Board and International Financial Reporting Standards as issued by the International Accounting Standards Board.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(a) Basis of accounting (Continued)

Status of investment in fund

During the 2009 year, the Responsible Entity closed the Scheme to new investors and suspended withdrawals subject to certain exceptions. Redemptions were suspended at this time, per the Constitution, as the Responsible Entity considered the suspension of the withdrawals to be in the best interest of the members of the Scheme.

The Scheme is now in the process of being formally wound up with redemptions and hardship provisions remaining suspended.

Liquidation Basis

Previous financial statements have been prepared on a going concern basis.

The financial statements for the periods ended 30 June 2013 onwards have not been prepared on a going concern basis due to the appointment of Administrators to the Responsible Entity for the Fund on 19 March 2013 and subsequently Liquidators on 1 August 2013 and the appointment of Receivers and Managers and Court Appointed Receiver and person responsible for ensuring it is wound up in accordance with its Constitution as detailed in Note 1. Accordingly, the financial statements for those periods have been prepared on a liquidation basis.

(b) New accounting standards and interpretations

Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective have not been adopted by the Scheme for the reporting period. The impact of these standards and interpretations are not expected to have a material impact on the Scheme have not been included.

(c) Significant accounting judgements, estimates and assumptions

In the process of applying accounting policies, judgements and estimations have been made which have had an impact on the amounts recognised in the accounts. The key estimates and assumptions that have a significant risk of causing material adjustment to the carrying amounts of certain assets and liabilities within the next annual reporting period are:

Allowance for impairment loss on loans and receivables

The Scheme determines whether loans are impaired on an ongoing basis. Individually assessed provisions are raised where there is objective evidence of impairment, where the Scheme does not expect to receive all of the cash flows contractually due. Individually assessed provisions are made against individual facilities.

(d) Cash and cash equivalents

Cash and cash equivalents includes cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. For the purposes of the Statement of cash flows, cash and cash equivalents as defined above, net of outstanding bank overdrafts.

(e) Distribution income

Distribution income is recognised when the Scheme's right to receive income is established.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(f) Interest income

Interest income is recognised as the interest accrues using the effective interest rate method, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset. Interest ceases to be recognised when a loan is in default and the principal is impaired.

(g) Default management fees

Income from default management fees is recognised in line with the executed agreement with the borrower when an event of default occurs.

(h) Changes in the fair value of investments

Gains or losses on investments held for trading are calculated as the difference between the fair value at sale, or at year end, and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses.

(i) Fees, commissions and other expenses

Except where included in the effective interest calculation (for financial instruments carried at amortised cost), fees and commissions are recognised on an accrual basis. Audit and compliance fees are included with 'other expenses' and are recorded on an accrual basis.

(j) Financial instruments

Financial instruments in the scope of *AASB 139 Financial Instruments* are classified as either financial assets or financial liabilities at fair value through profit or loss, loans and receivables, held-to-maturity investments, available-for-sale investments or other financial liabilities as appropriate.

When financial assets are recognised initially, they are measured at fair value, plus, in the case of investments not at fair value through profit or loss, directly attributable transactions costs. The Scheme determines the classification of its financial assets at initial recognition.

All regular way purchases and sales of financial assets are recognised on the trade date i.e. the date that the Scheme commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the marketplace.

i. Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are initially measured at fair value including transaction costs directly attributable to the financial asset. After initial recognition, loans and receivables are carried at amortised cost using the effective interest method. Gains and losses are recognised in profit or loss when receivables are derecognised or impaired, as well as through the amortisation process.

Loans and receivables are assessed for impairment at each reporting period. An allowance is made for credit losses when there is objective evidence that the Scheme will not be able to collect the loans and receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision for impairment

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(j) Financial instruments

has been recognised in relation to the loan, write-offs for bad debts are made against the provision. If no provision for impairment has previously been recognised, write-offs for bad debts are recognised as an expense in the statement of comprehensive income.

A provision is made of loans in arrears where the collectability of the debts is considered doubtful by estimation of expected losses in relation to loan portfolios where specific identification is impracticable.

The components of impaired assets are as follows:

“Loans in arrears” are loans and advances for which there is reasonable doubt that the Scheme will be able to collect all amounts of principal and interest in accordance with the terms of the agreement.

“Assets acquired through the enforcement of security” are assets acquired in full or partial settlement of a loan or similar facility through the enforcement of security arrangements.

When it is determined that interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectable.

(k) Payables

Payables are carried at amortised costs and represent liabilities for goods and services provided to the Scheme prior to the end of the financial year and half year that are unpaid and arise when the Scheme becomes obliged to make future payments in respect of the purchases of these goods and services.

The distribution amount payable to investors as at the reporting date is a carried forward balance from a period prior to the appointment of the Court Appointed Receiver. This balance is recognised separately on the statement of financial position as unitholders are presently entitled, subject to confirmation, to the distributable income as at 30 June 2014 under the Scheme’s constitution. Further investigation into the distributions payable is currently being undertaken.

(l) Increase/decrease in net assets attributable to unitholders

Non-distributable income is transferred directly to net assets attributable to unitholders and may consist of unrealised changes in the net fair value of investments, accrued income not yet assessable, expenses accrued for which are not yet deductible, net capital losses and tax free or tax deferred income. Net capital gains on the realisation of any investments (including any adjustments for tax deferred income previously taken directly to net assets attributable to unitholders) and accrued income not yet assessable will be included in the determination of distributable income in the same year in which it becomes assessable for tax. Excess and undistributed income is also transferred directly to net assets attributable to unitholders.

(m) Distributions

The Trustees for the LM Managed Performance Fund previously put both the Receivers and Managers and the Court Appointed Receiver on notice of a potential claim against the Fund.

The secured creditor was not in a position to release its security due to the potential claim against the Fund. This matter has now been resolved and the Receivers and Managers have advised they are finalising their appointment. Once the secured creditor’s Receivers have retired and the funds are released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim and Bellpac litigation. I am also required to seek the directions of the Court before proceeding with the next distribution.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(n) Goods and services tax (GST)

The GST incurred on the costs of various services provided to the Responsible Entity by third parties such as audit fees, custodial services and investment management fees have been passed onto the Scheme. The Scheme qualifies for Reduced Input Tax Credits (RITC's) at a rate of 55%.

Investment management fees, custodial fees and other expenses have been recognised in the statement of comprehensive income net of the amount of GST recoverable from the Australian Taxation Office (ATO). Accounts payable are inclusive of GST. The net amount of GST recoverable from the ATO is included in the statement of cash flows on a gross basis.

The GST component of cash flows arising from investing and financing activities recoverable or payable to the ATO is classified as an operating cash flow.

(o) Applications and redemptions

Applications received for units in the Scheme are recorded when units are issued in the Scheme. Redemptions from the Scheme are recorded when the cancellation of units redeemed occurs. Unit redemption prices are determined by reference to the net assets of the Scheme divided by the number of units on issue.

Applications received in foreign currency denominations are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Foreign currency denominated unitholder funds are translated into the Schemes functional currency at balance date, using the spot rate prevailing at that date. Gains and losses arising from foreign exchange translation are recorded in the Statement of Comprehensive Income in the period in which they arise.

(p) Taxation

Under current legislation, the Scheme is not subject to income tax provided the distributable income of the Scheme is fully distributed either by way of cash or reinvestment (i.e. unitholders are presently entitled to the income of the Scheme).

(q) Interest-bearing loans and borrowings

All loans and borrowings are initially recognised at cost, being the fair value of the consideration received net of issue costs associated with the borrowing. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Amortised cost is calculated by taking into account any issue costs, and any discount or premium on settlement.

(r) Foreign currency translations

The Scheme's transactions in foreign currencies previously comprised applications and withdrawals of foreign currency unitholder funds and payment of distributions. Transactions in foreign currencies were initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liability denominated in foreign currencies are retranslated at the rate of exchange prevailing at the balance sheet date, and exchange rate gains and losses are recognised in the statement of comprehensive income.

In relation to the total investor units, a discrepancy between the units recorded in the investor register and the units recorded in the audited and management accounts for the 2012 financial year has been identified. Investigations indicate that the discrepancy relates to the Fund's migration to a new financial database in 2010 whereby the units of investors who subscribed in a foreign currency were incorrectly recorded in the foreign currency equivalent amount, and not in the AUD equivalent amount in accordance with the PDS and Constitution. An application will be made to the Court with a view to rectifying the register.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(s) Determination of fair value

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

The fair value for financial instruments not traded in an active market is determined using appropriate valuation techniques. Valuation techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cash flow analysis and option pricing models making as much use of available and supportable market data as possible.

(t) Estimated net asset amount per unit available to investors

The estimated amount of net assets available to investors are subject to the uncertainties indicated in this financial report.

The net assets of the fund and number of units on issue at the end of each of the periods is detailed in the table below:

	30 June 2018	30 June 2017
Estimated net amount of assets available to investors as at the period end (\$)	66,884,414	68,809,977
Total investor units (# of units) *	478,100,386	478,100,386
Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)**	0.140	0.144

* Unit #'s

In previous financial statements prepared by David Whyte, unrealised foreign exchange transactions relating to the units denominated in foreign currencies were included in the accounts as this practice was undertaken in the audited financial accounts prior to year ended 30 June 2013. The results of these transactions were notionally recorded in the financial accounts as an adjustment to the total number of investor units in accordance with accounting standards. Given the discrepancy identified as detailed in Note 2(r) above in regard to the units of investors who subscribed in a foreign currency, having obtained legal advice, Mr Whyte has decided that no further notional adjustments to the unit numbers ought to be made in the financial accounts, until the incorrect recording of units of investors who subscribed in a foreign currency has been resolved and directions from the Court have been obtained. Accordingly, the total investor unit numbers has been notionally restated above as at the balance at 30 June 2016.

** Estimated return to investors

The estimated net asset amount per unit available to investors as set out above is subject to the resolution of a number of ongoing proceedings, including a claim against the Feeder Funds which was served on or about 7 August 2017. Given that the claim is likely to be defended, the actual net asset amount per unit available to investors is currently uncertain and an update will be provided in due course. Please refer to Note 14 below for further details regarding the claim.

The Feeder Funds are the LM Currency Protected Australian Income Fund (CPAIF), the LM Institutional Currency Protected Australian Income Fund (ICPAIF) and the LM Wholesale First Mortgage Income Fund (WMIF). The Feeder Funds are Class B investors and currently comprise approximately 48% of the total unitholding in the FMIF.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The claim is for declarations that the FMIF is entitled to withhold from distributions or payments otherwise payable to the Feeder Funds an amount in excess of \$55 million (for redemptions paid to the Feeder Funds when the FMIF suspended redemptions to all other investors, apart from genuine approved hardship cases), as adjusted for the amount which the Feeder Funds would otherwise have been entitled as pleaded in the statement of claim. The claim seeks a declaration cancelling approximately 35 million units issued to the Feeder Funds (which were a consequence of re-investment of distributions made to the Feeder Funds) which were issued after the FMIF suspended distributions to other investors.

If the Court grants the relief sought against the Feeder Funds and putting aside any other recoveries for the benefit of investors:

- the CPAIF and ICPAIF are not likely to receive any distribution in the winding up of the FMIF;
- the WMIF is likely to receive a smaller distribution than it otherwise would have been entitled, subject to the outcome of litigation against the FMIF and future operating costs of the FMIF;
- the FMIF can use the funds which otherwise would have been paid to the Feeder Funds for distributions to investors generally instead and, as a result, the return to other investors (Class A and Class C) will substantially increase.

3. INCOME AND DISTRIBUTIONS TO UNITHOLDERS

(a) Other Income

The other income amount of \$1,687,695 relates to adjustments to the Fund's accrued expenses that were reported and expensed in prior periods during the Receivership. This amount is predominantly made up of amounts accrued for FTI's claimed remuneration and expenses up to 30 September 2015 which are no longer payable due to the recent decision of the Court and provision for reimbursement of operational expenses by FTI not previously brought to account. See Note 14 litigation for more information.

(b) Distributions Payable

The distributions payable balance of \$1,372,036 relates to distributions that appear to have been declared prior to the date of the Court Receiver's appointment which were not paid, or have not cleared or were returned unclaimed. These liabilities have not been verified and Court approval may be required before any payment is made.

Once the secured creditor's Receivers have retired and the funds are released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim and Bellpac litigation.

I am also required to seek the directions of the Court before proceeding with the next distribution.

There have been no distributions to unitholders for the year ended 30 June 2018 or for years ending 30 June 2017, 30 June 2016 and 30 June 2015.

4. OTHER EXPENSES

	30 June 2018	30 June 2017
Other Expenses	\$	\$
Receivers and Managers' fees and outlays (McGrathNicol)	239,310	386,228
Court Appointed Receiver's fees & outlays (BDO) *	2,239,050	1,960,705
Legal Fees	1,876,102	1,791,427
Other expenses	270,837	245,720
Total	4,625,299	4,384,080

*Denotes expenses which are subject to approval by the court.

Court Appointed Receiver's fees & outlays (BDO)

	30 June 2018	30 June 2017
The Court Appointed Receiver's fees & outlays are represented by the following amounts:	\$	\$
Court Appointed Receiver's investigations, litigation and other non-operating costs	1,007,573	678,368
Operating Costs of the Fund	1,231,477	1,282,337
Total	2,239,050	1,960,705

The Court Appointed Receiver's investigations and other non-operating costs include time costs in relation to the claim against the former auditors of the Fund, and other litigation matters which include claims against the MPF, LMIM and its directors and the claim against the Feeder Funds.

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

Movements in the net assets attributable to unitholders during the year were as follows:

Net assets attributable to unitholders	30 June 2018	30 June 2017
	\$	\$
Class A		
Opening balance	245,679,110	245,679,110
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	245,679,110	245,679,110
Class B		
Opening balance	220,196,311	220,196,311
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	220,196,311	220,196,311
Class C		
Opening balance	12,224,964	12,224,964
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Foreign exchange (gain)/loss on investor funds	-	-
Closing balance	12,224,964	12,224,964
Cumulative movement in changes in net assets	(411,215,971)	(409,290,408)
Net assets attributable to unitholders	66,884,414	68,809,977

Class A

Class A consists of unitholders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A. These consist of the following products with varying terms:

- 1) Flexi Account investment option
- 2) Fixed Term investment option
- 3) LM Savings Plan investment option

Class B

Class B consists of related Scheme unitholders.

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS (cont)

Class C

Class C consists of unitholders who have invested in foreign currencies and are entitled to receive the declared distribution rate.

Subject to the comments relating to the status of the Scheme in note 2(t) above, unitholders are entitled to one vote per unit at unitholders' meetings and as the Scheme is being wound up, unitholders rank after creditors and are equally entitled to the proceeds of the winding up procedure.

6. LOANS AND RECEIVABLES

	30 June 2018	30 June 2017
	\$	\$
Secured mortgage loans	6,102,290	72,696,775
Provision for impairment	(6,058,055)	(69,076,608)
	44,235	3,620,167

Loans and receivables are initially measured at the fair value including transaction costs and subsequently measured at amortised cost after initial recognition. Loans and Receivables are assessed for impairment at each reporting date. Where impairment indicators exist, the recoverable amount of the loan will be determined and compared to its carrying amount to determine whether any impairment losses exists. Impairment losses are recognised when the recoverable amount under the individual loan is less than the carrying amount of that loan.

Material uncertainty regarding recoverability of Loans and Receivables

For loans in default, an impairment indicator arises which requires the recoverable amount of that loan to be determined. The recoverable amount for each individual loan in default has been determined from independent valuations and/or the assets forming the security for the loans. The valuations are based on current market conditions and provide for appropriate exposure to the market and an orderly realisation of assets forming the security for the loans.

In determining the recoverable amounts, there are uncertainties involved in assessing the market values and the ability to realise those market values, particularly where the market is not active. Consequently, it is likely that there may be differences between the amounts at which the Loans and Receivables are recorded at in the financial statements for the period ended 30 June 2018, and the amounts that are actually realised. Such differences may be material. Accordingly, there is a material uncertainty regarding recoverability of Loans and Receivables.

The balance of \$44,235 represents cash available in the controllerships' bank accounts as at 30 June 2018. These funds have since been distributed to the Fund's bank account as loan repayments.

(a) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

	30 June 2018	30 June 2017
	\$	\$
Opening balance	69,076,608	68,866,088
Impairment losses provided for (recoveries) during the period	614,117	120,542
Impairment losses realised during the period	(63,632,670)	89,978
Closing balance	6,058,055	69,076,608
Total provision for impairment	(6,058,055)	69,076,608

(b) Movement in default loans

	30 June 2018	30 June 2017
	\$	\$
Gross default loans opening balance	72,696,775	74,341,624
New and increased default loans	117,090	248,453
Balances written off	(63,632,670)	89,978
Repaid	(3,078,905)	(1,983,280)
Gross default loans closing balance	6,102,290	72,696,775
Specific provision	(6,058,055)	(69,076,608)
Net default loans	44,235	3,620,167

7. PAYABLES

Payables are carried at cost and represent liabilities for goods and services provided to the Fund prior to the period end but have not yet been paid.

	30 June 2018	30 June 2017
	\$	\$
Accounts payable	2,451,143	6,883,961

Approximately \$918,458 of the accounts payable balance relates to FTI's remuneration and expenses claimed from the Fund. See Note 14 FTI litigation for more information.

8. INTEREST BEARING LOANS AND BORROWINGS

Interest bearing loans and borrowings relates to facilities with external providers. In July 2010, the RE entered into a new facility with an external financier, Deutsche Bank. Deutsche Bank holds a fixed and floating charge over the assets of the Fund.

As indicated in Note 1, McGrathNicol were appointed as Receivers and Managers of the Fund by Deutsche Bank as a result of a default of the finance facility by the Fund for this secured loan.

There has been a progressive sell down of the assets of the Fund which enabled \$14.1M of the loan to be repaid during the 2013 financial year and \$21.5M between July and December 2013. The facility was repaid in full in January 2014.

9. RELATED PARTIES

	30 June 2018	30 June 2017
	\$	\$
<i>Custodian</i>		
Custodian's fees paid by the Scheme	32,274	86,709
Custodian's legal fees (refund)	(145,847)	-
Total	(113,573)	86,709

Custodian

The Custodian of the Fund is The Trust Company (PTAL) Ltd. The Custodian's fees in the year ended 30 June 2016 included a claim for legal fees payable under the custodian agreement. The legal fees were incurred by the custodian defending an action brought by a mortgagor of the Scheme. This action was subsequently discontinued and PTAL was awarded costs. PTAL received a payment of \$150,000 from security for costs put up by the plaintiffs. As PTAL's costs were claimed and paid by the Fund under the custodian agreement, PTAL forwarded the security for costs monies to the Fund.

10. RECEIVABLES

	30 June 2018	30 June 2017
	\$	\$
Term deposit interest receivable	131,378	249,315
GST receivable	337,652	101,709
	469,030	351,024

11. CASH AND CASH EQUIVALENTS

(a) Reconciliation of cash and cash equivalents

For the purposes of the Statement of Financial Position, the cash and cash equivalents comprise of cash at bank and in hand. The cash at bank earns interest at floating rates based on the daily bank deposit rates, however, the majority of the cash balance is invested on term deposit with a bank. The cash at bank figure includes monies held in foreign exchange accounts.

	30 June 2018	30 June 2017
	\$	\$
Cash at bank	70,194,328	73,094,783

(b) Reconciliation of change in net assets attributable to unitholders to net cash flows from operating activities

	30 June 2018	30 June 2017
	\$	\$
Change in net assets attributable to unitholders	(1,925,563)	(3,088,411)
<i>Adjustments for:</i>		
Non-cash impairment expense	614,117	120,542
Non-cash accrued expense reduction	(1,687,695)	-
(Gains)/loss on foreign exchange contracts	(4,129)	3,548
(increase)/decrease in other receivables	(118,005)	39,947
Increase/(decrease) in payables	(2,740,995)	(942,066)
Net cash flows from/(used in) operating activities	(5,862,270)	(3,866,440)

12. INTEREST REVENUE

Interest revenue relates to interest received on funds held in bank accounts.

Interest on loans is suspended and not brought to account when it is considered that the amounts are not ultimately recoverable from the remaining security for the loans.

13. CONTINGENT LIABILITIES

Claims by KordaMentha as Trustee of the LM Performance Fund

Assigned Loans Claim

In August 2014, KordaMentha Pty Ltd and Calibre Capital Pty Ltd as trustees of the MPF commenced two proceedings against LMIM alleging that the entry into Deeds of Assignment by LMIM, pursuant to which PTAL, as custodian of the FMIF assigned its right, title and interest in the securities that it held for two FMIF loans, to LMIM as trustee of the MPF, in exchange for payment of a Settlement Sum, and the alleged payment of the Settlement Sum by LMIM as trustee of the MPF, breached duties owed by LMIM to members of the MPF. Calibre Capital Pty Ltd has since resigned as trustee of the MPF, and has been removed as a party to the proceedings.

On the application of David Whyte, as Receiver of the property of FMIF, orders were made on 17 December 2015 adding him as second defendant in each proceeding. The plaintiff (after various amendments to its case) sought the following relief in each proceeding:

- Equitable compensation against LMIM, interest and costs
- Declarations that:
 - LMIM is entitled to be indemnified out of FMIF assets in respect of its liability to the plaintiff in the proceeding;
 - LMIM has a lien or charge over FMIF assets in respect of its liability to the plaintiff in the proceeding;
 - the plaintiff is entitled to be subrogated to the rights of LMIM in respect of the assets of FMIF.

The total amount of the claims made against assets of the FMIF is about \$24.1 million plus interest and costs.

At the review hearing on 16 December 2016, the proceedings were adjourned to a date to be fixed.

Both proceedings were discontinued by the MPF in June 2018.

AIIS Loan Claim

On 16 December 2015, KordaMentha as trustee of the MPF (MPF Trustee), commenced a proceeding against LMIM. The MPF Trustee alleged in the proceeding that:

- PTAL, as custodian of the FMIF, and LMIM as trustee of the MPF, both made loans to a borrower by the name of Australian International Investment Services Pty Ltd (AIIS);
- PTAL as custodian of the FMIF was the first registered mortgagee, and LMIM as trustee of the MPF was the second registered mortgagee;
- LMIM as trustee of the MPF approved various increases to the amount of the facility, from time to time, in breach of duty; and
- LMIM as trustee of the MPF made various advances that were used to service interest on the loan made by PTAL as custodian of the FMIF to AIIS, in breach of duty, and LMIM as RE of the FMIF received such payments with knowledge that they were made in breach of duty.

The MPF Trustee claimed the following relief in the proceeding:

- approximately \$16.82 million equitable compensation against LMIM;
- a declaration that LMIM as RE of the FMIF holds on constructive trust the amount of approximately \$3.9 million (being the amount of the payments allegedly made by LMIM as trustee of the MPF to service interest on the FMIF facility);
- a declaration that the MPF Trustee is entitled to be subrogated to the rights of LMIM, and indemnified out of assets of the FMIF in respect of, or has a lien or charge over the assets and undertakings of the FMIF to secure, the amount of approximately \$3.9 million;
- interest and costs.

The proceedings were discontinued by the MPF in June 2018.

14. LITIGATION MATTERS

Claim against the former auditors

A public examination (PE) of the former auditors, certain directors, former directors (Directors) and staff of LM Investment Management Limited (In Liquidation) was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015.

Following the PEs, a further amended statement of claim was filed by David Whyte in the Supreme Court of Queensland and served on the former auditors of the Fund on 14 April 2016.

The former auditors' solicitors lodged and served on David Whyte an application and supporting affidavit on 27 April 2016 seeking to strike-out certain parts of the statement of claim. The hearing of the strike out application was adjourned to a date to be fixed by consent to enable appropriate directions to be made for the parties to exchange and file any further affidavit material and written submissions in advance of the hearing of the strike out application.

On 30 May 2016, David Whyte filed an application to place the proceedings on the Court's commercial list. This application was also adjourned to a date to be fixed.

On 2 August 2016, David Whyte filed a second further amended statement of claim. The parties filed submissions and further affidavit evidence as required by the orders and at the hearing of the strike out application and the commercial list application on 15 December 2016, the Court granted the application to place the proceedings on the commercial list and reserved its decision on the strike out application.

The reserved decision from the hearing of the strike out application was handed down on 8 May 2017 and the decision was not appealed. In that decision, the Court declined to strike out all of the parts of the claim that the former auditors sought to strike out. However, it did make orders striking out certain causes of action and orders were made that the statement of claim be amended to delete those causes of action.

In accordance with the Court's judgment, the statement of claim has been amended and was filed on 20 November 2017 and served on the former auditors. Details of the loss has been included in the amended statement of claim which has been calculated (at its highest) in excess of \$200 million.

The amended statement of claim filed on 20 November 2017 included a claim for compensation from the former auditors under section 1325 of the Corporations Act. Steps have been taken to amend the Claim to make specific reference to this claim for compensation under section 1325. Leave of the Court is required for such amendment, necessitating an application to the Court.

On 29 May 2018, the Court made Orders for the filing of the proposed application to amend the Claim, as well as for the auditors to make a request for further and better particulars of the further amended statement of claim.

A request for particulars was received on 19 June 2018. A further Order of the Court dated 24 July 2018 requires the response to this request to be filed and served by 19 October 2018.

Two further amendments to the statement of claim were filed on 5 July 2018 and 7 August 2018. Particulars of loss and damage were filed and served on the auditors on 23 July 2018.

The Application for leave to amend the Claim was filed on 10 August 2018. The Court has listed the hearing of the application for 27 September 2018.

Following the hearing on 27 September 2018, the next steps are to provide the particulars requested and obtain Orders programming the filing of the auditors' defence and the Receiver's reply to that defence.

Wollongong Coal Ltd (WCL) – Convertible Bonds

There are \$8 million in convertible bonds in Wollongong Coal Limited (WCL) which was the subject of a successful application to the Federal Court acknowledging that Bellpac Pty Ltd (In Liquidation) (Bellpac) (under the control of its liquidators) is the true owner.

The defendants appealed the decision, which was unsuccessful, however, on 12 July 2016, the defendants made application for special leave to the High Court of Australia to appeal the decision of the Federal Court. On 10 November 2016, the High Court refused to grant special leave to the defendants, and dismissed their application with costs.

In January 2016, the Bellpac Liquidator applied for the conversion of the bonds to shares. Under the terms of the Bonds, WCL is required to issue the shares within 7 days after the end of January 2016 (Due Date) which it failed to do. Instead WCL issued part of the shares in early February 2016 and the balance of the shares after resolution of its members, in May 2016.

As WCL did not issue the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds by

- Redeeming all of the Bonds which were not converted by the Due Date; and
- Pay to the Liquidator \$8M or such other amount being the nominal principal value of the unconverted Bonds (those issued in May 2016), plus interest.

The proceedings have been adjourned pending completion of the terms of a heads of agreement with WCL pursuant to which Bellpac will receive cash of \$6.3 million in exchange for the transfer of the shares to WCL or alternatively cancellation of the shares.

The remaining condition precedent (Sunset Date) to the settlement with WCL has been extended several times from the original condition precedent fulfilment date and the Liquidator was successful in negotiating as part of the agreement to extend the Sunset Date that WCL pay interest at 3% p.a. from 2 October 2017 until settlement. The last agreed extension granted was to 18 October 2018.

Proceedings against the MPF, LMIM and the Directors of LMIM

On 17 December 2014, David Whyte filed a claim and statement of claim in the Supreme Court of Queensland, against a number of parties, including the MPF Trustee, alleging the FMIF suffered loss as a result of a decision to pay an amount to the MPF in 2011 on settlement of litigation between Bellpac and Gujarat NRE Minerals Ltd (now called Wollongong Coal Limited). The claim is for \$15.5M plus interest.

The proceedings have progressed to completion of discovery stage for the plaintiff and certain defendants. The defendants who are participating in the proceedings have all filed defences (and in some instances, amended defences) to which the plaintiff has filed replies.

A draft trial bundle of documents was served on the defendants on 1 June 2018. The proceedings were listed for review on 16 August 2018 following which a timetable was implemented to progress the proceedings to a trial in March/April 2019. Specifically, and amongst other things, it was ordered that the plaintiff serve an amended draft trial bundle by 14 September 2018. This has been completed and the defendants' response is due by 5 October 2018. Following the finalisation of the contents of the trial bundle, affidavit evidence is to be exchanged by the parties along a timeline from November 2018 to February 2019 in advance of trial.

FTI litigation

The RE for the Fund is LM Investment Management Ltd (in Liquidation) ("LMIM"). On 8 April 2015, the Liquidators of LMIM ("FTI") filed an application (which was subsequently amended on 20 July 2015) in the Supreme Court of Queensland, for directions in relation to their ongoing role, and the extent of their powers and responsibilities to undertake certain duties, for, and on behalf of, the FMIF. The application was heard before the Court on 20 July 2015, and orders were made on 17 December 2015.

Remuneration claim

On 16 December 2015, FTI filed a Further Amended Originating Application ("FAOA") seeking a determination of their remuneration as administrators, and liquidators, of LMIM. The FAOA sought payment in the amount of \$3,098,251.83 plus GST (for the period from the date of their appointment as administrators on 19 March 2013 to 30 September 2015) from the assets of the Fund. The matter was heard by the Court on 22 February and 14 March 2016 and the decision was reserved.

The Court handed down its reasons for judgment on 17 October 2017 in relation to FTI's application for approval of their remuneration and payment from assets of the Fund. Orders reflecting His Honour's reasons for judgment were made on 22 November 2017 to the effect that FTI be paid a total of \$1,827,205.23 "(plus GST)" for remuneration and out of pocket expenses from property of the Fund. The approved amount of \$1,827,205.23 was paid to FTI in December 2017.

As to the costs of the proceedings, the court orders provide that certain specified proportions of FTI's costs on an indemnity basis are to be paid from the property of the Fund and 3 other LM funds.

On 12 June 2018, FTI advised David Whyte of further claims against the Fund for remuneration and disbursements outstanding from 1 October 2015 up to 30 April 2018 totalling \$363,929.47 exclusive of GST.

On 17 July 2018, Mr Park of FTI, who is now the sole Liquidator of LMIM, filed an application in the Court seeking payment of remuneration of approximately \$743,889.89 inclusive of GST from property of the FMIF, relating to various periods between 19 March 2013 and 30 June 2018. The application was heard on 6 September 2018 and adjourned to 3 October 2018.

Mr Park's claimed fees and expenses have been included in the Fund's Payables (as referred to in Note 7 above), though this amount is not admitted and is subject to the outcome of FTI's application to the Court.

Indemnity claims

In accordance with the Orders made by the Court on 17 December 2015, FTI submitted two indemnity claims to David Whyte, seeking payment of the sums of \$241,453.54 and \$375,499.78 respectively, from the assets of the Fund.

The first claim (of \$241,453.54) was made with respect to the legal costs incurred by LMIM in relation to the appeal of the decision of Dalton J appointing David Whyte as receiver of the assets of the Fund, and the person responsible for ensuring the Fund is wound up in accordance with its Constitution. This claim was rejected by David Whyte.

As to the second claim, David Whyte accepted, and paid, \$84,954.41, rejected \$169,243.26 and deferred consideration of \$5,473.59 (pending the outcome of the judgment to be handed down in respect of the FAOA for FTI's remuneration). The balance of the second claim was withdrawn by FTI.

On 20 May 2016, FTI filed an application in the Supreme Court of Queensland, seeking declarations that the claims for indemnity rejected by David Whyte are properly payable to LMIM from the Fund ("Indemnity Application"), and payment thereof. On 16 February 2017, Jackson J made directions as to the steps to progress the Indemnity Application. The Indemnity Application was heard by the Court on 8 and 9 May 2017 and the Court reserved its decision. Shortly before the hearing, the Indemnity Application was amended, to incorporate a claim by FTI for direct indemnity in favour of FTI (rather than in favour of LMIM) from the property of the FMIF.

David Whyte obtained judicial advice (by Order of Burns J) to the effect that he is justified in raising the clear accounts rule in opposition to the Indemnity Application, in relation to certain identified claims.

The Court handed down its reasons for judgment on 17 October 2017, and Orders were made on 22 November 2017 to give effect to the Judgment. Jackson J relevantly found that the legal costs of the appeal in 8895 of 2013 of \$263,127.13 and costs of assessment of those costs in the sum of \$9,068.68 are not payable out of the property of the FMIF, that the Liquidators are entitled to direct indemnity out of the FMIF for various amounts totalling \$44,158, and that the clear accounts rule operates to suspend LMIM's claimed right to payment from the assets of the FMIF until the resolution of the claim made in the proceeding 11560/16 (the LMIM Claim). The Court also ordered to the effect that 90% of FTI's costs of the Indemnity Application be paid out of the assets of the FMIF on the indemnity basis, to be assessed if not agreed.

It is anticipated that there are likely to be further claims by Mr Park for indemnity for expenses from property of the FMIF.

LMIM Claim

A statement of claim filed in November 2016 to preserve claims in relation to certain transactions and avoid possible expiry of statutory limitation periods has been amended and has now been served on LMIM. The claims are for various alleged breaches of trust in relation to certain transactions including pre-paid management fees and loan management fees paid to LMIM or its service entity LM Administration Pty Ltd. On 25 July 2018, the Court granted leave to proceed with this claim and ordered that the claim be stayed until further order.

Claim against Feeder Funds (Class B unitholders)

The statement of claim which was filed against the Feeder Funds in December 2016 to preserve certain claims has now been amended and has now been formally served on the parties representing the Feeder Funds. The Feeder Funds are the LM Currency Protected Australian Income Fund (CPAIF), the LM Institutional Currency Protected Australian Income Fund (ICPAIF) and the LM Wholesale First Mortgage Income Fund (WMIF). The claim concerns approximately \$55 million of redemptions paid to the Feeder Funds when the FMIF had suspended redemptions to other investors (apart from genuine approved hardship cases) and approximately \$19.5M of income distributions made to the Feeder Funds when income distributions to other investors were suspended (and the reinvestment of these distributions). The relief sought in the claim includes declarations to withhold from distributions or payments otherwise payable from the FMIF to:

- CPAIF in the sum of \$40,583,109 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the statement of claim;
- ICPAIF in the sum of \$5,044,118.30 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the statement of claim;
- WMIF in the sum of \$9,432,090.76 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the WMIF would otherwise have been entitled as referred to in the statement of claim.

If the claim is successful, it will impact on the return to the Feeder Funds from the winding up of the FMIF and, in the case of the CPAIF and ICPAIF, it is expected that the claim will exhaust any estimated return (based on the estimated unit value as calculated herein) to those funds (such that they will not be entitled to any distribution from the FMIF). In the case of the WMIF, the claim will substantially reduce its entitlement to any distribution.

Mr Whyte made an application under Section 59 of the Trusts Act to seek directions in relation to how the differing interests of LMIM are to be represented in the proceedings and an application under Section 500 of the Corporations Act to seek leave to proceed against LMIM (the Applications). The hearing of the Applications, which was originally listed on 8 December 2017,

was adjourned to a date to be fixed on 7 December 2017. The Applications together with an application to have the matter listed on the Commercial List (Commercial List Application) were set down for hearing on 29 May 2018.

On 29 May 2018 the matter was heard before his Honour Justice Jackson who stood the matter down in order for the parties to liaise in relation to the final terms of an order providing for further directions. The further directions included referring the matter to mediation. Following the provision of an agreed order to his Honour Justice Jackson, the parties were asked by the Court to reappear before his Honour on 13 June 2018.

On 13 June 2018 orders were made granting the orders sought in the Applications and the Commercial List Application including that Mr Whyte represent the interests of the LM First Mortgage Income Fund in the proceedings and that the ICPAIF and the CPAIF be represented by Mr Said Jahani of Grant Thornton. The interests of LMIM are to be represented by Mr John Park of FTI Consulting. Further, it was ordered that mediation between the parties take place prior to 28 September 2018.

Following discussions between the parties, it was determined that the parties did not have mutual availability prior to 28 September 2018 to attend mediation. Accordingly, amended orders were made by his Honour Justice Jackson on 4 September 2018 providing for a two day mediation to take place on 5 and 6 November 2018.

MinterEllison

17 October 2018

BY EMAIL ssharry@claytonutz.com

Mr Scott Sharry
Partner
Clayton Utz
Level 28, Riparian Plaza
71 Eagle Street
BRISBANE QLD 4000

Dear Mr Sharry

LM Investment Management Limited (in Liquidation)(Receivers & Managers Appointed)("LMIM") – KordaMentha Pty Ltd as Trustees of the LM Managed Performance Fund – Supreme Court of Queensland Proceeding No. 8032/14 and Supreme Court of Queensland Proceeding No. 8034/14 (Proceedings)

We refer to your letter dated 3 October 2018.

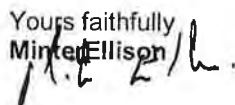
We confirm that proceedings BS8032/14 (Barly Wood) and BS8034/14 (Lifestyle) have been discontinued. Proceeding BS12716/15 (AIIIS/Alto) has also been discontinued.

On 2 October 2018, our client lodged the following proofs of debt in the liquidation of LMIM:

1.	AIIIS and Alto	\$3,905,721.81
2.	Barly Wood	\$5,128,071.34
3.	Lifestyle	\$18,982,171.51
4.	Bellpac	\$4,153,731.32
5.	Greystanes	\$10,706,853.84
6.	Kingopen	\$19,948,253.18
7.	LM Capalaba	\$1,281,024
8.	Lot 111	\$2,320,118.62
9.	Madison Estate	\$254,676,177.58
10.	Peter Drake	\$17,307,395.78
11.	Pre-paid Management Fees	\$16,518,568.19

These proofs do not assert any claim against LMIM as trustee of the First Mortgage Income Fund.

Our client is not obliged to provide your clients with a "release", and it will not be providing one.

Yours faithfully
MinterEllison


Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB 407735740

enclosure

cc Mr David Schwarz, Tucker & Cowen

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ME_153914653_1

7 December 2018

Our Ref: AJT:JTW:20180543

Your Ref: Mr Schwarz

Mr David Schwarz
Tucker & Cowen
GPO Box 345
BRISBANE 4001

By Email: dschwarz@tuckercowen.com.au

Dear Colleagues

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)
("LMIM")

Application for directions as to the future conduct of the winding up of LMIM and the LM Funds
Supreme Court of Queensland Proceeding number 3508 of 2015

We refer to your letters of 4 and 5 December 2018

Your correspondence raises several issues in respect of the "proof of debt process," some of those issues being ones we sought clarification in respect of in our 29 November 2018 correspondence. We respond to each of those issues, and where appropriate seek further clarification from you, as follows:

1. Our client is conscious of the need for the proof of debt process (both pursuant to the 17 December 2015 orders and otherwise) to be completed in a timely manner. This is for both the benefit of the members of the FMIF and the members of the other LM Funds.
2. KordaMentha Pty Ltd as trustee of MPF is not pressing an indemnity claim against the FMIF. The proofs of debt lodged by the trustee of MPF are in respect of LMIM.
3. Requests for information have been made by our client in respect of the proofs of debt that have been received. Mr Park's affidavit of 12 November 2018 deposes to those requests. The requests for information have been made in accordance with the regulation 5.6.53(3) of the *Corporations Regulations 2001* ("**the Regulations**").
4. Our client has not made requests for further information from the MPF trustees, having currently only requested information where there may be a claim against the scheme property of the FMIF. As previously indicated LMIM is in its own right without funds and our client is not seeking to adjudicate in respect of claims made against LMIM where there is no prospect of a dividend being paid to creditors.

5. In respect of proofs of debt where an adjudication will be carried out, our client expects all of those adjudications to be completed by 11 January 2019 and to be in a position to notify your client of Creditor Indemnity Claims in accordance with the 17 December 2015 Orders by 25 January 2019.
6. Your client has no basis to seek directions at the 10 December 2018 hearing in respect of the proof of debt process, that process being carried out in accordance with the Regulations and within the times stipulated by your client.
7. In our 29 November 2018 letter we sought a response from your client regarding our client proceeding to date on the basis that all of their work in assessing proofs of debt which have been lodged are in connection with the FMIF because the process is, in effect, directed to whether a claim is made against the FMIF. You have not provided the response, instead refusing to commit himself to a fixed position regarding the payment of particular amounts from the FMIF. It is crucial that your client commitment themselves to a position in respect of this issue so our client has transparency in respect of the work they are carrying out in respect of the proof of debt process. Given the 17 December 2015 Orders it is crucial there is an agreed position in respect of the proof of debt process rather than the issue being left to when the work is done and an application is made.
8. In respect of legal advice relevant to a particular fund, is your preliminary view that if a proof of debt has a connection to a particular Fund it must be an expense in respect of that fund? Are you asserting that there is in effect a "Category 1 Expense" in respect of the proofs of debt?
9. Please elaborate on what you mean when you refer to "general costs." Are these "Category 2 Expenses" which are in respect of all of the LM Funds, whether funded or unfunded? Are you identifying "corporate expenses" in respect of the proof of debt process as "general costs" and if so exactly which "corporate expenses" do you include within general costs. It is crucial that you provide clarification on these issues to avoid further legal costs being incurred as a result of a subsequent dispute in respect of "general costs."
10. In respect of a *pari pasu* apportionment including the Feeder Funds, please tell us the exact basis on which that apportionment will take place. Is there a temporal operation in respect of that apportionment and if so from exactly when?
11. It is only when we have the answers sought in this letter and in our 29 November 2018 letter that we can tell you whether there has been a change in the "general" proof of debt process estimate.

Given the issues identified and the importance of these issues to completing the proof of debt process, we request a response to this letter prior to the 10 December 2018 hearing.

Yours faithfully



Julian Walsh
Special Counsel
Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au
20180543/2565859

Tucker&CowenSolicitors.

TCS Solicitors Pty. Ltd. / ACN 610 321 509

Level 15, 15 Adelaide St. Brisbane. Qld. 4000 / GPO Box 345. Brisbane. Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz / Mr Nase

19 December 2018

Your reference: Mr Tiplady / Mr Walsh

Mr Ashley Tiplady
Russells Lawyers
Brisbane Qld 4000

Email: atiplady@russellslaw.com.au
jwalsh@russellslaw.com.au

Principals.
Richard Cowen.
David Schwarz.
Justin Marschke.
Daniel Davey.

Consultant.
David Tucker.

Special Counsel.
Geoff Hancock.
Alex Nase.
Brent Weston.
Marcelle Webster.

Associates.
Emily Anderson.
James Morgan.
Scott Hornsey.
Paul Armit.
Wesley Hill.

Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("*LMIM*");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("*FMIF*") v David Whyte
Supreme Court of Queensland Proceeding No. 3508/2015

We refer to your letter dated 7 December 2018.

We note your letter confirms, in paragraph number 2, that the proofs of debt lodged by KordaMentha as trustee of the LM Managed Performance Fund ("*MPF Trustee*") are in respect of LMIM, that the MPF is not pressing an indemnity claim against the FMIF, and that your client has not made any requests for information from the MPF Trustee, having only requested information where there may be a claim against scheme property of the FMIF .

We also note that your Counsel informed His Honour at the hearing of the application on 10 December 2018 that there are only two proofs of debt for about \$440,000 in respect of which there are potential claims for indemnity from the FMIF and a further nine proofs in respect of which further information has been requested on the basis that they might relate to the FMIF (see pages 24 and 31 of transcript). Our client understands that none of these potential indemnity claims are claims for indemnity with respect to the debts or claims the subject of the proofs of debt lodged by the MPF Trustee.

On the basis of the statements and assurances given in your letter and by your Counsel to His Honour, our client will be proceeding on the basis that no claim for indemnity from the FMIF will be made, by either the MPF Trustee or LMIM, with respect to the debts or claims the subject of the proofs of debt lodged by the MPF Trustee. If that is not correct, please let us know promptly.

As you know, our client intends to make application early next year, for authority of the Court to make an interim distribution to members, as contemplated by the Orders made on 17 December 2015. Please let us know as soon as possible, if your client does still intend to leave open the possibility of making any Creditor Indemnity Claim in connection with any of the debts or claims the subject of the proofs of debt lodged by the MPF Trustee.

In the absence of a response by 25 January 2019, our client will assume that your client has decided that no such Creditor Indemnity Claim is available.

SEASON'S GREETINGS

This office will be closed from 5.00pm on Friday, 21 December 2018 and will re-open on Wednesday, 2 January 2019.

Please do not hesitate to contact us if you have any questions.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

Individual liability limited by a scheme approved under Professional Standards Legislation.

20 December 2018
Our Ref: RCL_897411

BDO
Level 10, 12 Creek Street
BRISBANE QLD 4000

Attention: **Mr David Whyte**

By Email: David.Whyte@bdo.com.au

Dear Mr Whyte

**RE: LM Investment Management Limited (In Liquidation) (LMIM) ACN 055 691 426
Proof of Debt Adjudication**

I refer to previous correspondence concerning the proof of debt process being undertaken by myself as Liquidator to identify claims against the LM First Mortgage Income Fund ("FMIF").

The following claims against FMIF have been received and admitted:

Creditor	Claim Amount (\$)	Amount Admitted (\$)
Ernst and Young	158,896.51	158,896.51
Norton Rose Fulbright Australia	315,601.21	315,601.21
Total	474,497.72	474,497.72

Proofs of debt in support of the above are ***attached**.

Should you have any further queries please contact Renee Lobb of this office on (07) 3225 4976 or Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting



John Park
Liquidator

Proof of Debt Adjudication Form

8974 - LM Investment Management Limited (In Liquidation)

Claim Reference: 640316 **Creditor Class:** Unsecured Creditors

Name of Creditor: **ERNST AND YOUNG**
Level 51, One One One , , 111 Eagle Street
BRISBANE 4000

Creditor Reference:

Claim Details:

Proof of Debt Date: 30/04/2013

Proof of Debt Total: 158,896.51

Amount Withdrawn: 0.00

Claim Breakdown:	RATA	Advised	Claimed	Admitted	Rejected	Variation
Unsecured: Fund Creditors	10,539.17	0.00	158,896.51	158,896.51	0.00	148,357.34
	10,539.17	0.00	158,896.51	158,896.51	0.00	148,357.34

Reasons for Variation:

Other:

Supporting Documentation: Creditor Ledger
 Invoices
 Contracts
 Other

Proof of Debt Executed:

Correctly Witnessed:

Correctly Completed

Recommendation: Admit for: 158,896.51
 Reject for: _____
 Hold Over
 More Information

Signatures:

Preparer. _____ Dated _____

Manager. _____ Dated _____

Appointee. _____ Dated _____

Corporations Act 2001 (Cth)

LM Administration Pty Ltd (Administrators Appointed)
ACN 055 691 426

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To: The Administrators of LM Administration Pty Ltd

1. This is to state that the company was on 19 March 2013 and still is, justly and truly indebted:-

TO: ERNST & YOUNG
(name of creditor)
OF: 680 GEORGE STREET SYDNEY NSW 2000
(address of creditor)
FOR: 158,896.57 ONE HUNDRED & FIFTY EIGHT THOUSAND, EIGHT HUNDRED
(amount owed to creditor) AND NINETY-SIX DOLLARS
AND FIFTY-ONE cents.

Particulars of the debt are:-

<u>Date</u> (insert date when debt arose)	<u>Consideration</u> (state how the debt arose & <u>attach supporting invoices & statements of account</u>)	<u>Amount (\$)</u>	<u>Remarks</u> (include details of voucher substantiating payment)
--	---	--------------------	---

PROFESSIONAL SERVICES - SEE ATTACHED

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: (insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

<u>Date</u>	<u>Drawer</u>	<u>Acceptor</u>	<u>Amount (\$...c)</u>	<u>Due Date</u>
-------------	---------------	-----------------	------------------------	-----------------

*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Dated this 30th day of APRIL 2013

Signature [Signature]

Name HELEN GEORGIENSKI

Address 680 GEORGE STREET

SYDNEY NSW 2000

*Delete if not applicable.

Our Ref: EBZ_8973pod.doc



ABN 75 288 172 749
Tax Invoice



Ernst & Young
111 Eagle Street
Brisbane QLD 4000 Australia
GPO Box 7878 Brisbane QLD 4001

Tel: +61 7 3011 3333
Fax: +61 7 3011 3100
www.ey.com/au

LM Investment Management Limited
Attention: Francene Mulder
PO Box 485
SURFERS PARADISE QLD 4217

8 April 2013
Tax Invoice No. AU00100327917
Recipient ABN 68 077 208 461

No receipt will be issued unless requested

Memorandum of Fees

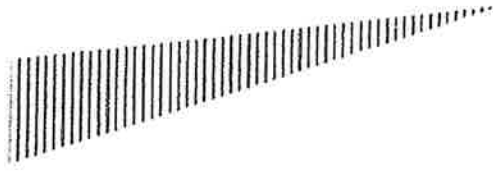
Billing with respect to 31 December 2012 Half Year Review of LM First Mortgage Income Fund for work performed up to and including 18 March 2013.	37,079.00
Out of pocket expenses.	45.00
Engagement administration charge at 3%	1,112.37
Total	38,236.37
<i>GST applied 38,236.37 at 10.00%</i>	<i>3,823.64</i>
Total amount payable	\$42,060.01

With Compliments

Terms: payment on this notice within 14 days

Our Ref: 60459407/15771813/AU011001420

Ernst & Young ABN 75 288 172 749
Liability limited by a scheme approved under Professional Standards Legislation



LM Investment Management Limited
Attention: Francene Mulder
 PO Box 485
 SURFERS PARADISE QLD 4217

8 April 2013
 Tax Invoice No. AU00100327917
 Debtor No. 60459407

Fee for services rendered	\$42,060.01
Amount paid	\$ _____

Payment options:

... by Direct Deposit, Bank Transfer or Domestic Internet Transfer please remit to:

Westpac, 341 George St, Sydney NSW 2000
 BSB 032000, Account 404335
 For international payments - Swift Code: WPACAU2S
 quoting references AU00100327917 and LM Investment Management Limited

Please complete Amount being paid and fax to: Accounts Receivable +61 2 9248-5451

Or e-mail all payment details to: Accounts.Receivable@au.ey.com

... by Mail please make cheque payable to "Ernst & Young", attach to this page and mail to:

Ernst & Young
 GPO Box 2646
 SYDNEY NSW 2001

If paying multiple invoices please attach full details



ABN 75 288 172 749
Tax Invoice



Ernst & Young
111 Eagle Street
Brisbane QLD 4000 Australia
GPO Box 7878 Brisbane QLD 4001

Tel: +61 7 3011 3333
Fax: +61 7 3011 3100
www.ey.com/au

LM Investment Management Limited
Attention: Francene Mulder
PO Box 485
SURFERS PARADISE QLD 4217

15 March 2013
Tax Invoice No. AU00100324826
Recipient ABN 68 077 208 461

No receipt will be issued unless requested

Memorandum of Fees

Progress bill for 31 December 2012 Half Year Review of LM First Mortgage Income Fund.	100,000.00
Out of pocket expenses	3,215.00
Engagement administration charge at 3%	3,000.00
Total	<u>106,215.00</u>
<i>GST applied 106,215.00 at 10.00%</i>	10,621.50
Total amount payable	<u><u>\$116,836.50</u></u>

With Compliments

Terms: payment on this notice within 14 days

Our Ref: 60459407/15771813/AU011001420

Ernst & Young ABN 75 288 172 749
Liability limited by a scheme approved under Professional Standards Legislation



LM Investment Management Limited
 Attention: Francene Mulder
 PO Box 485
 SURFERS PARADISE QLD 4217

15 March 2013
 Tax Invoice No. AU00100324826
 Debtor No. 60459407

Fee for services rendered	\$116,836.50
Amount paid	\$ _____

Payment options:

... by Direct Deposit, Bank Transfer or Domestic Internet Transfer please remit to:

Westpac, 341 George St, Sydney NSW 2000
 BSB 032000, Account 404335
 For international payments - Swift Code: WPACAU2S
 quoting references AU00100324826 and LM Investment Management Limited

Please complete Amount being paid and fax to: Accounts Receivable +61 2 9248-5451

Or e-mail all payment details to: Accounts.Receivable@au.ey.com

... by Mail please make cheque payable to "Ernst & Young", attach to this page and mail to:

Ernst & Young
 GPO Box 2646
 SYDNEY NSW 2001

If paying multiple invoices please attach full details

Proof of Debt Adjudication Form

8974 - LM Investment Management Limited (In Liquidation)

Claim Reference: 640534 **Creditor Class:** Unsecured Creditors

Name of Creditor: **NORTON ROSE FULBRIGHT AUSTRALIA**
GPO Box 407
Brisbane QLD 4001

Creditor Reference:

Claim Details:

Proof of Debt Date: 27/03/2013

Proof of Debt Total: 409,668.85

Amount Withdrawn: 0.00

Claim Breakdown:	RATA	Advised	Claimed	Admitted	Rejected	Variation
Unsecured: Fund Creditors	46,757.00	0.00	409,668.85	409,668.85	0.00	362,911.85
	46,757.00	0.00	409,668.85	409,668.85	0.00	362,911.85

Reasons for Variation:

Other:Supporting Documentation: Creditor Ledger
 Invoices
 Contracts
 OtherProof of Debt Executed: Correctly Witnessed: Correctly Completed

Recommendation: Admit for: 409,668.85
 Reject for: _____
 Hold Over
 More Information

Signatures:

Preparer. _____ Dated _____

Manager. _____ Dated _____

Appointee. _____ Dated _____

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of LM Investment Management Limited (in Liquidation) ACN 077 208 461 (the "Company")

This is to state that the company was on 19 March 2013, and still is, justly and truly indebted to: NORTON ROSE FULBRIGHT ABN 32 720 888 049

full name, ABN and address of the creditor

and, if applicable, the creditor's partners (if prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor)
for \$315,601.21 dollars and _____ cents

Particulars of the debt are:

Date	Consideration <small>(state how the debt arose)</small>	Amount	Remarks <small>(include details of voucher substantiating payment)</small>
<u>NOVEMBER 2012 TO FEBRUARY 2013</u>	<u>LEGAL SERVICES</u>	<u>\$315,601.21</u>	<u>SEE ATTACHED LETTER DATED 30 SEPTEMBER 2014</u>
\$			

To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: N/A

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form)

Date	Drawer	Acceptor	Amount	Due Date
<u>N/A</u>				
\$				

Signed by (select option):

- I am the creditor personally.
- I am ^{A PARTNER OF} employed by the creditor and authorised ^{PS} in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: 

Dated: 26/9/2018

Name: Peter Anthony Schmidt

Occupation: PARTNER NORTON ROSE FULBRIGHT

Address: c/o LEVEL 21, 111 EAGLE STREET, BRISBANE

RECEIVE REPORTS BY EMAIL

Do you wish to receive all future reports and correspondence from our office via email?

Yes No

Email:.....

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

TAX INVOICE

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

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
--	------------

Total

AU \$1,208.67

Other Charges**Document reproduction**

\$39.90

Total

AU \$39.90

30 September 2014

Norton Rose Fulbright Australia

ABN 32 720 868 049

Level 21, ONE ONE ONE

111 Eagle Street

BRISBANE QLD 4000

AUSTRALIA

Tel +61 7 3414 2888

Fax +61 7 3414 2999

GPO Box 407, Brisbane QLD 4001

DX 114 Brisbane

nortonrosefulbright.com

Direct line

+61 7 3414 2930

Email

peter.schmidt@nortonrosefulbright.com

Your reference:

Our reference:

2796353

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

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 LMFMIIF but mainly about;
- (1) The majority of discussions and negotiations with ASIC was in respect of the "forward looking" management of the LMFMIIF. 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 LMFMIIF 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 LMFMIIF 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

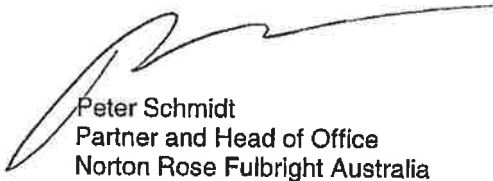
- 3.1 As shown by the letter of engagement, the engagement in respect of this matter was on behalf of LM as responsible entity of the LMFMIIF and its 2 feeder funds, LMWFMIF and LMCPAIF, because at the time, the view was taken that the interests of members was the same, at least for the work which we 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 LMFMIIF for Trilogy to be appointed as responsible entity of the LMFMIIF (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 LMFMIIF 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

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

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

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.

22

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 emai 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 WFMIIF. 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 WFMIIF 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
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Travel expenses

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

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

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

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.	6.00
04-Dec-2012	Confer with J Moutsopoulos of the same. Telephone F Mulder and C Hodge regarding review of papers.	
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 WFMIIF 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#: C6F2EEEE3FE65848F5BA3; 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

Other Charges

Document reproduction \$483.75

Total

AU \$483.75

COPY

NORTON ROSE

TAX INVOICE

Norton Rose Australia
 ABN 32 720 866 049
 Level 21
 ONE ONE ONE
 111 Eagle Street
 BRISBANE QLD 4000
 AUSTRALIA

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

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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 %
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	

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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.

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 Loggan 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
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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 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	

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- (ii) the setting aside of a costs agreement under section 328 of the Act.

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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 WFMI 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

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

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

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 %
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	

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.

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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GPO Box 407, Brisbane Qld 4001
DX 114 Brisbane
www.nortonrose.com

Direct line
+61 7 3414 2930

Email
peter.schmidt@nortonrose.com

Our reference
2789191

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 Denys 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:

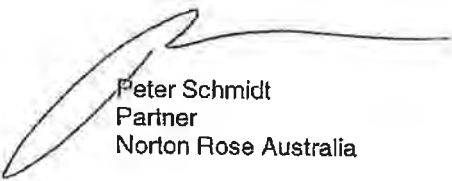
- (1) signing and returning to us the enclosed copy of this letter; or
- (2) continuing to instruct us (in writing or orally) to perform the work specified in this letter.

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

Director
Title

Francene Mulder
Name

LM Investment Management Limited
Company

Date: 19/10/ 2012

Matter number: 2789191
[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

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| <p>1 Definitions</p> <p>1.1 In these Standard Terms the following expressions have the following meanings:</p> <p>(1) claim means any such claim as is referred to in paragraph 17 of this Appendix;</p> <p>(2) constituent part of Norton Rose Group means any partnership, limited liability partnership, body corporate or other entity comprised within Norton Rose Group;</p> <p>(3) Contracting Party means Norton Rose Australia;</p> <p>(4) LOE means the Letter of Engagement or other form of instruction confirmation we send you relating to a matter;</p> <p>(5) LPA has the meaning in paragraph 2.2;</p> <p>(6) Norton Rose Australia means the Australian partnership of that name with Australian Business Number 32 720 868 049 (generally called Norton Rose);</p> <p>(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";</p> <p>(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;</p> <p>(9) we, our and us refer to the Contracting Party;</p> <p>(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</p> <p>(11) the expressions fixed cost provision and regulated client in the definitions schedule in paragraph 26 have the meanings set against them respectively.</p> <p>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.</p> <p>1.3 Details of any constituent part of Norton Rose Group may be obtained on request.</p> | <p>2 Introduction</p> <p>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.</p> <p>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:</p> <p>(1) <i>Legal Profession Act 2004</i> (New South Wales) (NSW Act);</p> <p>(2) <i>Legal Profession Act 2004</i> (Victoria) (VIC Act);</p> <p>(3) <i>Legal Profession Act 2006</i> (Australian Capital Territory) (ACT Act);</p> <p>(4) <i>Legal Profession Act 2007</i> (Queensland) (QLD Act); or</p> <p>(5) <i>Legal Profession Act 2008</i> (Western Australia) (WA Act).</p> <p>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:</p> <p>(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</p> <p>(2) to which the VIC Act applies, as soon as is practicable after we become aware of that change.</p> <p>3 Professional fees comprising costs, service charges and disbursements</p> <p>3.1 We will charge you fees comprising our costs, service charges for non-professional services provided by our related service entity, and disbursements.</p> <p>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.</p> <p>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 AS250 and</p> |
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- AS600 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.

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.

- 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

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 AS\$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 AS\$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 compelling 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 AS750 (New South Wales and Victoria) or AS1,500 (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
Level 4
9 Beach Road
SURFERS PARADISE QLD 4217

 **NORTON ROSE**

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peter.schmidt@nortonrose.com

Our reference
2787923

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.

APAC-#16015489-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 Denys 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

- 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 be 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

<p>1 Definitions</p> <p>1.1 In these Standard Terms the following expressions have the following meanings:</p> <p>(1) claim means any such claim as is referred to in paragraph 17 of this Appendix;</p> <p>(2) constituent part of Norton Rose Group means any partnership, limited liability partnership, body corporate or other entity comprised within Norton Rose Group;</p> <p>(3) Contracting Party means Norton Rose Australia;</p> <p>(4) LOE means the Letter of Engagement or other form of instruction confirmation we send you relating to a matter;</p> <p>(5) LPA has the meaning in paragraph 2.2;</p> <p>(6) Norton Rose Australia means the Australian partnership of that name with Australian Business Number 32 720 868 049 (generally called Norton Rose);</p> <p>(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";</p> <p>(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;</p> <p>(9) we, our and us refer to the Contracting Party;</p> <p>(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</p> <p>(11) the expressions fixed cost provision and regulated client in the definitions schedule in paragraph 26 have the meanings set against them respectively.</p> <p>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.</p> <p>1.3 Details of any constituent part of Norton Rose Group may be obtained on request.</p>	<p>2 Introduction</p> <p>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.</p> <p>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:</p> <p>(1) <i>Legal Profession Act 2004</i> (New South Wales) (NSW Act);</p> <p>(2) <i>Legal Profession Act 2004</i> (Victoria) (VIC Act);</p> <p>(3) <i>Legal Profession Act 2006</i> (Australian Capital Territory) (ACT Act);</p> <p>(4) <i>Legal Profession Act 2007</i> (Queensland) (QLD Act); or</p> <p>(5) <i>Legal Profession Act 2008</i> (Western Australia) (WA Act).</p> <p>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:</p> <p>(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</p> <p>(2) to which the VIC Act applies, as soon as is practicable after we become aware of that change.</p> <p>3 Professional fees comprising costs, service charges and disbursements</p> <p>3.1 We will charge you fees comprising our costs, service charges for non-professional services provided by our related service entity, and disbursements.</p> <p>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.</p> <p>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</p>
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- 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 shell 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

From: David Whyte
Sent: Wednesday, 02 January 2019 2:06 PM
To: 'Trenfield, Kelly' <Kelly.Trenfield@fticonsulting.com>; Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Ainsley Watt <Ainsley.Watt@bdo.com.au>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

Kelly

Thank you for your email below, of 31 December 2018.

My email to you on 21 December 2018 pointed out that the letter from John Park of 20 December 2018 did not expressly state that the liquidator is making a Creditor Indemnity Claim, and asked for clarification as to whether a claim for indemnity was in fact being made. My later email on 28 December also asked for clarification.

Your response does not specifically advise the liquidator is seeking a Creditor Indemnity Claim under the terms of the 17 December 2015 Court Order and indeed you state the two claims have a "purported claim for indemnity from the assets of the FMIF". There is no analysis or explanation in your correspondence that details why the liquidator considers the two proofs should be the subject of a creditor indemnity claim; in fact, there is not any statement that the liquidator does consider that LMIM has a claim for indemnity from the property of the FMIF in respect of the claims made in those proofs of debt.

The 17 December 2015 Order directed the liquidator not only to ascertain the debts of LMIM, but also to identify whether LMIM has a claim for indemnity from the FMIF in respect of any, or any part of any, debt payable by LMIM as admitted by the liquidator. It is a claim for indemnity as identified by the liquidator which the liquidator is required to notify to me and which is required to be done within 14 days of the admittance of a proof of debt i.e. by tomorrow. The letter dated 20 December does not say that any claim from the FMIF in respect of any such debt has been identified by the liquidator. Your email simply says that the proofs assert an indemnity - there is nothing stating that you or the liquidator have considered whether LMIM actually does have a claim for indemnity.

However, rather than continue to try to obtain clarification on that issue, and given the timeframes prescribed by the Order made on 17 December 2015 if the letter of 20 December 2018 was intended to notify me of indemnity claims, on the assumption that the liquidator intends (at some point, if not now) to make creditor indemnity claims in respect of those proofs of debt, I now seek further information on the claims in accordance with paragraph 8(a) of the 17 December 2015 order. The further information I require is, as follows:

1. EY Proof of debt

I note from the invoices provided that the work relates to the auditors review of the December 2012 accounts which I understand was never completed. I also note that substantial claims are advanced by LMIM as RE of the FMIF against EY in the proceedings against the auditors for amounts of up to \$200M, which LMIM may be entitled to set-off against the claims made by EY.

Please provide the following additional information and documents:

- Confirmation as to whether or not the review was completed;
- A copy of the engagement letter(s) relating to the review and confirming the amount to be paid to EY for the audit, and any standard terms and conditions or other documents setting out the terms and conditions upon which EY were engaged to audit the December 2012 accounts;
- Supporting documentation detailing the time spent/work performed by EY with respect to the audit of the December 2012 accounts;
- (if not set out in the supporting documentation requested above) the basis of payment for the review and whether or not interim invoices were permitted and if payment was dependent on completion of the review;
- Your explanation as to why the liquidator considers (if he does) that the claim should be allowed as a creditor indemnity claim.

2. Norton Rose Fulbright Proof of debt

The proof of debt adjudication form (which refers to a proof of debt dated 27 March 2013, rather than the proof dated 28 September 2018) says the debt should be admitted for \$409,668.85. However the proof of debt and supporting documentation claims an amount of \$315,601.21. That is the amount stated in your letter and I will proceed on the assumed basis of a claim of \$315,601.21 unless you advise otherwise, although I would ask you to confirm that. The invoices supporting the proof show that it relates to two files in respect of ASIC investigations and Trilogy.

From a review of the timesheet narrations it appears that the ASIC investigations centred around changes made in the constitution by LMIM without the passing of a special resolution by members, redemptions made to the feeder funds to the detriment of other members (which are the subject of the feeder fund proceedings brought by me), valuation of assets (which were not performed adequately as set out in my proceedings against the auditors and LMIM) and related party transactions (proceedings have been brought in respect of some of these transactions).

Can you please explain why the liquidator considers (if he does) that the RE should be entitled to an indemnity against the fund's assets? Given that the letter from Norton Rose Fulbright dated 30 September 2014 says that some of the work related to the feeder funds, and refers to a possible need to split some invoices between a number of funds, please explain whether (and if so, why) you consider the full amount of the proof should be accepted as a Creditor Indemnity Claim against the FMIF. If upon further consideration of these comments, you consider the claim should be reduced, please advise accordingly.

All rights are reserved. For the avoidance of any doubt, this includes my right to raise, on behalf of the FMIF, the clear accounts rule and to rely upon the claims made in the Clear Accounts Proceeding in connection with the clear accounts rule.

Please provide your response within 14 days in accordance with clause 7(b) of the 17 December 2015 order.

Regards

David

From: Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Sent: Monday, 31 December 2018 7:51 PM
To: David Whyte <David.Whyte@bdo.com.au>; Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Ainsley Watt <Ainsley.Watt@bdo.com.au>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

David

To clarify, we provided notification of the admission of these two (2) claims given their connection to and purported claim for indemnity from the assets of the of FMIF. I confirm these were admitted and notified on 20 December 2018. Further, I confirm all claims received as at the time of notification had been accessed and these were the only claims to which a right of indemnity was sought.

I note subsequent to this correspondence additional claims have been received from Ernst & Young via their legal representatives. I confirm given the timing of receipt of these claims coincided with the closure of our office for the festive season (please note our office does not re-open until 2 January 2019) accordingly, these claim have not been reviewed to determine if the claims are able to be admitted or otherwise or whether there is any indemnity claimed against the assets of FMIF.

Should you wish to discuss please do not hesitate to contact me on my return to the office on 2 January 2019.

Regards

Kelly

Kelly Trenfield

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kelly.trenfield@fticonsulting.com

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From: David Whyte <David.Whyte@bdo.com.au>
Sent: Friday, December 28, 2018 3:40 PM
To: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>; Park, John <John.Park@fticonsulting.com>; Ainsley Watt <Ainsley.Watt@bdo.com.au>
Subject: Re: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

I refer to the below correspondence seeking clarification as to whether or not you intend seeking an indemnity from the fund's assets in respect of two admitted proofs of debt and bearing in mind you have 14 days to do so from the date of admittance.

It is unclear from your correspondence of the date the proofs were admitted however the latest date to advise me of a creditor indemnity claim under the court order dated 17 December 2015 would be 14 days from the date of your letter being 3 January 2019.

Can you please therefore clarify your position as soon as possible and respond to the other queries in the below email.

Regards

David

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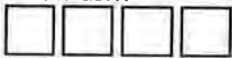
 Before you print think about the environment

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Source: *Australian Financial Review (AFR) Top 100 Accounting Firms report.*

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On 21 Dec 2018, at 1:13 pm, David Whyte <David.Whyte@bdo.com.au> wrote:

Thanks for providing a copy of two proofs of debt admitted by the liquidator.

I note that you do not state whether or not the liquidator is making a claim for indemnity against the LM First Mortgage

Income Fund's assets. Your letter simply says that the proofs have been admitted.

In accordance with the court order dated 17 December 2015, the liquidator is required to notify me of any Creditor Indemnity Claim within 14 days after any debt or claim is admitted by the liquidator in the winding up of LMIM.

Could you please clarify the position in relation to the proofs of debt and, if the proofs are intended to be the subject of a Creditor Indemnity Claim under paragraph 6 of the order, please confirm that and make that claim to me in writing so that I know the timeframes that the order requires be adhered to.

Given the substantial claims advanced by me in the proceedings against the auditors, it would not seem appropriate for there to be an indemnity for the EY invoices. Could you please clarify your position in that respect and confirm whether there is a claim for indemnity for those invoices.

Please also confirm if you have now ruled on all proofs of debt that relate to the FMIF, and if not when that will be completed as it would seem more efficient to rule on all and subject one indemnity claim rather than to do it in a piecemeal way.

Regards

David

On 20 Dec 2018, at 2:39 pm, Lobb, Renee <Renee.Lobb@fticonsulting.com> wrote:

Dear David,

Please refer to the attached correspondence.

Kind regards,

Renee Lobb

Senior Director, Corporate Finance & Restructuring

FTI Consulting

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16 January 2019

Our Ref: RCL_897411

BDO
Level 10, 12 Creek Street
BRISBANE QLD 4000

Attention: Mr David Whyte

By Email: David.Whyte@bdo.com.au

Dear Mr Whyte

**RE: LM Investment Management Limited (In Liquidation) (LMIM) ACN 055 691 426
Proof of Debt Adjudication**

I refer to previous correspondence concerning the proof of debt process being undertaken by myself as Liquidator to identify claims against the LM First Mortgage Income Fund ("FMIF") and to your subsequent email dated 2 January 2019 wherein you requested additional information on the below admitted proof of debts.

Creditor	Claim Amount (\$)	Amount Admitted (\$)
Ernst and Young	158,896.51	158,896.51
Norton Rose Fulbright Australia	315,601.21	315,601.21
Total	474,497.72	474,497.72

Ernst and Young Claim

On 3 January 2019, Ernst and Young ("EY") were requested to provide the following additional information by 14 January 2019:

- Confirmation as to whether the December 2012 review was completed in full by EY.
- Copies of the engagement letter/s and agreements which detail the amount to be paid to EY for the December 2012 review, along with all terms and conditions.
- If not covered by the above, documents to support the basis of payment and the ability for EY to issue interim invoices for the December 2012 review.
- Supporting documents for the invoices which show the time spent and work performed.

On 15 January 2019, the ***attached** revised proof of debt was received from King & Wood Mallesons of EY's behalf. The revised proof of debt contains the General Terms and Conditions (Statutory Audit). In item 23 of the General Terms and Conditions, it is stated, in the event of Termination, "you shall pay us for all work in progress, Services already performed, and expenses incurred." As you have not taken up the services of EY to complete the December 2012 review, it is apparent they are entitled under this clause alone for payment of their costs from the FMIF for work in progress irrespective of whether the review is complete.

Irrespective of the above, I consider the proof of debt should still be admitted on the following grounds:

- It is irrelevant whether the December 2012 review was completed. EY was engaged to complete the work and the work was not completed by the time LM Investment Management Limited ("LMIM") was placed into Administration on 19 March 2013.
- Prior year engagement agreements advise it is EY's "practice to render accounts for progress fees during the period of performing our work." I note we are yet to receive the engagement agreement from EY specific to the December 2012 review.
- The invoices are specific for work conducted by EY only in relation to the FMIF and as such, it is a cost in the winding up of FMIF, to be paid from the FMIF and not a claim against LMIM as responsible entity.

Norton Rose Fulbright Claim

From a review of the invoices which form part of the Norton Rose Fulbright ("NRF") proof of debt, it is clear to me the work conducted was for the benefit of FMIF.

It is not commercial to undertake your proposed line-by-line time entry review of work conducted by NRF to identify the likely small portion of their proof of debt which may relate to work for the Feeder or other funds. From my review of the documents, it is apparent that these works, though they reference the feeder funds, were conducted in connection with FMIF, such as time spent investigating the see-through voting rights of the feeder funds in connection with an FMIF investor meeting.

The NRF proof of debt is admitted on a commercial basis in consideration of the above.

Should you disagree with this position and request a line-by-line timesheet review in order to arrive at a fund allocation, I will welcome a discussion to revise the fee scope of this arrangement to accommodate this request.

Should you have any further queries please contact Renee Lobb of this office on (07) 3225 4976 or Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting

A handwritten signature in black ink, appearing to read 'John Park', with a large, stylized initial 'J'.

John Park
Liquidator

*Attach.

FORM 535
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidators of LM Investment Management Limited (In Liquidation) ("LMIM") in its capacity as responsible entity for the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ARSN 089 343 288 ("FMIF"):

1. This is to state that LMIM was on 19 March 2013, and still is, justly and truly indebted

to EY (also known as Ernst & Young) (A Firm) (Creditor)
(name of creditor)

of 111 Eagle Street, Brisbane, QLD, 4000
(address of creditor)

for \$158,896.51 plus interest and legal costs

The Creditor submits this proof for adjudication by the liquidators pursuant to the Orders of Jackson J made 17 December 2015 and reserves the right to amend or adjust any amounts set out in this proof.

Particulars of the debt are:

Date (date when the debt arose)	Consideration (state how debt arose and attach supporting documentation)	Amount (\$)	Remarks (include details of voucher substantiating payment)
December 2012	Engagement as auditor of the half-year financial statements of LMIM as RE of the FMIF for the period 1 July 2012 to 31 December 2012 (copy of EY's general terms and conditions for statutory audits attached).	\$158,896.51 plus interest and legal costs	Outstanding tax invoice no. AU00100327917 and AU00100324826 for work performed up to and including 18 March 2013 in respect of the half-year financial statements of LMIM as RE of the FMIF for the period 1 July 2012 to 31 December 2012 (copies attached), pursuant to clauses 19 and 23 of EY's general terms and conditions for statutory audits.

2. To my knowledge or belief the Creditor has not, nor has any person by the Creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following
(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount (\$c)	Due Date
N/A	N/A	N/A	N/A	N/A

*3A. I am employed by the Creditor and authorised in writing by the Creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

*3B. I am the Creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

* Items 3A & 3B - delete both if the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

Complete all sections

I have attached the following documents (tick as many as appropriate):

- | | | | |
|---|---|---|---|
| <input checked="" type="checkbox"/> Invoices | <input type="checkbox"/> Judgement from Court | <input type="checkbox"/> Letters of demand | <input type="checkbox"/> Orders from Company |
| <input type="checkbox"/> Monthly statements | <input type="checkbox"/> Statutory demand | <input type="checkbox"/> Credit application | <input type="checkbox"/> Guarantee from Company |
| <input type="checkbox"/> Creditors authority letter | <input checked="" type="checkbox"/> Other documents | | |

Dated 14 January 2019

Name Cameron Mew, King & Wood Mallesons

Signatory 

Phone (07) 3244 8148

Email address cameron.mew@au.kwm.com

Attachment General Terms and Conditions (Statutory Audit)

Our Relationship with You

1. We are a member of the global network of Ernst & Young firms ("EY Firms"), each of which is a separate legal entity.
2. We may subcontract portions of the Services to other EY Firms, who may deal with you directly. Nevertheless, we alone will be responsible to you for the information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement ("Report(s)"), the performance of the Services, and our other obligations under this Agreement.

Your Responsibilities

3. You shall be responsible for your personnel's compliance with your obligations under this Agreement.

Our Reports

4. You may not rely on any draft Report.

Limitations

5. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, any amount with respect to any loss of profit, data or goodwill, or any indirect or consequential costs, loss or damage in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.
6. (a) Unless prohibited by law, no term, condition or warranty is implied except as expressly provided in this Agreement.
(b) Our liability is limited by a scheme approved under professional standards legislation, except where we are a financial services licensee. A copy of the scheme can be obtained from us upon request.
7. If we are liable to you (or to any others for whom Services are provided) under this Agreement or otherwise relating to the Services, for loss or damage (including interest or costs) to which any other persons have also contributed, our liability to you shall be several, and not joint, with such others, and shall be limited to our fair share of that total loss or damage, which is agreed between us or ascribed to us by a court or tribunal of competent jurisdiction based on our contribution to the loss and damage relative to

the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment.

8. The limitation in Section 6 will not apply to losses or damages caused by our fraud.
9. You may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("EY Persons"). You shall make any claim or bring proceedings only against us. The limitations in Sections 6 through 7 and this Section 9 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.

Indemnity

10. To the fullest extent permitted by applicable law and professional regulations, you shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs and any goods and services tax payable by us on amounts paid by you under this Indemnity) (together "Loss") arising out of or relating to the Services or this Agreement, including any breach of this Agreement or any negligent, wrongful or willful act or omission by you. However, the indemnity does not apply to any Loss in respect of any matters which are finally determined to have resulted from Ernst & Young's negligent, wrongful or willful acts or omissions. On behalf of yourself and your affiliates, you release us, the other EY Firms and the EY Persons from all claims and causes of action (together, "Claims"), pending or threatened, that you or they may have arising out of the Services or this Agreement to the extent such Claims result from or arise out of any misrepresentation or fraudulent act or omission by you, your employees or agents on your behalf.

Confidentiality

11. We follow professional standards of confidentiality and will treat information related to you disclosed to us by you or on your behalf

("Client Information") as set forth in the IFAC Code of Ethics Section 140 and Section 140 of APES 110 Code of Ethics for Professional Accountants as issued by the Accounting Professional and Ethical Standards Board (APESB).

12. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations.
13. Unless prohibited by applicable law, we may disclose Client Information to other EY Firms and EY Persons to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, or for quality, risk management or financial accounting purposes.
14. You agree that, if a regulatory or governmental authority responsible for auditor oversight asks or orders us to produce information or documents in our files relating to your affairs, including our working papers or other work product, we may provide these materials to it. Except where prohibited by law, we will advise you of the request or order.
15. You shall cause all of your foreign subsidiaries and affiliates included in your consolidated financial statements to provide any authorization, to the fullest extent permissible under applicable law, to permit compliance with requests from regulatory or governmental authorities for production of documents or information in a foreign public accounting firm's, associated person's or our possession, custody and control that was obtained in the conduct of the Services by such firm or person.

Data Protection

16. We may collect, use, transfer, store or otherwise process (collectively, "Process") Client Information that can be linked to specific individuals ("Personal Data"). We may Process Personal Data in various jurisdictions in which we and the other EY Firms operate (which are listed at www.ey.com). We will Process the Personal Data in accordance with our Privacy Policy, applicable law and professional regulations, including (without limitation) the Privacy Act 1988 (Cth) and the National Privacy Principles under that Act. We will require any service provider that Processes Personal Data on our behalf to adhere to such requirements. A copy of our Privacy Policy Statement may be obtained upon request.
17. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the

Personal Data provided to us has been processed in accordance with applicable law.

Solicitation and hiring of EY personnel

18. Our auditor independence may be impaired if you solicit or hire certain EY personnel. This may delay the provision of the Services. You shall not, during the term of this Agreement and for 24 months following its termination, for any reason, without our prior written consent, solicit to employ or nominate for a position on your Board of Directors or a financial reporting oversight role, or hire or appoint to your Board of Directors or a financial reporting oversight role, any partner or any professional employee of EY or of any other EY Entity who is or has been involved directly or indirectly with the performance of the Services for the current or prior financial year. A person in a financial reporting oversight role exercises, or is in a position to exercise, influence over the financial statements and anyone who prepares the financial statements.

Fees and Expenses Generally

19. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the Engagement Letter. You shall pay our engagement administration charge of 3% of our fees which covers our costs, including courier charges, photocopying, postage, telephone calls, facsimiles and stationery. You shall also reimburse us for other reasonable expenses incurred in performing the Services.

Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other than taxes imposed on our income generally). In relation to GST specifically, if our supply to you is taxable you will pay additional consideration calculated as the prevailing GST rate multiplied by our GST exclusive fees.

You shall pay our invoices within 14 days of the billing date. We shall issue our invoices to you or as you may direct. If you direct us to issue an invoice to another party, you shall remain responsible for payment until our invoice is paid in full. Accounts may be paid by electronic funds transfer, internet banking or cheque. Credit card payments are not accepted.

20. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the

request, unless we are a party to the proceeding or the subject of the investigation.

Force Majeure

21. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

Term and Termination

22. This Agreement applies to all Services performed at any time (including before the date of this Agreement).
23. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 14 days following receipt of our invoice for these amounts.

Governing Law and Dispute Resolution

24. This Agreement, and any non-contractual obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of the state or territory of the Ernst & Young office shown on the Engagement Letter. We both agree and irrevocably submit to the exclusive jurisdiction of the Courts of that state or territory.
25. If there is a dispute relating to the Services or this Agreement, the parties must submit the dispute to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre (ACDC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provisions of this Section. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate unless the parties otherwise agree.

Miscellaneous

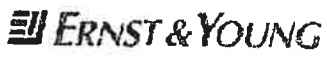
26. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
27. Both of us may execute this Agreement (and modifications to it) by electronic means. Both of

us must agree in writing to modify this Agreement.

28. You represent that the person signing this Agreement on your behalf is expressly authorized to execute it and to bind you and any of your affiliates or others for whom Services are performed to its terms.
29. We retain ownership in all of our working papers prepared in connection with the Services.
30. Neither of us may assign any of our rights, obligations or claims under this Agreement.
31. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect. Sections 5 and 10 do not apply to the extent prohibited by applicable law, including (without limitation) the Corporations Act 2001 (Cth) or the rules of the US Securities and Exchange Commission.
32. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Engagement Letter, (b) these General Terms and Conditions, and (c) other annexes to this Agreement.
33. We may use your name publically to identify you as a client, but we may refer to you in connection with the Services only if, in doing so we do not disclose any of your confidential information, or it is a matter of public knowledge that we are providing them (or have provided them).
34. We are committed to providing our clients with the highest quality services at Ernst & Young. However, should you be less than fully satisfied with the quality of our services or have a specific complaint please contact your engagement partner. If you do not wish to contact your engagement partner, or you are dissatisfied with the resolution of your complaint, please contact our Chief Compliance Officer on (02) 9248 5555 or at 680 George St, Sydney NSW 2000. We will respond to you about your complaint and our complaints handling process.



ABN 75 288 172 749
Tax Invoice



Ernst & Young
111 Eagle Street
Brisbane QLD 4000 Australia
GPO Box 7878 Brisbane QLD 4001

Tel: +61 7 3011 3333
Fax: +61 7 3011 3100
www.ey.com/au

LM Investment Management Limited
Attention: Francene Mulder
PO Box 485
SURFERS PARADISE QLD 4217

8 April 2013
Tax Invoice No. AU00100327917
Recipient ABN 68 077 208 461

No receipt will be issued unless requested

Memorandum of Fees

Billing with respect to 31 December 2012 Half Year Review of LM First Mortgage Income Fund for work performed up to and including 18 March 2013.	37,079.00
Out of pocket expenses.	45.00
Engagement administration charge at 3%	1,112.37
Total	38,236.37
<i>GST applied 38,236.37 at 10.00%</i>	<i>3,823.64</i>
Total amount payable	\$42,060.01

With Compliments

Terms: payment on this notice within 14 days

Our Ref: 60459407/15771813/AU011001420

Ernst & Young ABN 75 288 172 749
Liability limited by a scheme approved under Professional Standards Legislation



LM Investment Management Limited
 Attention: Francene Mulder
 PO Box 485
 SURFERS PARADISE QLD 4217

8 April 2013
 Tax invoice No. AU00100327917
 Debtor No. 60459407

Fee for services rendered	\$42,060.01
Amount paid	\$ _____

Payment options:

... by Direct Deposit, Bank Transfer or Domestic Internet Transfer please remit to:

Westpac, 341 George St, Sydney NSW 2000
 BSB 032000, Account 404335
 For international payments - Swift Code: WPACAU2S
 quoting references AU00100327917 and LM Investment Management Limited

Please complete Amount being paid and fax to: Accounts Receivable +61 2 9248-5451

Or e-mail all payment details to: Accounts.Receivable@au.ey.com

... by Mail please make cheque payable to "Ernst & Young", attach to this page and mail to:

Ernst & Young
 GPO Box 2646
 SYDNEY NSW 2001

If paying multiple invoices please attach full details



ABN 75 288 172 749
Tax Invoice

Ernst & Young
111 Eagle Street
Brisbane QLD 4000 Australia
GPO Box 7878 Brisbane QLD 4001

Tel: +61 7 3011 3333
Fax: +61 7 3011 3100
www.ey.com/au

LM Investment Management Limited
Attention: Francene Mulder
PO Box 485
SURFERS PARADISE QLD 4217

15 March 2013
Tax Invoice No. AU00100324826
Recipient ABN 68 077 208 461

No receipt will be issued unless requested

Memorandum of Fees

Progress bill for 31 December 2012 Half Year Review of LM First Mortgage Income Fund.	100,000.00
Out of pocket expenses	3,215.00
Engagement administration charge at 3%	3,000.00
Total	106,215.00
GST applied 106,215.00 at 10.00%	10,621.50
Total amount payable	\$116,836.50

With Compliments

Terms: payment on this notice within 14 days

Our Ref: 60459407/15771813/AU011001420

Ernst & Young ABN 75 288 172 749
Liability limited by a scheme approved under Professional Standards Legislation



LM Investment Management Limited
Attention: Francene Mulder
 PO Box 485
 SURFERS PARADISE QLD 4217

15 March 2013
 Tax Invoice No. AU00100324826
 Debtor No. 60459407

Fee for services rendered	\$116,836.50
Amount paid	\$ _____

Payment options:

... by Direct Deposit, Bank Transfer or Domestic Internet Transfer please remit to:

Westpac, 341 George St, Sydney NSW 2000
 BSB 032000, Account 404335
 For international payments - Swift Code: WPACAU2S
 quoting references AU00100324826 and LM Investment Management Limited

Please complete Amount being paid and fax to: Accounts Receivable +61 2 9248-5451
 Or e-mail all payment details to: Accounts.Receivable@au.ey.com

... by Mail please make cheque payable to "Ernst & Young", attach to this page and mail to:

Ernst & Young
 GPO Box 2646
 SYDNEY NSW 2001

If paying multiple invoices please attach full details

From: David Whyte
Sent: 24 January 2019 2:56 PM
To: 'Lobb, Renee' <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

Thank you

Regards

David

From: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Sent: 24 January 2019 2:52 PM
To: David Whyte <David.Whyte@bdo.com.au>
Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

David,

That is correct. The Liquidator has made the determination and is making a creditor indemnity claim against the assets of FMIF as provided for in the Orders.

Regards,

Renee Lobb

Senior Director, Corporate Finance & Restructuring

FTI Consulting

+61 7 3225 4976 T | +61 408 811 969 M | +61 7 3225 4999 F

renee.lobb@fticonsulting.com

Level 20, CP1

345 Queen Street

Brisbane QLD 4000, Australia

www.fticonsulting.com

Proudly supporting



From: David Whyte <David.Whyte@bdo.com.au>

Sent: Thursday, 24 January 2019 2:37 PM

To: Lobb, Renee <Renee.Lobb@fticonsulting.com>

Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>

Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

Renee

I do not understand the play on words - can you please advise if you are making a creditor indemnity claim as provided for in the 17 December 2015 order (and as amended)? The liquidator has to make that determination. Has such a determination been made?

Regards

David

DAVID WHYTE

Partner

Direct: +61 7 3237 5887

Mobile: +61 413 491 490

David.Whyte@bdo.com.au

BDO

Level 10, 12 Creek St

Brisbane QLD 4000

AUSTRALIA

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www.bdo.com.au

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From: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Sent: 24 January 2019 2:29 PM
To: David Whyte <David.Whyte@bdo.com.au>
Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

Dear David,

I refer to your email of today's date.

For sake of clarity, the notification to you pursuant to the 17 December 2015 Orders was to inform you the admitted claims of Ernst and Young ("EY") and Norton Rose Fulbright claimed a right of indemnity from the FMIF assets.

With respect to the further information for the EY proof of debt, we were advised the information was to be compiled and issued to our office by Friday, 18 January 2019. We are yet to receive the further documentation and will advise you should we be informed the information cannot, or will not be produced.

Regards,

Renee Lobb
Senior Director, Corporate Finance & Restructuring

FTI Consulting
+61 7 3225 4976 T | +61 408 811 969 M | +61 7 3225 4999 F
renee.lobb@fticonsulting.com

Level 20, CP1
345 Queen Street
Brisbane QLD 4000, Australia
www.fticonsulting.com

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From: David Whyte <David.Whyte@bdo.com.au>
Sent: Thursday, 24 January 2019 10:42 AM
To: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

I refer to your letter of 16 January 2019, which was sent by email on 17 January 2019.

Although your correspondence is not entirely clear, I am proceeding on the assumption that claims by LMIM for indemnity from the FMIF with respect to the EY and Norton Rose proofs have been identified by the Liquidators and notified to me pursuant to the orders dated 17 December 2015 ("the Orders").

If my assumption is not correct, please let me know forthwith.

As the response to my request for information with respect to the Norton Rose proof was received on 17 January 2019, I note that the due date under the Orders for me to accept or reject this claim for indemnity is 16 February 2019.

I note that I received a partial response to my request for information with respect to the EY proof.

The outstanding requests are:

1. A copy of the engagement letter(s) relating to the review; and
2. Supporting documentation detailing the time spent/work performed by EY with respect to the audit of the December 2012 accounts;

Would you please let me know when this further information is expected to be provided, or if it is not going to be provided, tell me that, so that I may proceed to make my decision as to whether to accept or reject, this claim for indemnity”

Regards

David

DAVID WHYTE

Partner

Direct: +61 7 3237 5887

Mobile: +61 413 491 490

David.Whyte@bdo.com.au

BDO

Level 10, 12 Creek St

Brisbane QLD 4000

AUSTRALIA

Tel: +61 7 3237 5999

Fax: +61 7 3221 9227

www.bdo.com.au

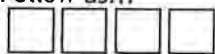
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Source: Australian Financial Review (AFR) Top 100 Accounting Firms report.

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From: Lobb, Renee <Renee.Lobb@fticonsulting.com>

Sent: 17 January 2019 10:08 AM

To: David Whyte <David.Whyte@bdo.com.au>

Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>

Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

Dear David,

Please refer to the attached correspondence concerning the proof of debts of EY and Norton Rose Fulbright.

Regards,

Renee Lobb

Senior Director, Corporate Finance & Restructuring

FTI Consulting

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From: David Whyte <David.Whyte@bdo.com.au>
Sent: Wednesday, 2 January 2019 2:06 PM
To: Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>; Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Ainsley Watt <Ainsley.Watt@bdo.com.au>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

Kelly

Thank you for your email below, of 31 December 2018.

My email to you on 21 December 2018 pointed out that the letter from John Park of 20 December 2018 did not expressly state that the liquidator is making a Creditor Indemnity Claim, and asked for clarification as to whether a claim for indemnity was in fact being made. My later email on 28 December also asked for clarification.

Your response does not specifically advise the liquidator is seeking a Creditor Indemnity Claim under the terms of the 17 December 2015 Court Order and indeed you state the two claims have a "purported claim for indemnity from the assets of the FMIF". There is no analysis or explanation in your correspondence that details why the liquidator considers the two proofs should be the subject of a creditor indemnity claim; in fact, there is not any statement that the liquidator does consider that LMIM has a claim for indemnity from the property of the FMIF in respect of the claims made in those proofs of debt.

The 17 December 2015 Order directed the liquidator not only to ascertain the debts of LMIM, but also to identify whether LMIM has a claim for indemnity from the FMIF in respect of any, or any part of any, debt payable by LMIM as admitted by the liquidator. It is a claim for indemnity as identified by the liquidator which the liquidator is required to notify to me and which is required to be done within 14 days of the admittance of a proof of debt i.e. by tomorrow. The letter dated 20 December does not say that any claim from the FMIF in respect of any such debt has been identified by the liquidator. Your email simply says that the proofs assert an indemnity - there is nothing stating that you or the liquidator have considered whether LMIM actually does have a claim for indemnity.

However, rather than continue to try to obtain clarification on that issue, and given the timeframes prescribed by the Order made on 17 December 2015 if the letter of 20 December 2018 was intended to notify me of indemnity claims, on the assumption that the liquidator intends (at some point, if not now) to make creditor indemnity claims in respect of those proofs of debt, I now seek further information on the claims in accordance with paragraph 8(a) of the 17 December 2015 order. The further information I require is, as follows:

1. EY Proof of debt

I note from the invoices provided that the work relates to the auditors review of the December 2012 accounts which I understand was never completed. I also note that substantial claims are advanced by LMIM as RE of the FMIF against EY in the proceedings against the auditors for amounts of up to \$200M, which LMIM may be entitled to set-off against the claims made by EY.

Please provide the following additional information and documents:

- Confirmation as to whether or not the review was completed;
- A copy of the engagement letter(s) relating to the review and confirming the amount to be paid to EY for the audit, and any standard terms and conditions or other documents setting out the terms and conditions upon which EY were engaged to audit the December 2012 accounts;
- Supporting documentation detailing the time spent/work performed by EY with respect to the audit of the December 2012 accounts;

- (if not set out in the supporting documentation requested above) the basis of payment for the review and whether or not interim invoices were permitted and if payment was dependent on completion of the review;
- Your explanation as to why the liquidator considers (if he does) that the claim should be allowed as a creditor indemnity claim.

2. Norton Rose Fulbright Proof of debt

The proof of debt adjudication form (which refers to a proof of debt dated 27 March 2013, rather than the proof dated 28 September 2018) says the debt should be admitted for \$409,668.85. However the proof of debt and supporting documentation claims an amount of \$315,601.21. That is the amount stated in your letter and I will proceed on the assumed basis of a claim of \$315,601.21 unless you advise otherwise, although I would ask you to confirm that. The invoices supporting the proof show that it relates to two files in respect of ASIC investigations and Trilogy.

From a review of the timesheet narrations it appears that the ASIC investigations centred around changes made in the constitution by LMIM without the passing of a special resolution by members, redemptions made to the feeder funds to the detriment of other members (which are the subject of the feeder fund proceedings brought by me), valuation of assets (which were not performed adequately as set out in my proceedings against the auditors and LMIM) and related party transactions (proceedings have been brought in respect of some of these transactions).

Can you please explain why the liquidator considers (if he does) that the RE should be entitled to an indemnity against the fund's assets? Given that the letter from Norton Rose Fulbright dated 30 September 2014 says that some of the work related to the feeder funds, and refers to a possible need to split some invoices between a number of funds, please explain whether (and if so, why) you consider the full amount of the proof should be accepted as a Creditor Indemnity Claim against the FMIF. If upon further consideration of these comments, you consider the claim should be reduced, please advise accordingly.

All rights are reserved. For the avoidance of any doubt, this includes my right to raise, on behalf of the FMIF, the clear accounts rule and to rely upon the claims made in the Clear Accounts Proceeding in connection with the clear accounts rule.

Please provide your response within 14 days in accordance with clause 7(b) of the 17 December 2015 order.

Regards

David

DAVID WHYTE

Partner

Direct: +61 7 3237 5887

Mobile: +61 413 491 490

David.Whyte@bdo.com.au

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Source: Australian Financial Review (AFR) Top 100 Accounting Firms report.

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From: Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Sent: Monday, 31 December 2018 7:51 PM
To: David Whyte <David.Whyte@bdo.com.au>; Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Ainsley Watt <Ainsley.Watt@bdo.com.au>
Subject: RE: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

David

To clarify, we provided notification of the admission of these two (2) claims given their connection to and purported claim for indemnity from the assets of the of FMIF. I confirm these were admitted and notified on 20 December 2018. Further, I confirm all claims received as at the time of notification had been accessed and these were the only claims to which a right of indemnity was sought.

I note subsequent to this correspondence additional claims have been received from Ernst & Young via their legal representatives. I confirm given the timing of receipt of these claims coincided with the closure of our office for the festive season (please note our office does not re-open until 2 January 2019) accordingly, these claim have not been reviewed to determine if the claims are able to be admitted or otherwise or whether there is any indemnity claimed against the assets of FMIF.

Should you wish to discuss please do not hesitate to contact me on my return to the office on 2 January 2019.

Regards

Kelly

Kelly Trenfield

+61 7 3225 4920 T | +61 409 630 469 M

kelly.trenfield@fticonsulting.com

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From: David Whyte <David.Whyte@bdo.com.au>
Sent: Friday, December 28, 2018 3:40 PM
To: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>; Park, John <John.Park@fticonsulting.com>; Ainsley Watt <Ainsley.Watt@bdo.com.au>
Subject: Re: 8974 LM Investment Management Limited (In Liquidation) - FMIF Proof of Debt Adjudications

I refer to the below correspondence seeking clarification as to whether or not you intend seeking an indemnity from the fund's assets in respect of two admitted proofs of debt and bearing in mind you have 14 days to do so from the date of admittance.

It is unclear from your correspondence of the date the proofs were admitted however the latest date to advise me of a creditor indemnity claim under the court order dated 17 December 2015 would be 14 days from the date of your letter being 3 January 2019.

Can you please therefore clarify your position as soon as possible and respond to the other queries in the below email.

Regards

David

DAVID WHYTE
Partner
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Mobile: +61 413 491 490
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On 21 Dec 2018, at 1:13 pm, David Whyte <David.Whyte@bdo.com.au> wrote:

Thanks for providing a copy of two proofs of debt admitted by the liquidator.

I note that you do not state whether or not the liquidator is making a claim for indemnity against the LM First Mortgage

Income Fund's assets. Your letter simply says that the proofs have been admitted.

In accordance with the court order dated 17 December 2015, the liquidator is required to notify me of any Creditor Indemnity Claim within 14 days after any debt or claim is admitted by the liquidator in the winding up of LMIM.

Could you please clarify the position in relation to the proofs of debt and, if the proofs are intended to be the subject of a Creditor Indemnity Claim under paragraph 6 of the order, please confirm that and make that claim to me in writing so that I know the timeframes that the order requires be adhered to.

Given the substantial claims advanced by me in the proceedings against the auditors, it would not seem appropriate for there to be an indemnity for the EY invoices. Could you please clarify your position in that respect and confirm whether there is a claim for indemnity for those invoices.

Please also confirm if you have now ruled on all proofs of debt that relate to the FMIF, and if not when that will be completed as it would seem more efficient to rule on all and subject one indemnity claim rather than to do it in a piecemeal way.

Regards

David

On 20 Dec 2018, at 2:39 pm, Lobb, Renee <Renee.Lobb@fticonsulting.com> wrote:

Dear David,

Please refer to the attached correspondence.

Kind regards,

Renee Lobb

Senior Director, Corporate Finance & Restructuring

FTI Consulting

+61 7 3225 4976 T | +61 408 811 969 M | +61 7 3225 4999 F

renee.lobb@fticonsulting.com

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<image001.png>

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<8974l1_Letter to BDO re POD Adjudication.pdf>

<Ernst & Young POD.pdf>

<Norton Rose Fulbright POD (incl attachments).pdf>

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25 January 2019

Our Ref: RCL_897414

BDO
Level 10, 12 Creek Street
BRISBANE QLD 4000

Attention: David Whyte

By Email: David.Whyte@bdo.com.au

Dear Mr Whyte

**RE: LM Investment Management Limited (In Liquidation) (LMIM) ACN 055 691 426
Proof of Debt Adjudication**

I refer to previous correspondence concerning the proof of debt process being undertaken by myself as Liquidator.

As you are aware, a further claim was received from King & Wood Mallesons on behalf of Ernst and Young on 20 December 2018. A copy of the proof of debt with respect to the LM First Mortgage Income Fund ("FMIF") is ***attached**. The claim seeks a right of indemnity from the assets of FMIF.

I am presently reviewing this claim and have issued a notice to King & Wood Mallesons requesting that their client provide further information to enable the adjudication of the claim to be performed. Given the complexity of the claim, twenty-eight (28) days have been allowed to provide the information requested.

Following my receipt and review of this information, I will provide you with the outcome of my adjudication.

FTI Consulting (Australia) Pty Limited
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25 January 2019

Page 2 of 2

Should you have any further queries please contact Renee Lobb of this office on (07) 3225 4976 or Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting



John Park
Liquidator

*Attach.

FORM 535
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidators of LM Investment Management Limited (In Liquidation) ("LMIM"):

This is to state that LMIM in its capacity as responsible entity for the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ARSN 089 343 288 ("FMIF") was on 19 March 2013, and still is, justly and truly indebted

to EY (also known as Ernst & Young) (A Firm) (**Creditor**)
(name of creditor)

of 111 Eagle Street, Brisbane, QLD, 4000
(address of creditor)

for \$181,005,000.00 plus interest and legal costs

The Creditor submits this proof for adjudication by the liquidators pursuant to the Corporations Act 2001 (Cth) and the Orders of Jackson J made 17 December 2015 in Supreme Court of Queensland proceedings number 3508 of 2015 and reserves the right to amend or adjust any amounts set out in this proof.

Particulars of the debt are:

Date (date when the debt arose)	Consideration (state how debt arose and attach supporting documentation)	Amount (\$)	Remarks (include details of voucher substantiating payment)
18 February 2008	Engagement as auditor of the full year and half year financial statements of LMIM as RE of the FMIF and the yearly compliance plans for the period 1 July 2007 to 30 June 2012 (copy of 2008 engagement letters attached) and claims particularised in the Sixth Further Amended Statement of Claim served on 30 November 2018 in Supreme Court of Queensland proceedings number 2166 of 2015 (copy attached).	\$181,005,000.00 plus interest and legal costs	To the extent the contraventions contained in the Sixth Further Amended Statement of Claim are proven (which is denied), the Creditor will suffer loss and damage (in addition to the existing legal costs) because of the conduct of LMIM as RE of the FMIF in contravention of Chapter 5C of the <i>Corporations Act 2001</i> ("Act") which is recoverable under sections 1325(2) and (5)(c) of the Act. Further, for negligent misrepresentation, misleading and deceptive conduct and breach of contract on the basis of the audit engagements and statements contained in the Financial Audit and the Compliance Plan Letters of Representation (in the form as per the attached example representation letters).

1. To my knowledge or belief the Creditor has not, nor has any person by the Creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following
(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount (\$c)	Due Date
N/A	N/A	N/A	N/A	N/A

~~*3A. I am employed by the Creditor and authorised in writing by the Creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.~~

*3B. I am the Creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

** Items 3A & 3B - delete both if the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.*

I have attached the following documents (tick as many as appropriate):

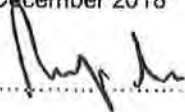
- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Invoices | <input type="checkbox"/> Judgement from Court | <input type="checkbox"/> Letters of demand | <input type="checkbox"/> Orders from Company |
| <input type="checkbox"/> Monthly statements | <input type="checkbox"/> Statutory demand | <input type="checkbox"/> Credit application | <input type="checkbox"/> Guarantee from Company |
| <input type="checkbox"/> Creditors authority letter | <input type="checkbox"/> Other documents | | |

Complete all sections

Dated 20 December 2018

Name: Philip Pan, Partner, King & Wood Mallesons Solicitors

Signatory



Phone (07) 3244 8081

Email address: philip.pan@au.kwm.com



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Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

Via email: john.park@fticonsulting.com

John Park
FTI Consulting
Level 20, CP1
345 Queen Street
BRISBANE QLD 4000

31 January 2019

Dear John

LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ("LMIM") AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INVESTMENT FUND ARSN 089 343 288 ("FMIF")

Proof of Debt Adjudication

I refer to your letter dated 25 January 2019, which enclosed a copy of a further proof of debt you received on 20 December 2018 from King & Wood Mallesons on behalf of EY (also known as Ernst & Young) (the "20 December EY proof"). The 20 December EY proof claims an amount of \$181,005,000 against LMIM in its capacity as responsible entity for the FMIF, which is said to have been owing as at 19 March 2013.

Your letter said that you are currently reviewing this claim and have issued a notice to King & Wood Mallesons requesting further information within 28 days. Although you have noted in your letter that the 20 December EY proof seeks an indemnity from the assets of the FMIF, I am not treating your letter as notice of a Creditor Indemnity Claim within the meaning of the Orders of Jackson J made on 17 December 2015, since under that Order, you are required to first adjudicate on the claims made against LMIM and then, if you admit a claim against LMIM and identify a claim for indemnity against the FMIF assets, notify me of any Creditor Indemnity Claim.

Please let me know urgently if you disagree.

I note the following about the 20 December EY proof:

1. The proof is dated 20 December 2018, and you have said you received it on that date. However, I note that your notice to creditors of LMIM inviting formal proofs of debt requested that proofs to be lodged by 2 October 2018.

2. I received a letter from you dated 20 December 2018 by email from Renee Lobb of FTI, together with a copy of proofs of debt by EY and Norton Rose Fulbright. In your letter, you informed me that you had received and admitted a claim by EY in the amount of \$158,896.51, and the copy of the proof of debt lodged by EY received with that letter was dated 30 April 2013 and addressed to “The Administrators of LM Administration Pty Ltd” (not to the liquidators of LMIM). It was for the amount admitted by you against LMIM.
3. Then on 31 December 2018, I received an email from Kelly Trenfield saying that:
 - a. she confirmed that only two claims had been admitted and notified to me on 20 December 2018 and “all claims received as at the time of notification had been accessed and these were the only claims to which a right of indemnity was sought”; and
 - b. subsequent to that, additional claims had been received from Ernst & Young via their legal representatives which had not been reviewed; it was not said what the claims were for.
4. On 16 January 2019 you wrote to me to tell me that you had received a revised proof of debt from King & Wood Mallesons on EY’s behalf. You provided a copy of that proof, which was dated 14 January 2019 and claimed an amount owing on 19 March 2013 of \$158,896.51 “plus interest and legal costs”; this proof was addressed to LMIM in its capacity as responsible entity for the FMIF. Again, no mention was made in your letter of the 20 December EY proof, which had been lodged on 20 December 2018.
5. I received the 20 December EY proof from you on 25 January 2019.

Against that background, could you please:

1. Explain (if you know anything about the circumstances) why there was such a lengthy delay in the provision of the 20 December EY proof, which was not provided until more than two months after the date by which you had requested that proofs of debt be provided?
2. Explain why there was a delay between the provision of the 20 December EY proof to you, and your provision of that proof to me on 25 January 2019, given that it asserts a claim against LMIM in its capacity as responsible entity of the FMIF?
3. Provide to me a copy of your request to King & Wood Mallesons for further information to enable adjudication of the claim?

Further, while the adjudication of the claim is of course a matter for you, I note that the proof appears to assert a claim against the property of the FMIF which relies on the proceeding commenced by me against EY in Supreme Court proceeding 2166 of 2015 (the **EY Proceeding**).

It is my view that it is not appropriate that the claims asserted by EY be dealt with in the context of the proof of debt regime for the following reasons:

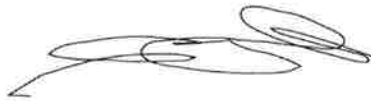
1. the proof is incompetent in so far as it claims loss and damage recoverable under section 1325 of the Corporations Act. That is, the claim asserts that if the contraventions in the EY Proceeding are successful, the creditor will suffer loss and damages recoverable under sections 1325(2) and (5)(c) of the *Corporations Act*. However, in order to assert a right to participate in the division of assets of the company, EY must have a “claim” within the meaning of s553, founded on an existing legal right. In this case, EY has nothing more than a right to initiate proceedings in respect of their claim. Further, their claim is dependent on the Court exercising its discretion in respect of the

order sought under section 1325(2). For this reason, they cannot obtain from the liquidator the relief they seek, they can only achieve this relief by a successful application to the Court. Until such time as their claim has been determined, no legal obligation of LMIM exists and as such, there is no "claim" within the meaning of s553. In this regard, we refer you to the decisions of Vagrand Pty Ltd (in liq) v Fielding (1993) 41 FCR 550 at 553, BE Australia WD Pty Ltd (subject to a deed of company arrangement) v Sutton (2011) 82 NSWLR 336 at [106] and Central Queensland Development Corp Pty Ltd v Sunstruct Pty Ltd (2015) 231 FCR 17 at [58]-[65] (Besanko, Gilmour and Rangiah JJ);

2. as to the balance of the 20 December EY proof, wherein EY assert a claim based on negligent misrepresentation, misleading and deceptive conduct and breach of contract, it is not appropriate that these claims be dealt with in the context of the proof of debt procedure given the seriousness of the claim and the degree of complexity of the legal and factual issues involved. If EY intend to make any claim of the kind set out in the 20 December EY proof then it is appropriate that they make that claim in the EY Proceeding.

Could you please respond to my requests above as soon as possible; I ask for a response within seven days. Of course, my rights in relation to the 20 December EY proof are reserved.

Yours faithfully



David Whyte
Receiver

4 February 2019

Our Ref: AJT:JTW:20170943

Your Ref: Mr Schwarz

Tucker & Cowen
Level 15
15 Adelaide Street
BRISBANE QLD 4000

By Email: dschwarz@tuckercowen.com.au
anase@tuckercowen.com.au

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers Appointed) (“LMIM”)
Supreme Court of Queensland Proceeding Number BS3508/2015**

We refer to Mr Nase’s email to the Associate to Justice Jackson on the afternoon of Friday, 2 February 2019 which attached an application dated 1 February 2019 seeking orders which would ultimately lead to the payment of an interim distribution from the property of FMIF of up to \$40M among the members of the FMIF (“**the Application**”). You have also sought to list an interlocutory application for “mechanical service orders” in respect of the Application for hearing later this week.

We understand that our respective clients have been in discussions since late last year in respect of the proofs of debt and claims which have been made by EY (represented by Mr Pan of King & Wood Mallesons, whom we have copied to this correspondence). Our client will continue dealing directly with Mr Whyte on the issues the subject of the correspondence which has recently passed between them.

It would seem uncontroversial that whilst the EY proofs of debt have not yet been adjudicated upon in circumstances where our client has sought further information from EY, the quantum of the one of the EY proofs (being for \$180M in round figures), would totally consume all assets of FMIF. Consequently, dealing with that claim directly impacts upon the appropriateness of any interim distribution being paid from FMIF (noting also the flow on effect in respect of the settlement of the “Feeder Fund Litigation”). This is particularly so in circumstances where there is litigation on foot between FMIF and EY on the very subject matter of the relevant EY proof of debt.

Mr Whyte has been notified that our client considers that the EY proofs will be the subject of an indemnity claim against the assets of the FMIF.

Given all of the above, our client’s current view is that the pending court proceeding involving FMIF and EY is likely to provide the appropriate forum for determination of the claims which have been

made by EY against LMIM (and hence FMIF) (and the proof of debt process is perhaps an inappropriate forum by which that is to occur).

Despite our client being particularly concerned to see money returned to FMIF members as soon as possible, Mr Park is concerned that any application made seeking approval for an interim distribution to be paid from FMIF may be premature pending the outcome of the EY court proceeding. Our client is also conscious of the potential impact upon the settlement of the "Feeder Fund Litigation".

In these circumstances, our client has instructed us to write to you to raise his concerns with a view to there not being further wasted monies spent on advancing an application for approval to pay an interim distribution from FMIF (or associated interlocutory orders) if the true position is as outlined above.

We have copied in all relevant parties so that they too may outline their views on this issue.

We await your prompt response.

Yours faithfully



Ashley Tiplady
Partner

Direct 07 3004 8833
Mobile 0419 727 626
ATiplady@RussellsLaw.com.au

CC: *HWL Ebsworth*
Mr David O'Farrell
dofarrell@hwle.com.au

Ms Elizabeth Singleton
esingleton@hwle.com.au

King & Wood Mallesons
Mr Philip Pan
Philip.Pan@au.kwm.com

20170943/2581320

Tucker & Cowen Solicitors.

TCS Solicitors Pty Ltd. / ACN 610 321 509

Level 15, 15 Adelaide St. Brisbane, Qld 4000 / GPO Box 345 Brisbane Qld 4001.
Telephone 07 300 300 00 / Facsimile 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz / Mr Nase

4 February 2019

Your reference: Mr Tiplady / Mr Walsh

Principals:
Richard Cowen
David Schwarz
Justin Marschke
Daniel Davey.

Consultant
David Tucker.

Special Counsel
Geoff Hancock
Alex Nase.
Brent Weston.
Marcelle Webster.

Associates:
Emily Anderson.
James Morgan.
Scott Hornsey.
Paul Armit.
Wesley Hill.

Mr Ashley Tiplady
Russells Lawyers
Brisbane Qld 4000

Email: atiplady@russellslaw.com.au
jwalsh@russellslaw.com.au

Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("*LMIM*");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("*FMIF*") v David Whyte
Supreme Court of Queensland Proceeding No. 3508/2015
Application filed by Mr Whyte on 1 February 2019 for authority to make interim distribution ("*the Application*")

We refer to your letter dated 4 February 2019.

Our client does not consider that the proof of debt lodged by EY dated 20 December 2018 is a barrier to the making of an interim distribution because the amount claimed in that proof of debt is merely reflective of and is contingent upon, the claim made against EY in proceeding 13534/16 (Auditor's Proceeding) being successful. Even if the proof of debt is admitted and LMIM is entitled to claim indemnity from the FMIF with respect to the proof (which our client doubts), the maximum amount of the proof is limited to and is at best, a set-off against, any judgment against EY in the Auditor's Proceeding.

Accordingly, we are instructed by our client to proceed with the application filed on 1 February 2019 for authority to make an interim distribution to FMIF members ("*the Application*").

Would you please let us know, by close of business today, whether your client intends to appear at the return of the application for service orders, and if so, whether either or both of the dates proposed in the email from His Honour's Associate of 1 February 2019 are suitable?

Yours faithfully



Alex Nase

Tucker & Cowen

Direct Email: anase@tuckercowen.com.au

Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation

Melissa Nel

From: Renee Maclean on behalf of Alex Nase
Sent: Wednesday, 6 February 2019 9:44 AM
To: 'philip.pan@au.kwm.com'
Cc: Alex Nase; David Schwarz
Subject: LM Investment Management Limited
Attachments: Letter to Mr Philip Pan King & Wood Mallesons.pdf; BS3508.15 Sealed Application.pdf; Letter from Russells to Tucker & Cowen.pdf

Dear Colleagues

Please find attached correspondence and enclosures for your attention.

Yours faithfully,

Sent on behalf of **Alex Nase**, Special Counsel

E: anase@tuckercowen.com.au | D: 07 3210 3503 | M: 0423 386 195

by:

Tucker & Cowen Solicitors.

TCS Solicitors Pty. Ltd. / ACN 610 321 509

Level 15, 15 Adelaide St, Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz / Mr Nase

6 February 2019

Your reference:

Mr Philip Pan
King & Wood Mallesons

Email: philip.pan@au.kwm.com

Principals.
Richard Cowen.
David Schwarz.
Justin Marschke.
Daniel Davey.

Consultant.
David Tucker.

Special Counsel.
Geoff Hancock.
Alex Nase.
Brent Weston.
Marcelle Webster.

Associates.
Emily Anderson.
James Morgau.
Scott Homsey.
Paul Armit.
Wesley Hill.

Dear Colleagues

**Re: LM Investment Management Limited
Supreme Court of Queensland Proceeding No. 3508/2015**

We act for Mr David Whyte, in his capacity as the Court appointed receiver of the LM First Mortgage Income Fund (FMIF), in the above proceeding.

We enclose for your information an application filed by our client on 1 February 2019 seeking authority of the Court to make an interim distribution from the assets of the FMIF to FMIF investors ("the Application").

We further refer to and enclose a letter from Russells Lawyers dated 4 February 2019 concerning the Application, sent to us on behalf of the liquidator of LM Investment Management Limited (In Liquidation) ("LMIM"), which was copied to you.

This letter refers to the proof of debt dated 20 December 2018 lodged by your client, EY (also known as Ernst & Young) (A Firm) (EY), in the liquidation of LMIM for \$181,005,000 plus interest and legal costs ("the proof of debt"). The proof of debt has not been ruled upon yet and we reserve our client's position in that regard.

The proof of debt asserts that your client's claim is against LMIM in its capacity as RE of the FMIF and, as such, purports to assert a right of indemnity against the assets of the FMIF. However, it seems to our client that the claims made by the proof of debt:

1. are merely reflective of, and contingent upon, the claims made against your client in proceeding 2166 of 2015 ("Auditor's Proceeding") being successful; and
2. even if the proof of debt is admitted and LMIM is entitled to claim indemnity from the FMIF with respect to the claim made in the proof of debt (which our client disputes), the maximum amount of the proof is limited to and is at best, a set-off against, any judgment against your client in the Auditor's Proceeding.

In other words, we anticipate that despite the proof of debt your client would have no objection to the making of the interim distribution proposed by the Application. We are instructed to request your client's confirmation that:

1. the amount claimed by the proof of debt is limited to the amount of any judgement or orders made against your client in the Auditor's Proceeding; and

2. your client will only press the proof of debt in the event of and to set-off against judgment or orders in the Auditor's Proceeding imposing a liability on your client to LMIM as responsible entity of the FMIF.

In the circumstances, we would appreciate your client's prompt response to this correspondence.

Yours faithfully



Alex Nase
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

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

First Applicant: JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF 'THE LM FIRST' MORTGAGE INCOME FUND ARSN 089 343 288

AND

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

AND

First Respondent: 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

AND

Second Respondent SAID JAHANI IN HIS CAPACITY AS RECEIVER AND MANAGER OF THE ASSETS, UNDERTAKINGS, RIGHTS AND INTERESTS OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 AS THE RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 AND THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868

APPLICATION



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

S:\TC\SVREXCH\Daily\Index\DM\Documents\M\Matter\1701664\01634799-001.docx

TAKE NOTICE that the First Respondent is applying to the Court for the following orders:-

1. Pursuant to section 601NF(2) of the *Corporations Act* 2001 (Cth) ("the Act"), orders that:
 - (a) the First Respondent is authorised and empowered to exercise the powers of, and is responsible for the functions of, the Second Applicant as the responsible entity of the LM First Mortgage Income Fund ("FMIF") as set out in clause 16.7(c) of the constitution of the FMIF, to make an interim distribution from the property of the FMIF of up to \$40 million among the members of the FMIF;
 - (b) in the event that any of the conditions precedent to the Deed of Settlement and Release resolving Supreme Court proceedings 13534/15 have not been satisfied or will not be satisfied by the making of the interim distribution, the First Respondent is authorised to withhold payment of the interim distribution to:
 - (i) LM Investment Management Limited (In Liquidation) ACN 077 208 461 (LMIM) as responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875;
 - (ii) LMIM as responsible entity of the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868; and
 - (iii) The Trust Company Limited ACN 004 027 749 as custodian of the property of the LM Wholesale First Mortgage Income Fund ARSN 099 857 511.
2. A declaration that each member holding "Class C" Units in the FMIF (having invested in one of the "Non-Australian Dollar Currency Hedged Fixed Term Investment Options") is entitled to be paid in the winding up of the FMIF amounts calculated by reference to that member's "Unit Balance" recorded in the "Investor Master Register", as adjusted for the foreign exchange spot rate between the "Investment Currency" recorded in the "Investor Master Register" and the Australian Dollar prevailing:
 - (a) as at the time of each distribution in the winding up; or
 - (b) in the alternative, as at the date of the commencement of the winding up of the FMIF, namely 8 August 2013; or
 - (c) in the further alternative, as at the date or dates of that member's investment or investments, renewal of investment or investments and/or re-investment or re-investments immediately prior to commencement of the winding up of the FMIF, as applicable.
3. Under rule 116 of the *Uniform Civil Procedure Rules* 1999 (Qld) ("UCPR"), orders that service of this application on the members of the FMIF be effected by:
 - (a) posting a notice substantially in the form of Annexure A to this Order (the Notice) to the website "lmfmif.com" (the Website);
 - (b) sending a copy of the Notice to all members of the FMIF by each member's preferred method for distribution of notices recorded on the Register;
 - (c) in relation to any member of the FMIF whose preferred method of distribution is by forwarding it to the email address of a financial advisor, service is to be effected by sending

the Notice to the financial advisor by email and identifying in the email the member to whom the Notice is directed;

- (d) in relation to any member of the FMIF whose preferred method of distribution is by forwarding it to the postal address of a financial advisor, service is to be effected by sending the Notice by post addressed to the member "care of" the postal address of the financial advisor.
4. Under rule 116(3) of the UCPR, an order that service of this application be deemed to have been effected on each of the members of the FMIF five (5) days after orders 3(a) to 3(d) above have been complied with.
 5. Under rule 116 of the UCPR, an order that service by the First Respondent of documents to be served on the members of the FMIF in relation to this application (including any affidavits or submissions) be effected by the First Respondent causing such documents to be posted to the Website.
 6. Under rule 116(3) of the UCPR, an order that service of any documents referred to in paragraph 5 above be deemed effected on each of the members of the FMIF five (5) days after all the documents are posted to the Website pursuant to order 5 above.
 7. An order that the First Respondent's costs of and incidental to this application be costs in the winding up of the FMIF, to be paid out of the assets of the FMIF.
 8. Such further or other order as the Court sees fit.

Orders 3 to 6 of the orders sought by this application will be heard by the Court at Brisbane on: _____ at _____

Orders 1 and 2 of the orders sought by this application will be heard by the Court at Brisbane on a date to be fixed.

Filed in the Brisbane Registry on _____

1 February 2019

Registrar:



If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of David Whyte to be sworn

THE APPLICANT ESTIMATES THE HEARING OF ORDERS 3 TO 6 SHOULD BE ALLOCATED 20 MINUTES

THE APPLICANT ESTIMATES THE HEARING OF ORDERS 1 AND 2 SHOULD BE ALLOCATED UP TO 1 DAY

Signed:

Description: Tucker & Cowen
Solicitors for the First Respondent

Dated: 1 February 2019

Other than as to orders 3 to 6, this application is to be served on:

1. The Members of the LM First Mortgage Income Fund ARSN 089 343 288
2. John Richard Park as Liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 077 208 461 ("LMIM") as the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF")
AND
LMIM as responsible entity of the FMIF

C/- Russells Lawyers
Level 18
300 Queen Street
Brisbane Qld 4000
3. Mr Said Jahani in his capacity as the receiver and manager of the assets, undertaking, rights and interests of LMIM as the responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875 ("CPAIF") and the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("ICPAIF")

C/- HWL Ebsworth
Level 19, 480 Queen Street
Brisbane QLD 4000

ANNEXURE A

**TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ("FMIF")**

TAKE NOTICE that David Whyte, as the person appointed pursuant to section 601NF of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and as receiver of the property of the FMIF (**Mr Whyte**), has applied to the Supreme Court of Queensland:-

1. for authority to make an interim distribution from the property of the FMIF of up to \$40 million among the members of the FMIF;
2. to determine the proper entitlements of members holding "Class C" Units in the FMIF, having invested in one of the "Non-Australian Dollar Currency Hedged Fixed Term Investment Options".

The Class C Unitholders invested in the FMIF in foreign currencies and are recorded in the "Investor Master Register" (the **Register**) as holding units in the "Investment Currency" listed in the Register. In order to pay those unitholders their proper entitlements in the interim distribution, and in subsequent distributions in the winding up of the FMIF, it is necessary to determine the foreign exchange spot rate at which to convert their units into Australian Dollars. The different possible rates are as follows:

- (a) the rate as at the time of the interim distribution; or
- (b) in the alternative, the rate as at the date of the commencement of the winding up of the FMIF, namely 8 August 2013; or
- (c) in the further alternative, the rate as at the date or dates of that member's investment or investments, renewal of investment or investments and/or re-investment or re-investments immediately prior to commencement of the winding up of the FMIF, as applicable.

This application is set down to be heard by the Supreme Court of Queensland at Brisbane on [date] at [time].

Copies of the court documents in respect of the application will be available on the website www.lmfimf.com. Court documents will be made available progressively, as and when they are filed with the Court.

Any member who reasonably requires a hard copy of the application and supporting material should call BDO on +61 7 3237 5999.

Dated: [date]

David Whyte

Court Appointed Receiver

4 February 2019

Our Ref: AJT:JTW:20170943
Your Ref: Mr Schwarz

Tucker & Cowen
Level 15
15 Adelaide Street
BRISBANE QLD 4000

By Email: dschwarz@tuckercowen.com.au
anase@tuckercowen.com.au

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers Appointed) ("LMIM")
Supreme Court of Queensland Proceeding Number BS3508/2015**

We refer to Mr Nase's email to the Associate to Justice Jackson on the afternoon of Friday, 2 February 2019 which attached an application dated 1 February 2019 seeking orders which would ultimately lead to the payment of an interim distribution from the property of FMIF of up to \$40M among the members of the FMIF ("**the Application**"). You have also sought to list an interlocutory application for "mechanical service orders" in respect of the Application for hearing later this week.

We understand that our respective clients have been in discussions since late last year in respect of the proofs of debt and claims which have been made by EY (represented by Mr Pan of King & Wood Mallesons, whom we have copied to this correspondence). Our client will continue dealing directly with Mr Whyte on the issues the subject of the correspondence which has recently passed between them.

It would seem uncontroversial that whilst the EY proofs of debt have not yet been adjudicated upon in circumstances where our client has sought further information from EY, the quantum of the one of the EY proofs (being for \$180M in round figures), would totally consume all assets of FMIF. Consequently, dealing with that claim directly impacts upon the appropriateness of any interim distribution being paid from FMIF (noting also the flow on effect in respect of the settlement of the "Feeder Fund Litigation"). This is particularly so in circumstances where there is litigation on foot between FMIF and EY on the very subject matter of the relevant EY proof of debt.

Mr Whyte has been notified that our client considers that the EY proofs will be the subject of an indemnity claim against the assets of the FMIF.

Given all of the above, our client's current view is that the pending court proceeding involving FMIF and EY is likely to provide the appropriate forum for determination of the claims which have been

made by EY against LMIM (and hence FMIF) (and the proof of debt process is perhaps an inappropriate forum by which that is to occur).

Despite our client being particularly concerned to see money returned to FMIF members as soon as possible, Mr Park is concerned that any application made seeking approval for an interim distribution to be paid from FMIF may be premature pending the outcome of the EY court proceeding. Our client is also conscious of the potential impact upon the settlement of the "Feeder Fund Litigation".

In these circumstances, our client has instructed us to write to you to raise his concerns with a view to there not being further wasted monies spent on advancing an application for approval to pay an interim distribution from FMIF (or associated interlocutory orders) if the true position is as outlined above.

We have copied in all relevant parties so that they too may outline their views on this issue.

We await your prompt response.

Yours faithfully



Ashley Tiplady
Partner

Direct 07 3004 8833
Mobile 0419 727 626
ATiplady@RussellsLaw.com.au

CC: *HWL Ebsworth*
Mr David O'Farrell
dofarrell@hwle.com.au

Ms Elizabeth Singleton
esingleton@hwle.com.au

King & Wood Malletson
Mr Philip Pan
Philip.Pan@au.kwm.com

20170943/2581320

7 February 2019

Our Ref: RCL_8974I7

BDO
Level 10, 12 Creek Street
BRISBANE QLD 4000

Attention: Mr David Whyte

By Email: David.Whyte@bdo.com.au

Dear Mr Whyte

**RE: LM Investment Management Limited (In Liquidation) (LMIM) ACN 055 691 426
Proof of Debt Adjudication**

I refer to previous correspondence concerning the proof of debt process being undertaken by myself as Liquidator to identify claims against the LM First Mortgage Income Fund ("FMIF") and to your correspondence dated 31 January 2019.

I address below the queries raised in your 31 January 2019 correspondence, in the order they appear in the correspondence as follows:

- The Ernst and Young 20 December 2018 proof of debt ("EY POD") was provided to you as a courtesy, for your information only at this time;
- I am yet to adjudicate on the EY POD, nor have I made a determination or notification to you as to any right of indemnity from FMIF assets;
- As the proof of debt process is not being conducted by the Liquidator for the purpose of declaring a dividend, creditors are able to lodge a proof of debt at any point in time. The delay in the provision of the EY POD is not a matter known to me.
- The separate Ernst and Young Proof of Debt referred to in your point 2 for \$158,896.51 was subsequently revised via the proof of debt dated 14 January 2019 which was provided to you in my correspondence dated 16 January 2019. This amount has been admitted and I have formed a view the claim has a right of indemnity from FMIF assets;

- With respect to your points 3 and 4 and subsequent point 1, I respond further as follows:
 - The EY POD was received by our office after close of business on 20 December 2018, being some hours after the 20 December 2018 correspondence had been finalised and issued to you;
 - Given the late receipt of the EY POD prior to the Christmas office closure period, I had not reviewed the EY POD until after my return to this office in January 2019. Further, upon receipt of the EY POD we sought to obtain legal counsel as to the most appropriate course of action, given the nature of the claim and proceedings on foot;
 - We also sought to discuss the EY POD with King & Wood Mallesons to determine the background of the claims and again, to determine the most appropriate course of action given the nature of the claim and the intertwined nature of the claim and the audit proceeding.
 - I have not adjudicated on this proof of debt, nor formed a view as to its right of indemnity from FMIF assets;
 - A request for further information was issued to enable me to properly assess the EY POD. A copy of that request is ***attached**;
 - Following receipt of the requested information I will revert to you with my adjudication on the EY POD and whether I consider the EY POD to have a right of indemnity against FMIF assets.

I note the points raised by you with respect to the EY POD and Supreme Court proceeding 2166 of 2015 and will take those under consideration in my eventual adjudication of the claim. I have not yet determined whether or not it is appropriate for these claims to be dealt with in the context of a proof of debt regime. Upon receipt of the additional information as requested from King & Wood Mallesons on behalf of EY I will be in a better position to decide if such an evaluation is able to be undertaken in the circumstances. In accordance with the revised Orders, you have the ability to review the adjudication should you not agree with my eventual determination.

Should you have any further queries please contact Renee Lobb of this office on (07) 3225 4976 or Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting



John Park
Liquidator

25 January 2019

Our Ref: KAT_8974RFI_EY

Ernst & Young
C/- King & Wood Mallesons
Level 33, Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

By email: cameron.mew@au.kwm.com
philip.pan@au.kwn.com

Dear Sirs

**RE: The Creditors of LM Investment Management Limited (in Liquidation) (Receivers Appointed)
("the Company") and the Funds
Formal proof of debt or claim – further particulars required**

I refer to previous correspondence relating to the Company, the Funds, and to the following Formal Proofs of Debt or Claim (POD) from Ernst & Young ("EY") dated 20 December 2018:

Claimant	POD Amount (\$)
LM First Mortgage Income Fund	181,005,000.00 plus interest and legal costs
LM Currency Protected Australian Income Fund	40,583,109.06 plus interest and legal costs
LM Institutional Currency Protected Australian Income Fund	5,044,18.30 plus interest and legal costs
LM Wholesale First Mortgage Income Fund	9,432,090.76 plus interest and legal costs

The proofs of debt are for unliquidated amounts as no judgment has been delivered in respect of Supreme Court Proceeding 2166/15 ("the EY Proceeding"). Further, the proofs of debt do not reconcile with amounts stated in the EY Proceeding further amended statement of claim.

With respect to your assertion that EY has the right to be subrogated as LM Investment Management Limited is able to be indemnified from the property of the FMIF, you have not had regard to the 17 October 2017 decision of Justice Jackson, where His Honour held that the claimed right of payment from the assets of the FMIF was suspended until the resolution of the Clear Accounts Proceeding.

Based on the above, further information is required to enable the adjudication of the EY proofs of debt. A formal notice is ***attached** outlining the information required.

Should you have any queries, please contact Renee Lobb of my office on (07) 3225 4976 or via email at Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting

A handwritten signature in black ink, appearing to read 'John Park', with a stylized flourish at the end.

John Park
Liquidator

***Attach.**

NOTICE REQUIRING FURTHER EVIDENCE IN SUPPORT OF PROOF OF DEBT OR CLAIM

**LM Investment Management Limited (In Liquidation) (Receivers Appointed)
ACN 077 208 461 (the "Company")**

To: Ernst & Young
C/- King & Wood Mallesons
Level 33
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

Take notice that I require further evidence as detailed below in support of the Formal Proof of Debt or Claim (Form 535) submitted by you.

Additional Information Required:

- A breakdown of each claim including all timesheets to support legal costs and audit fees;
- Itemised statement to evidence interest claims;
- Details as to the factual basis of EY's claim including:
 - The conduct of LM Investment Management Limited which contravenes Chapter 5C;
 - Grounds for negligent misrepresentation and misleading and deceptive conduct and breach of contract; and
- Summary which enables the Liquidator to reconcile the proof of debts claimed to specific sections of the further amended statement of claim.

Please note that unless the abovementioned evidence is supplied within 28 days after the date of this notice, you may be excluded from the benefit of any distribution made to unsecured creditors, should a distribution occur.

Dated: 25 January 2019



**John Park
Liquidator**

From: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Sent: 7 February 2019 4:41 PM
To: David Whyte <David.Whyte@bdo.com.au>
Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Subject: The Creditors of LM Investment Management Limited (In Liquidation) (Receivers Appointed) and the Funds

David,

Please refer to the attached correspondence.

With respect to your email of this afternoon, I confirm all information received from EY and King & Wood Mallesons on EY's behalf has been provided to you. Nothing further has been received at this time.

Regards,

Renee Lobb
Senior Director, Corporate Finance & Restructuring

FTI Consulting
+61 7 3225 4976 T | +61 408 811 969 M | +61 7 3225 4999 F
renee.lobb@fticonsulting.com

Level 20, CP1
345 Queen Street
Brisbane QLD 4000, Australia
www.fticonsulting.com

Proudly supporting



From: David Whyte <David.Whyte@bdo.com.au>
Sent: Thursday, 31 January 2019 1:58 PM
To: Lobb, Renee <Renee.Lobb@fticonsulting.com>
Cc: Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>
Subject: RE: The Creditors of LM Investment Management Limited (In Liquidation) (Receivers Appointed) and the Funds

Please refer attached letter.

Regards

David

DAVID WHYTE
Partner
Direct: +61 7 3237 5887
Mobile: +61 413 491 490
David.Whyte@bdo.com.au

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Level 10, 12 Creek St
Brisbane QLD 4000
AUSTRALIA
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Fax: +61 7 3221 9227

www.bdo.com.au

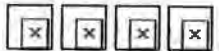
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From: Ubank, Ashleigh <Ashleigh.Ubank@fticonsulting.com>

Sent: 25 January 2019 4:06 PM

To: David Whyte <David.Whyte@bdo.com.au>

Cc: Lobb, Renee <Renee.Lobb@fticonsulting.com>; Park, John <John.Park@fticonsulting.com>; Trenfield, Kelly <Kelly.Trenfield@fticonsulting.com>

Subject: The Creditors of LM Investment Management Limited (In Liquidation) (Receivers Appointed) and the Funds

Dear Mr Whyte,

Please refer to the attached documents regarding The Creditors of LM Investment Management Limited (In Liquidation) (Receivers Appointed) and the Funds.

Regards,

Ashleigh Ubank

Executive Assistant II | Corporate Finance & Restructuring

FTI Consulting

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7 February 2019

Our Ref: RCL_897417

BDO
Level 10, 12 Creek Street
BRISBANE QLD 4000

Attention: Mr David Whyte

By Email: David.Whyte@bdo.com.au

Dear Mr Whyte

**RE: LM Investment Management Limited (In Liquidation) (LMIM) ACN 055 691 426
Proof of Debt Adjudication**

I refer to previous correspondence concerning the proof of debt process being undertaken by myself as Liquidator to identify claims against the LM First Mortgage Income Fund ("FMIF") and to your correspondence dated 31 January 2019.

I address below the queries raised in your 31 January 2019 correspondence, in the order they appear in the correspondence as follows:

- The Ernst and Young 20 December 2018 proof of debt ("EY POD") was provided to you as a courtesy, for your information only at this time;
- I am yet to adjudicate on the EY POD, nor have I made a determination or notification to you as to any right of indemnity from FMIF assets;
- As the proof of debt process is not being conducted by the Liquidator for the purpose of declaring a dividend, creditors are able to lodge a proof of debt at any point in time. The delay in the provision of the EY POD is not a matter known to me.
- The separate Ernst and Young Proof of Debt referred to in your point 2 for \$158,896.51 was subsequently revised via the proof of debt dated 14 January 2019 which was provided to you in my correspondence dated 16 January 2019. This amount has been admitted and I have formed a view the claim has a right of indemnity from FMIF assets;

- With respect to your points 3 and 4 and subsequent point 1, I respond further as follows:
 - The EY POD was received by our office after close of business on 20 December 2018, being some hours after the 20 December 2018 correspondence had been finalised and issued to you;
 - Given the late receipt of the EY POD prior to the Christmas office closure period, I had not reviewed the EY POD until after my return to this office in January 2019. Further, upon receipt of the EY POD we sought to obtain legal counsel as to the most appropriate course of action, given the nature of the claim and proceedings on foot;
 - We also sought to discuss the EY POD with King & Wood Mallesons to determine the background of the claims and again, to determine the most appropriate course of action given the nature of the claim and the intertwined nature of the claim and the audit proceeding.
 - I have not adjudicated on this proof of debt, nor formed a view as to its right of indemnity from FMIF assets;
 - A request for further information was issued to enable me to properly assess the EY POD. A copy of that request is ***attached**;
 - Following receipt of the requested information I will revert to you with my adjudication on the EY POD and whether I consider the EY POD to have a right of indemnity against FMIF assets.

I note the points raised by you with respect to the EY POD and Supreme Court proceeding 2166 of 2015 and will take those under consideration in my eventual adjudication of the claim. I have not yet determined whether or not it is appropriate for these claims to be dealt with in the context of a proof of debt regime. Upon receipt of the additional information as requested from King & Wood Mallesons on behalf of EY I will be in a better position to decide if such an evaluation is able to be undertaken in the circumstances. In accordance with the revised Orders, you have the ability to review the adjudication should you not agree with my eventual determination.

Should you have any further queries please contact Renee Lobb of this office on (07) 3225 4976 or Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting



John Park
Liquidator

25 January 2019

Our Ref: KAT_8974RFI_EY

Ernst & Young
C/- King & Wood Mallesons
Level 33, Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

By email: cameron.mew@au.kwm.com
philip.pan@au.kwn.com

Dear Sirs

**RE: The Creditors of LM Investment Management Limited (in Liquidation) (Receivers Appointed)
("the Company") and the Funds
Formal proof of debt or claim – further particulars required**

I refer to previous correspondence relating to the Company, the Funds, and to the following Formal Proofs of Debt or Claim (POD) from Ernst & Young ("EY") dated 20 December 2018:

Claimant	POD Amount (\$)
LM First Mortgage Income Fund	181,005,000.00 plus interest and legal costs
LM Currency Protected Australian Income Fund	40,583,109.06 plus interest and legal costs
LM Institutional Currency Protected Australian Income Fund	5,044,18.30 plus interest and legal costs
LM Wholesale First Mortgage Income Fund	9,432,090.76 plus interest and legal costs

The proofs of debt are for unliquidated amounts as no judgment has been delivered in respect of Supreme Court Proceeding 2166/15 ("the EY Proceeding"). Further, the proofs of debt do not reconcile with amounts stated in the EY Proceeding further amended statement of claim.

With respect to your assertion that EY has the right to be subrogated as LM Investment Management Limited is able to be indemnified from the property of the FMIF, you have not had regard to the 17 October 2017 decision of Justice Jackson, where His Honour held that the claimed right of payment from the assets of the FMIF was suspended until the resolution of the Clear Accounts Proceeding.

Based on the above, further information is required to enable the adjudication of the EY proofs of debt. A formal notice is ***attached** outlining the information required.

Should you have any queries, please contact Renee Lobb of my office on (07) 3225 4976 or via email at Renee.Lobb@fticonsulting.com.

Yours faithfully
FTI Consulting

A handwritten signature in black ink, appearing to read 'John Park', with a stylized flourish at the end.

John Park
Liquidator

***Attach.**

NOTICE REQUIRING FURTHER EVIDENCE IN SUPPORT OF PROOF OF DEBT OR CLAIM

**LM Investment Management Limited (In Liquidation) (Receivers Appointed)
ACN 077 208 461 (the "Company")**

To: Ernst & Young
C/- King & Wood Mallesons
Level 33
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

Take notice that I require further evidence as detailed below in support of the Formal Proof of Debt or Claim (Form 535) submitted by you.

Additional Information Required:

- A breakdown of each claim including all timesheets to support legal costs and audit fees;
- Itemised statement to evidence interest claims;
- Details as to the factual basis of EY's claim including:
 - The conduct of LM Investment Management Limited which contravenes Chapter 5C;
 - Grounds for negligent misrepresentation and misleading and deceptive conduct and breach of contract; and
- Summary which enables the Liquidator to reconcile the proof of debts claimed to specific sections of the further amended statement of claim.

Please note that unless the abovementioned evidence is supplied within 28 days after the date of this notice, you may be excluded from the benefit of any distribution made to unsecured creditors, should a distribution occur.

Dated: 25 January 2019



**John Park
Liquidator**



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

Via email: john.park@fticonsulting.com

John Park
FTI Consulting
Level 20, CP1
345 Queen Street
BRISBANE QLD 4001

14 February 2019

Dear Mr Park

**LM FIRST MORTGAGE INCOME FUND ("FMIF") CREDITOR INDEMNITY CLAIM CONFIRMED BY EMAIL
DATED 24 JANUARY 2019 - PROOF OF DEBT LODGED BY EY, DATED 14 JANUARY 2019**

I refer to:

1. The Orders dated 17 December 2015 in proceeding 3508/15 ("the Orders") Unless the context otherwise requires, terms defined in the Orders have the same meaning in this letter;
2. Your letter dated 20 December 2018, enclosing a Proof of Debt dated 30 April 2013 lodged by EY in the sum of \$158,896.51;
3. My request for further information in relation to this Proof dated 2 January 2019;
4. Your response dated 16 January 2019. Your letter dated 16 January 2019 enclosed a revised proof of debt lodged by EY dated 14 January 2019 in the sum of \$158,896.51 ("EY Proof"), which replaces the earlier proof;
5. Ms Lobb's email dated 24 January 2019 confirming that you have identified a Creditor Indemnity Claim with respect to the EY Proof.
6. Ms Lobb's email dated 7 February 2019 advising, amongst other things, that no further information has been received from EY at that time.

Under paragraph 8(b) of the Orders, within 30 days of receipt of an Eligible Claim, or of any information requested in accordance with paragraph 8(a) of the Orders, I am required to accept the Eligible Claim as one for which LMIM has a right to be indemnified from property of the FMIF, reject the Eligible Claim, or accept part of it and reject part of it.

I note that I have not yet received all of the information requested in my email dated 2 January 2019 - specifically, I have not received a copy of any engagement letter relating to the review or any supporting documentation detailing the time spent/the work performed by EY with respect to the audit of the December 2012 accounts, nor have you informed me that the requested information will not be provided, - and accordingly, the time for me to decide whether to accept, reject or accept in part or



reject in part, the Creditor Indemnity Claim (claim for indemnity) made against the FMIF with respect to the claim notified by the EY Proof has not yet begun to run.

I have reviewed the EY Proof and the supporting documents.

The EY Proof states that the debt arose in December 2012, and that the consideration is "*Engagement as auditor of the half-year financial statements of LMIM as RE of the FMIF for the period 1 July 2012 to 31 December 2012.*"

I have not been provided with a copy of any letter of engagement.

A copy of EY's Standard Terms and Conditions has been provided. Item 23 of the General Terms and Conditions provides "*You shall pay us for all work in progress, services already performed and expenses incurred by us up to and including the effective date of termination of this agreement. Payment is due 14 days following receipt of our invoice for these amounts.*"

EY's review of the financials statement for the half-year ending 31 December 2012 was not completed.

The following two invoices from EY have been provided:

1. Invoice No. AU00100324826 dated 15 March 2013 in the sum of \$116,836.50. This invoice is expressed to be for "Progress bill for 31 December 2012 after your review of LM First Mortgage Income Fund"; and
2. Invoice No. AU00100327917 dated 8 April 2013 in the sum of \$42,060.01. This invoice is expressed to be for "Billing with respect to 31 December 2012 half year review of LM First Mortgage Income Fund for work performed up to and including 18 March 2013".

I have not been provided with any further details of the work performed by EY.

Claim by LMIM as RE of the FMIF against EY

As you are aware, LMIM as RE of the FMIF has commenced Supreme Court of Queensland Proceeding No 2166/15 ("**Auditor's Action**") against EY claiming the sum of up to approximately \$201 million plus interest and costs. The claims are detailed in the Sixth Further Amended Statement of Claim, a copy of which has been provided to you by EY.

If the claims made in the Auditor's Action are successful and judgment is obtained against EY in a sum exceeding the amount of EY's Proof, then no amount is owing by LMIM as RE of the FMIF to EY.

My present view is that, given the claims made against EY in the Auditor's Action, the Creditor Indemnity Claim made in respect of the claim notified by the EY Proof should be rejected.

However, in the circumstances, it is appropriate for my determination as to whether to accept, or reject the Creditor's Indemnity Claim with respect to the claim notified by the EY Proof to be postponed until after the Auditor's Action is resolved.

Would you please let me know if you are agreeable to that course?

Clear Accounts Rule

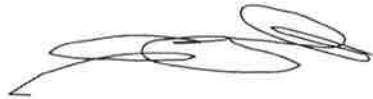
I also note that, as you are aware, the trustee's right of indemnification is subject to the Rule known as the clear accounts rule.

I have summarised the effect of the clear accounts rule and the claims relied upon by me to invoke the clear accounts rule in my letter to you notifying you of, and providing written reasons for, my determination in relation to the Creditors Indemnity Claim made in respect of the proof of debt lodged by Norton Rose Fulbright Australia.

I note that, if the Creditors Indemnity Claim made in respect of the claim notified by the EY Proof is properly admitted against the FMIF (which I doubt for the reasons given above), the effect of the clear accounts rule is that LMIM's claim for indemnity against the FMIF with respect to the proof of debt lodged by EY:

1. is suspended until the Drake Proceeding (Supreme Court of Queensland Proceeding 12317/2014), the Feeder Fund Proceeding (Supreme Court of Queensland Proceeding 13534/16) and the Clear Accounts proceeding (Supreme Court of Queensland proceeding no. 11560/16) are resolved; and
2. may not be productive of a money order in LMIM's favour, in the event that LMIM is found to have counter-liabilities to the FMIF exceeding the amount which LMIM is entitled to an indemnity out of the FMIF for.

Yours faithfully



David Whyte
Court Appointed Receiver of LM First Mortgage Income Fund



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GPO Box 457 Brisbane QLD 4001
Australia

Via email: john.park@fticonsulting.com

John Park
FTI Consulting
Level 20, CP1
345 Queen Street
BRISBANE QLD 4001

14 February 2019

Dear Mr Park

LM FIRST MORTGAGE INCOME FUND ("FMIF")- PROOF OF DEBT LODGED BY NORTON ROSE, DATED 28 SEPTEMBER 2018; CREDITOR INDEMNITY CLAIM CONFIRMED BY EMAIL DATED 24 JANUARY 2019; NOTIFICATION OF DECISION ON CREDITOR INDEMNITY CLAIM AND REASONS FOR DECISION

Notification of Decision

I refer to:

1. The Orders dated 17 December 2015 in proceeding 3508/15 ("the Orders"). Unless the context otherwise requires, terms defined in the Orders have the same meaning in this letter;
2. Your letter dated 20 December 2018, enclosing a Proof of Debt lodged by Norton Rose Fulbright Australia ("Norton Rose") in the sum of \$315,601.21("Norton Rose Proof");
3. My request for further information in relation to this Proof dated 2 January 2019;
4. Your response dated 16 January 2019; and
5. Ms Lobb's email dated 24 January 2019 confirming that you have identified a Creditor Indemnity Claim with respect to the Norton Rose Proof.

Under paragraph 8(b) of the Orders, within 30 days of receipt of an Eligible Claim, or of any information requested in accordance with paragraph 8(a) of the Orders, I am required to accept the Eligible Claim as one for which LMIM has a right to be indemnified from property of the FMIF, reject the Eligible Claim, or accept part of it and reject part of it.

I hereby give you notice, pursuant to paragraph 8(b) of the Orders, that I reject the Creditors Indemnity Claim made against the FMIF in respect of the Norton Rose Proof. Specifically, my view is that:

1. I consider that, but for the clear accounts rule, LMIM would have been entitled to indemnity from the FMIF in relation to the claim notified by the Norton Rose Proof in the sum of \$274,209.75;

2. The effect of the clear accounts rule is that LMIM's claimed right of payment from the FMIF with respect to the claim notified by the Norton Rose Proof is suspended until the claims made against LM Investment Management Ltd (Receiver Appointed) (In Liquidation) ("LMIM") in the Drake Proceeding, the Feeder Fund Proceeding, and the Clear Accounts Proceeding (as defined below) are resolved, and LMIM has no present right to be indemnified from the FMIF with respect to the Creditors Indemnity Claim made in relation to the claim notified by the Norton Rose Proof;
3. No amount will be due to be paid to LMIM with respect to the Norton Rose Proof if the amount of LMIM's liabilities to the FMIF exceeds the amount in respect of which LMIM is entitled to indemnity from the FMIF.

Detailed Reasons for Decision

Under paragraph 8(c) of the Orders, if I reject an Eligible Claim, whether in whole or in part, I must provide you with written reasons for my decision when or within seven days after, giving notice of my determination.

I now provide reasons for my decision pursuant to paragraph 8(c) of the Orders.

I have reviewed the Norton Rose Proof, and the supporting documents provided, including the letter from Norton Rose dated 30 September 2014, the schedule of invoices, copies of the invoices, and the client agreement provided by Norton Rose.

I note that a total of \$253,514.02 of the amount claimed by Norton Rose relates to the "ASIC Investigation" matter, file number 2787923, and a total of \$62,087.19 relates to the "Trilogy Funds Management Limited - change of responsible entity" matter, file number 2789191.

ASIC Investigation Matter

By letter dated 24 September 2012, Norton Rose offered to enter into a costs agreement, with LMIM in its own right and as responsible entity ("RE") of the FMIF. The retainer is described as assisting with the ASIC investigations inquiry including advising on any notices issued by ASIC and the appropriate response, undertaking any investigations required to respond to ASIC and advising on an appropriate strategy to sell down or manage redemption of the Fund in consultation with ASIC. The costs agreement does not appear to be signed by or on behalf of LMIM but I do not think anything turns upon that if it was sent and LMIM continued to instruct Norton Rose to perform the work.

The letter from Norton Rose dated 30 September 2014 describes the work undertaken in respect of the ASIC investigation file, as follows:

1. *"The majority of discussions and negotiations with ASIC was in respect of the "forward looking" management of the LMFIF. 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 ... one of the meetings held, by LM as RE of the LMFMIIF 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 LMFMIIF 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."*

I am satisfied that, on the basis of the information and explanations provided by Norton Rose, that all or most of the work undertaken on this file was undertaken in LMIM's capacity as RE of the FMIF.

Trilogy Funds Management File

By letter dated 24 September 2012, Norton Rose offered to enter into a costs agreement with LMIM in its own right and as responsible entity of, the FMIF, the LM Wholesale First Mortgage Income Fund and the LM Currency Protected Australian Income Fund. The retainer is described as to advise in respect to the attempt by Trilogy to replace LMIM "as responsible entity of the "funds". The costs agreement is signed by Francene Mulder on behalf of LMIM on 19 October 2012.

The letter from Norton Rose dated 30 September 2014 describes the work undertaken in respect of the Trilogy Funds Management file, as follows:

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 LMFMIIF 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.
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. 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.
4. As you are also aware, Dalton J. eventually found it was not in the interests of members of the LMFMIIF for Trilogy to be appointed as responsible entity of the LMFMIIF (refer paragraph [31] of the judgment delivered on 8 August 2013).
5. For the same reasons, it was reasonable for LM as RE of the LMFMIIF 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.
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.

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.”

I am satisfied, based on the definition of the clients and the description of work to be performed in the costs agreement, the descriptions of the work performed provided by Norton Rose and my review of the invoices, that it is reasonable for the work relating to this file to be apportioned as between the FMIF and the two Feeder Funds.

I do not propose to undertake a line by line review of the invoices to determine which fund they relate to.

I am satisfied that, in the circumstances, it is reasonable to allocate one third of the total of the invoices outstanding for this file, to the FMIF.

Summary

The total amount of the claim by Norton Rose that, but for the clear accounts rule, I would have accepted against the FMIF is therefore \$274,209.75.

Clear Accounts Rule

However, as you are aware, the trustee’s right of indemnification is subject to the Rule known as the clear accounts rule.

The existence of that rule was noted by Justice Applegarth in his Honour’s judgment in the *KordaMentha Pty Ltd v LM Investment Management Ltd & Anor*: see [2016] QSC 183 at [21].

More recently, it was the subject of specific consideration and findings by Justice Jackson in your client’s first application for Indemnity from the FMIF: see [2017] QSC 230 at [124] to [143]. In that case, LMIM had asserted a right of indemnity against the assets of the FMIF.

I refer in particular to paragraphs [137] to [143] of Justice Jackson’s judgment, as follows (footnotes omitted):

[137] In some quarters, the clear accounts rule is seen as derived from the rule in *Cherry v Boulton*. A reasonable argument exists that it is either separable from or a sub-set of the principles for which *Cherry v Boulton* is often cited. The Court of Appeal in *Re Dacre, Whitaker v Dacre*, without considering *Cherry v Boulton*, acted on the footing that there was a long series of authorities that “a defaulting trustee cannot claim a share in the estate unless and until he has made good his default” and that the rule is based on the theory “that the [c]ourt treats the trustee as having received his share by anticipation”, meaning that the trustee is treated as already having received its share to the extent of the default. Modern statements do not gainsay those propositions.

[138] In *RWG Management*, Brooking J considered and rejected an argument that a trustee was prevented from making a claim for indemnity for expenses against the estate until it has made good the loss to the estate from default, in the sense of payment of the amount of the default. Instead, he accepted that the counter-liabilities were to be applied (as if set off) against each other on the principle set out above, so that the trustee is entitled to any excess in its favour.

[139] To the extent that the reasons of Gordon J in *Australian Securities and Investments Commission v Lettern and ors (No 17)* suggest that the trustee's obligation to make good the default is a condition precedent to the right to an indemnity, in my view, they should not be taken as requiring anything more than the process of reducing the amount of the right by the amount of the counter-liabilities in accordance with the principle stated by Brooking J, as already mentioned.

[140] That may mean that the net amount of the right to an indemnity will not be capable of ascertainment until the amount of the loss caused by the breach of trust that is the basis of the counter-liability can be established. But that is a procedural matter, not an element of the right to indemnity or a matter of substantive defence. Hence, in my view, the statement of Young CJ in *Warne v GDK Financial Solutions Pty Ltd; Billingham v Parberry* that the trustee has a *prima facie* right to indemnity but an order for accounts will be made if there is doubt about a default that suspends the right of the trustee while the accounts are taken is correct. This reflects how matters would have proceeded in an administration action in equity involving an allegation of breach of trust.

[141] Gordon J in *Lettern* accepted that a breach of certain "core" duties will as a matter of course result in a loss of the right to indemnity for an associated expense. However, it is necessary to distinguish that statement from the operation of the clear accounts rule or the wider rule in *Cherry v Boulton*. That statement was not concerned with either principle, but a trustee's right to indemnity for an expense incurred in connection with the postulated breach of a core duty. There is no principle that the operation of the clear accounts rule is confined to a trustee's right to indemnity for an expense connected with a breach of trust.

[142] Following these steps, in the present case, reduction of the amount of the right of indemnity by the amount of the claim for the counter-liabilities in proceeding BS11560/16 would exceed the amounts claimed by LMIM for payment for indemnity for expenses, even if the claim for indemnity were otherwise accepted as one made for expenses properly incurred by LMIM as trustee or responsible entity.

[143] It follows that the clear accounts rule operates to "suspend" the claimed right to payment from the assets of the FMIF until the resolution of that claim and that LMIM's indemnity claims, to the extent that they are otherwise maintainable, should not be finally resolved until the claim in proceeding BS11560/16 is resolved.

Identification of Claims made against LMIM

LMIM as RE of the FMIF has made the following claims against LMIM in its personal capacity:

1. the claims made by LMIM as RE of the FMIF against LMIM in the Clear Accounts proceeding (Supreme Court of Queensland proceeding no. 11560/16). The Amended Claim and Statement of Claim filed in that proceeding has been served on your client. The quantum of the claim is yet to be finalised, but includes claims for the aggregate amounts of approximately \$13.7 million and \$12.9 million plus interest;

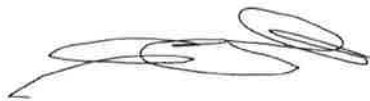
2. a claim for the sum of approximately \$15.5M plus interest and costs in the Drake Proceeding (Supreme Court of Queensland Proceeding 12317/2014). A copy of the Third Further Amended Statement of Claim filed in that proceeding has been served on LMIM. This proceeding is due to go to trial in April of 2019;
3. a claim for the sum of approximately \$56M plus interest and costs in the Feeder Fund Proceeding (Supreme Court of Queensland Proceeding 13534/16). A copy of the Second Further Amended Statement of Claim in that proceeding has been served on LMIM.

Relevantly, the effect of the clear accounts rule is that LMIM's Creditor Indemnity Claim (claim for indemnity) against the FMIF with respect to the claim notified by proof of debt lodged by Norton Rose:

1. is suspended until the Drake Proceeding, the Feeder Fund Proceeding and the Clear Accounts proceeding are resolved; and
2. may not be productive of a money order in LMIM's favour, in the event that LMIM is found to have counter-liabilities to the FMIF exceeding the amount which LMIM is entitled to an indemnity out of the FMIF for in respect of the Norton Rose Proof.

If you have any queries or wish to discuss, please do not hesitate to contact me.

Yours faithfully



David Whyte
Court Appointed Receiver of LM First Mortgage Income Fund

Our reference: Mr Schwarz / Mr Nase

14 February 2019

Your reference: Mr Tiplady / Mr Walsh

Mr Ashley Tiplady
Russells Lawyers
Brisbane Qld 4000

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Richard Cowen.
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Brent Weston.
Marcelle Webster.

Associates.
Emily Anderson.
James Morgan.
Scott Hornsey.
Paul Armit.

Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("*LMIM*");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("*FMIF*") v David Whyte
Supreme Court of Queensland Proceeding No. 3508/2015

We refer to the orders dated 17 December 2015 ("*the Orders*"), to your letter dated 4 February 2019 and to the letter from your client to our client dated 7 February 2019.

Your letter says that "*Mr Whyte has been notified that our client considers that the EY Proofs "will be the subject of an indemnity claim against the assets of the FMIF".*"

Our client's understanding of the current status of the proofs of debt lodged by EY is as follows:-

1. By email dated 24 January 2019, Ms Lobb of your client confirmed that a Creditor's Indemnity Claim has been identified by your client with respect to the claim notified by the Proof of Debt lodged by EY dated 14 January 2019 in the sum of \$158,896.51 ("*First EY Proof*").
2. Our client requested further information in relation to that Creditor's Indemnity Claim by email dated 2 January 2019 to your client, your client's letter to our client dated 16 January 2019 provided a partial response to that request.
3. On 24 January 2019, our client wrote to Ms Lobb to note that there were two outstanding requests. On 24 January 2019, Ms Lobb informed our client that your client is yet to receive that information from EY and that our client will be informed if that information cannot or will not be provided.
4. On 7 February 2019, your client wrote to our client to confirm that this proof of debt has been admitted and your client has formed the view that the claim has a right of indemnity from the FMIF. As there has not yet been a response to the outstanding request for information identified in our client's email of 24 January 2019, the time for our client to decide whether to admit or reject this claim for an indemnity under the Orders has not yet begun to run; and
5. On 25 January 2019, your client provided our client with a copy of a Proof of Debt dated 20 December 2018 in which EY claims the sum of approximately \$180 million from the FMIF ("*Second EY Proof*"). On 7 February 2019, Mr Park wrote to Mr Whyte to confirm that this Proof was provided to our client as a courtesy, for his information only at this time, that your client is yet to adjudicate on this Proof of Debt nor has he made a determination or notification to our client as to any right of indemnity from FMIF assets.

Would you please let us know as soon as possible if the above summary does not reflect your client's understanding of the current status of the EY proofs?

In the circumstances, our client's present view is that it would be appropriate for:

1. the time for our client to decide whether to accept or reject the Creditor's Indemnity Claim with respect to the First EY Proof to be extended until after the claims made by our client in the Auditor's Action have been resolved. There is no utility in our respective clients incurring further costs in relation to this proof of debt in circumstances where, if the claims made by our client in the Auditor's Proceeding are successful, they will well and truly overwhelm the claim made by EY, with the result that no amount will be due to EY; and
2. the claims made in respect of the Second EY Proof to be determined as part of the Auditor's Proceeding, rather than via the proof of debt process under the Orders. Given the factual and legal complexities associated with this proof of debt, and the claims relating to the Auditor's Proceeding, this claim is not readily amenable to resolution by way of the proof of debt process.

Please let us know if your client agrees, in principle with the above points? If so, we will seek instructions from our client in relation to submitting appropriate variations to the Orders (if that is necessary), for your client's consideration, with a view to the parties seeking consent orders from His Honour.

We look forward to hearing from you.

Yours faithfully



Alex Nase

Tucker & Cowen

Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation.

remuneration plus GST against the various Funds. This course has meant that the GST position is neutral for LMIM. I cause the GST to be remitted to the Commissioner of Taxation on the basis of the supply by me of services to LMIM. I have followed this course in respect of all of the LM Funds.

10. In my experience as a liquidator, and specifically as someone who has been a liquidator of a corporate trustee, I have followed the above course. In my experience, this is the usual way for liquidators to claim remuneration that is for the benefit of a company in liquidation that is the trustee of a trust.
11. In respect of GST claims made in respect of the other funds, those funds have made claims for input tax credits in respect of remuneration and other amounts. The Commissioner for Taxation has previously allowed those claims.

Expenses Application

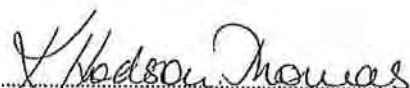
12. At paragraph 52 and 53 of my 10 August 2018 affidavit I referred to current liabilities in respect of LMIM in respect of the payment of legal expenses and also in respect of work in progress in respect of work being carried out by Russells.
13. I am informed by Mr Tiplady of Russells and verily believe that as of today's date the current liabilities to pay outstanding legal expenses and invoices that have not yet been paid total \$1,257,195.30. The work in progress of Russells is now in excess of \$350,000.00.
14. The decisions of *Park & Muller (Liquidators of LM Investment Management Ltd) v Whyte No 3* [2017] QSC 230 ("the Indemnity Decision") and *Park & Muller (Liquidators of LM Investment Management Ltd) v Whyte No 2* [2017] QSC 229 ("the Remuneration Decision") clarified my right to seek an indemnity from the First Mortgage Income Fund ("FMIF") and how my expenses ought to be apportioned. Prior to those decisions, expenses had been apportioned to the Funds in accordance with my earlier legal advice, namely on the basis of funds under management. In light of the Indemnity Decision, I consider that I ought to go back and review all expenses that have been claimed and re-allocate all of those expenses to the Funds on a *pari passu* basis and ascertain what adjusting payments may need to be made once expenses have been re-allocated.
15. I anticipate that that will be a time-consuming task, not least for the reason that each expense item will need to be considered and re-allocated. I am currently considering my position as to how it is best carried out. I may need to apply to the Court for directions as to the appropriate method to conduct this exercise.

Page 3

Deponent



Taken by



16. In addition to the re-allocation task, I intend to make a further claim for approval of expenses incurred to date, including for orders that the expenses be paid from the trust assets.
17. All the facts and circumstances herein deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear in this my affidavit.

Sworn by the Deponent on 5 September 2018 at Brisbane in the presence of:



.....
JOHN RICHARD PARK
Deponent



.....
Name:
Lawyer/Commissioner for Declarations/JP

Katie Hodson-Thomas JP 8387
Justice of the Peace

**Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 111AT(1) and 601QA(1) — Exemption**

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 111AT(1) and 601QA(1) of the Corporations Act 2001 (*Act*).

Title

2. This instrument is ASIC Instrument 18-0166.

Commencement

3. This instrument commences on the day it is signed.

Exemption

4. LM Investment Management Limited (in liquidation) (receivers appointed) ACN 077 208 461 in its capacity as the responsible entity (*Responsible Entity*) of LM First Mortgage Income Fund ARSN 089 343 288 (*Scheme*) does not have to comply with:
 - (a) the disclosing entity provisions in Part 2M.3 of the Act in relation to a financial year or half-year of the Scheme; and
 - (b) section 601HG of the Act in relation to a financial year of the Scheme.

Conditions

5. The Responsible Entity must comply with any obligation to which the exemption applies by no later than the last day of the deferral period.

Where exemption applies

6. The exemption applies where the Responsible Person does, or causes to be done (or, where the Responsible Person fails to do so, the Responsible Entity although not being required to do, within 28 days of becoming aware that the Responsible Person has failed to do so, does, or causes to be done), the following:
 - (a) publishes in a prominent place on the website maintained by the Responsible Person for the Scheme (or, in the case of the Responsible Entity, the Responsible Entity publishes on a website maintained by it for the purpose of providing information to members of the Scheme), a copy of this instrument accompanied by a notice explaining the relief granted by this instrument;
 - (b) prepares and makes available to members of the Scheme within 3 months after the end of each relevant period, a report for the relevant period which includes the following information unless disclosure of that information would be prejudicial to the winding up:

- (i) information about the progress and status of the winding up of the Scheme, including details (as applicable) of:
 - A. the actions taken during the period;
 - B. the actions required to complete the winding up;
 - C. the actions proposed to be taken in the next 12 months;
 - D. the expected time to complete the winding up; and
 - (ii) the financial position of the Scheme as at the last day of the relevant period (based on available information);
 - (iii) financial information about receipts for the scheme during the period; and
 - (iv) the following information at the end of the period:
 - A. the value of scheme property; and
 - B. any potential return to members of the Scheme; and
 - (c) maintains adequate arrangements to answer, within a reasonable period of time and without charge to the member, any reasonable questions asked by members of the Scheme about the winding up of the Scheme.
7. The exemption ceases to apply on 16 March 2020.

Interpretation

8. In this instrument:

deferral period means the period starting on the date this instrument is signed and ending on 16 March 2020.

disclosing entity provisions has the meaning given by section 111AR of the Act.

relevant period, in relation to a report, means each period of 6 months starting on 1 January 2018.

Responsible Person means the person appointed under subsection 601NF(1) of the Act to take responsibility for ensuring that the Scheme is wound up in accordance with its constitution.

Dated this 15th day of March 2018.

A. Duffy

Signed by Andrew Duffy

as a delegate of the Australian Securities and Investments Commission

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 13534/16

Plaintiff: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVER APPOINTED)**

AND

First Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 (RECEIVER APPOINTED)**

AND

Second Defendant: **TRILOGY FUNDS MANAGEMENT LIMITED ACN 080 383 679 AS RESPONSIBLE ENTITY OF THE LM WHOLESALE FIRST MORTGAGE INCOME FUND ARSN 099 857 511**

AND

Third Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868 (RECEIVER APPOINTED)**

AND

Fourth Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461**

AND

Fifth Defendant: **THE TRUST COMPANY LIMITED ACN 004 027 749 AS CUSTODIAN OF THE PROPERTY OF THE LM WHOLESALE FIRST MORTGAGE INCOME FUND ARSN 099 857 511**

SECOND FURTHER AMENDED STATEMENT OF CLAIM

SECOND FURTHER AMENDED STATEMENT OF CLAIM
Filed on Behalf of the Plaintiff
Form 16, Version 2
Uniform Civil Procedure Rules 1999
Rules 22, 146

BNEDOC5 23235893 1.DOC

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Phone No: 07 3231 1666
Fax No: 07 3229 5850
SZC/JSO:201619858

This claim in this proceeding is made in reliance on the following facts:

Parties

1. LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 077 208 461 (“**LMIM**”):
 - (a) is and was at all material times a company duly incorporated according to law;
 - (b) is and was at all material times the responsible entity (“**RE**”) of the LM First Mortgage Income Fund ARSN 089 343 288 (formerly the LM Mortgage Income Fund) (“**FMIF**”), a registered managed investment scheme under the *Corporations Act 2001* (“**the Act**”);
 - (c) was placed into voluntary administration on 19 March 2013; and
 - (d) was placed into liquidation on 1 August 2013, and John Richard Park and Ginette Dawn Muller of FTI Consulting were appointed as its joint and several liquidators.
2. Pursuant to Orders of Dalton J dated 21 August 2013 (“**the Orders**”), LMIM was directed to wind up the FMIF, subject to, inter alia, the appointment of Mr David Whyte referred to in paragraph 3 below.
3. Pursuant to the Orders, Mr David Whyte:
 - (a) was appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution;
 - (b) was appointed pursuant to s 601NF(2) of the Act as receiver of the property of the FMIF;
 - (c) has, in relation to the property of the FMIF, the powers set out in s 420 of the Act;
 - (d) is authorised to bring, defend or maintain any proceedings on behalf of the FMIF in the name of LMIM as is necessary for the winding up of the FMIF in accordance with clause 16 of its Constitution; and
 - (e) is entitled to bring and brings these proceedings in the name of LMIM as RE of the FMIF.

The Defendants

4. LMIM:
 - (a) is and was at all material times the RE of the LM Currency Protected Australian Income Fund ARSN 110 247 875 (“**CPAIF**”);
 - (b) was at all material times until 16 November 2012 the RE of the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 (“**WFMIF**”); and

- (c) is and was at all material times the RE of the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“ICPAIF”),
(together, known as the “Feeder Funds”).
5. At all material times each of the funds constituting the Feeder Funds was a unit trust and a registered managed investment scheme under the Act.
 6. On 16 November 2012, the RE of the WFMIF changed from LMIM to Trilogy Funds Management Limited (**Trilogy**), and thereby and pursuant to s.601FS of the Act the rights, obligations and liabilities of LMIM in relation to the WFMIF become rights, obligations and liabilities of Trilogy, except for:
 - (a) any right of LMIM to be paid fees for the performance of its functions before it ceased to be the RE of the WFMIF; and
 - (b) any right of LMIM to be indemnified for expenses it incurred before it ceased to be the RE of the WFMIF; and
 - (c) any right, obligation or liability that LMIM had as a member of the WFMIF; and
 - (d) any liability for which LMIM could not have been indemnified out of the property of the WFMIF if it had remained the RE of the WFMIF.
 7. At all material times from 16 November 2012, the RE of the WFMIF was Trilogy.
 8. On 18 October 2013, LMIM determined to wind up the CPAIF under s.601NC of the Act.
 9. On 18 October 2013, LMIM determined to wind up the ICPAIF under s.601NC of the Act.
 10. On 16 November 2015, Gayle Dickerson and Said Jahani of Grant Thornton were appointed by Custom House Currency Exchange (Australia) Pty Ltd (“**Custom House**”) as joint and several receivers and managers of LMIM in its capacity as RE of the CPAIF and the ICPAIF pursuant to security interests registered on the Personal Property Securities Register in favour of Custom House.

Custody Arrangements – the Feeder Funds

11. Pursuant to section 601FC(2) of the Act:
 - (a) the responsible entity for the CPAIF has held at all material times and continues to hold the scheme property of the CPAIF on trust for the unitholders in the CPAIF;
 - (b) the responsible entity for the WFMIF has held at all material times and continues to hold the scheme property of the WFMIF on trust for the unitholders in the WFMIF;

(c) the responsible entity for the ICPAIF has held at all material times and continues to hold the scheme property of the ICPAIF on trust for the unitholders in the ICPAIF.

12. At all material times, and pursuant to section 601FB(1) of the Act, each of the CPAIF, the WFMIF and the ICPAIF were governed by constitutions, each of which includes terms to the following effect:

(a) (ESTABLISHMENT OF TRUST – Appointment of Custodian) The RE may, but is not obliged to, appoint a Custodian as agent to hold the Scheme Property on behalf of the RE, in accordance with the terms and conditions of a Custody Agreement.

(b) (TITLE TO SCHEME PROPERTY – Custodian to hold as agent of RE) If a Custodian has been appointed, 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.

If not, the Scheme Property will be held in the name of the RE.

Particulars

(i) The term pleaded in (a) is clause 2.3 of the Replacement Constitutions of the CPAIF, the WFMIF and the ICPAIF each dated 10 April 2008.

(ii) The term pleaded in (b) is clause 21.1 of the Replacement Constitution of the WFMIF, and clause 20.1 of the Replacement Constitutions of the CPAIF and the ICPAIF.

13. There was a custodian appointed to hold the scheme property of the CPAIF, namely The Trust Company (PTAL) Limited ACN 008 412 913 (formerly Permanent Trustee Australia Limited) (PTAL), in the following periods:

(a) from about 1 September 2004 until about 9 April 2008;

(b) from about 30 November 2011 until about 19 February 2016.

Particulars

(i) PTAL was appointed custodian of the CPAIF under a Custody Agreement between PTAL and LMIM dated 4 February 1999, as amended from time to time (“Custody Agreement”).

(ii) PTAL was initially appointed as custodian of the CPAIF by an Amending Deed dated 1 September 2004.

(iii) LMIM terminated PTAL’s custody of the property of the CPAIF on about 9 April 2008, but re-appointed PTAL into that role by Amending Deed dated 30 November 2011.

(iv) Mr John Park, in his capacity as a liquidator of LMIM, caused LMIM to terminate PTAL's custody of the property of the CPAIF by letter dated 19 February 2016, with effect from 31 March 2016.

14. There was a custodian appointed to hold the scheme property of the WFMIF in the following periods:

- (a) from about 18 March 2002 until about 9 April 2008, namely PTAL;
- (b) from about 30 November 2011 until about 16 November 2012, namely PTAL;
- (c) from about 16 November until the date of this pleading, namely The Trust Company Limited ACN 004 027 749 ("TCL").

Particulars

- (i) PTAL was initially appointed custodian of the WFMIF under the Custody Agreement, by an Amending Deed dated 18 March 2002.
- (ii) LMIM terminated PTAL's custody of the property of the WFMIF on about 9 April 2008, but re-appointed PTAL into that role by Amending Deed dated 30 November 2011.
- (iii) In anticipation of replacing LMIM as the responsible entity for the WFMIF, and by an Amending Deed dated 1 November 2012, Trilogy appointed TCL as custodian of the property of the WFMIF under the existing Custody Deed between TCL and Trilogy dated 1 February 2005 ("Trilogy Custody Deed").

15. There was a custodian appointed to hold the scheme property of the ICPAIF, namely PTAL, in the following periods:

- (a) from about 1 September 2004 until about 9 April 2008;
- (b) from about 30 November 2011 until about 19 February 2016.

Particulars

- (i) PTAL was initially appointed custodian of the ICPAIF under the Custody Agreement, by an Amending Deed dated 27 September 2006.
- (ii) LMIM terminated PTAL's custody of the property of the ICPAIF on about 9 April 2008, but re-appointed PTAL by Amending Deed dated 30 November 2011.
- (iii) Mr John Park, in his capacity as a liquidator of LMIM, caused LMIM to terminate PTAL's custody of the property of the ICPAIF by letter dated 19 February 2016, with effect from 31 March 2016.

16. The Custody Agreement between LMIM and PTAL included at all material times material terms to the following effect:-

- (a) (Clauses 2.1 and 2.2) LMIM appoints PTAL to provide custodian services on the terms of this agreement. PTAL accepts its appointment and agrees to provide custodian services to LMIM on the terms of this agreement.
- (b) (Clause 3.1) Subject to the provisions of this agreement, PTAL agrees to custodially hold the Portfolio and Title Documents as agent for LMIM in relation to each Scheme, including the FMIF.
- (c) (Clause 1.1) 'Custodially Held' means, in relation to an asset of a Scheme held by or on behalf of PTAL under this agreement means that PTAL or the person holding the asset on PTAL's behalf has one or more of the following:-
 - (i) legal title to the asset;
 - (ii) physical possession of the asset;
 - (iii) direct control of the asset;
 - (iv) is designated as mortgagee of the asset; or
 - (v) physical possession or direct control of the essential elements of title of the asset,

where in all the circumstances this results in PTAL or the person holding the asset on PTAL's behalf having effective control of the asset for the purpose of its safekeeping (whether or not PTAL or the person holding the asset on PTAL's behalf, as the case may be, also performs other services in relation to the asset).
- (d) (Clause 1.1) 'Portfolio' means property of a Scheme Custodially Held from time to time by PTAL or a Sub-custodian pursuant to this agreement.
- (e) (Clause 1.1) 'Scheme' means those schemes listed in schedule 2 and any other scheme included by mutual agreement in writing between PTAL and LMIM, which relevantly included from time to time the schemes as particularised to paragraphs 13 to 15 above.
- (f) (Clause 4.1) LMIM is responsible for taking all decisions in relation to the Portfolio and properly communicating to PTAL Instructions in relation to the assets of the Portfolio. Subject to this agreement, PTAL must act on LMIM's Instructions in relation to any assets of the Portfolio. If PTAL does not have Instructions, PTAL is not required, subject to this agreement, to make any payment or take any other action in relation to any matter concerning any asset in a Portfolio.
- (g) (Clause 4.3) PTAL is not responsible for reviewing or advising LMIM on the Portfolio or any part of it nor for any action or omission pursuant to a decision taken or mistakenly not taken by LMIM.

(h) (Clause 4.8) PTAL is not obliged to see whether, in exercising any of its powers or performing any of its duties under this agreement in accordance with Instructions from an Authorised Person, the Authorised Person is acting in proper exercise or performance of his powers or duties.

17. The Trilogy Custody Deed between Trilogy and TCL included at all material times material terms to the following effect:-

(a) (Clause 2.1) Trilogy appoints TCL and TCL accepts the appointment as the custodian of the Assets of each of the Trusts on the terms and conditions of this Deed.

(b) (Clause 1.1) 'Assets' means the assets of each of the Trusts which TCL holds from time to time for Trilogy including those which may be transferred or delivered to TCL in accordance with the terms of this Deed;

(c) (Clause 1.1) 'Trusts' means one or more of the trusts listed in Schedule 1 and such other funds as may be agreed in writing between Trilogy and TCL, which relevantly includes the WFMIF as particularised to paragraph 14 above.

(d) (Clause 4.1) TCL's duties and responsibilities in respect of the Assets of each Trust include, in accordance with Proper Instructions:

(i) (sub-paragraph (a)) to enter into Contracts or effect transactions in relation to the Assets of the Trust on Trilogy's behalf;

(ii) (sub-paragraph (b)) to hold Assets of the Trust on Trilogy's behalf;

(e) (Clause 4.4) TCL must hold the Assets of a Trust as follows:

(i) (sub-paragraph (c)) In the case of Securities, in an Account or in its own name. If TCL is to hold Securities in its own name it must, to the extent permitted by the issuer of the Security and relevant Government Agencies, ensure that all registers and Certificates of Title record that the Securities are held by TCL on Trilogy's behalf. In the case of Securities recorded in an Account, ownership must be clearly recorded in TCL's books as belonging to the relevant Account and not for TCL's own interest.

(f) (Clause 1.1) 'Securities' includes units or other interests in managed investment schemes;

(g) (Clause 7)

(i) (sub-paragraph (a)) TCL must not effect any transactions or grant any securities involving the Assets of a Trust unless it has received Proper Instructions and must only give effect to those transactions in accordance with those Proper Instructions.

(ii) (sub-paragraph (d)) Trilogy will only provide Proper Instructions for proper purposes and TCL is not under any obligation to verify the purposes or the propriety of any purpose for which any transaction is being effected.

Governance of the FMIF

~~11.18.~~ At all material times, pursuant to section 601FC(2) of the Act, LMIM held the property of the FMIF on trust for its members.

Particulars.

- (a) LMIM held assets as trustee for the members of the FMIF;
- (b) LMIM, by its agent, held assets as trustee for the members of the FMIF;
- (c) LMIM held rights and interests in the property of the FMIF as trustee for the members of the FMIF.

~~12.19.~~ The terms of the trust on which LMIM held the assets of the FMIF were those contained in, *inter alia*:

- (a) ~~the Product Disclosure Statement for the FMIF as it was from time to time;~~
- ~~(b)(a)~~ the Constitution of the FMIF;
- ~~(e)(b)~~ the Act, to the extent to which it applied the obligations of an RE of a managed investment fund, including the obligations set out in paragraphs 23 and 41 below.

~~13.20.~~ At all material times, and pursuant to section 601FB(1) of the Act, the FMIF was governed by a Constitution (hereinafter, the “**Constitution**”), which relevantly provided to the following effect:

- (a) by clause 1.1:
 - (i) ‘Member’ in relation to a Unit means the person registered as the holder of that Unit (including joint holders);
 - (ii) ‘Register’ means the register of Members maintained by the RE under clause 22;
 - ~~(i)(iii)~~ the “Responsible Entity”, or “RE” means the company named in ASIC’s records as the responsible entity of the Scheme and referred to in this document as the RE who is also the Trustee of the Scheme;
 - ~~(ii)(iv)~~ the “Scheme” means the FMIF;
 - ~~(iii)(v)~~ “Scheme Property” means assets of the Scheme;
 - (vi) ‘Unit’ means an undivided interest in Scheme Property created and issued under this Constitution;
- (b) by clauses 2.1 and 2.2, the RE is trustee of the Scheme and holds the property of the Scheme on trust for ~~the~~ Members of the Scheme;
- (c) by clause 2.3, the RE has appointed PTAL The Trust Company (PTAL) Limited ACN 008 412 913 (formerly Permanent Trustee Australia Limited) (“PTAL”) as agent to hold the Scheme Property on behalf of the RE;

- (d) by clause 3.1, the beneficial interest in the Scheme Property is divided into Units and, 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 Mmembers under the Constitution;
- (e) by clause 3.2, 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 and, 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.
- (f) by clause 9.1:
 - (i) Subject to the 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;
 - (ii) A transferor of Units remains the holder of the Units transferred until the transfer is recorded on the Register.
- (g) by clause 22.1, the RE must establish and keep a register of Members, and if applicable, the other registers required by the Law.

21. Pursuant to the Orders of Jackson J dated 17 December 2015:

- (a) The liquidators of LMIM were directed not to carry out the functions of LMIM pursuant to clauses 9, 10 and 22 of the Constitution;
- (b) LMIM was relieved of the obligations imposed by clauses 9, 10 and 22 of Constitution;
- (c) Mr Whyte was authorised and empowered to exercise the powers of, and was made responsible for the functions of, the Responsible Entity as set out in Clauses 9, 10 and 22 of the Constitution.

~~14.22.~~ PTAL was at all material times the custodian of the assets of the FMIF, pursuant to the terms of the Custody Agreement, a Custody Agreement between PTAL and LMIM dated 4 February 1999 (as amended from time to time) ("Custody Agreement").

~~15.23.~~ At all material times, LMIM was obliged as RE and as trustee of the FMIF:

- (a) to act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, give priority to the members' interests;
- (b) to treat the members who hold interests of the same class equally and members who hold interests of different classes fairly;

- (c) to ensure that all payments out of the property of the FMIF are made in accordance with its Constitution and the Act.

Particulars

- (i) LMIM was so obliged pursuant to section 601FC(1)(c), (d) and (k) of the Act, and pursuant to the general law of trusts.

Obligations of the RE of the FMIF upon the winding up of the FMIF

~~+6.24.~~ By section 601NE of the Act, and in the premises of paragraph 2 above, LMIM as RE of the FMIF is obliged to ensure that the FMIF is wound up in accordance with the Constitution and the Orders.

~~+7.25.~~ At all material times, the Constitution relevantly provided by clause 16.7 to the effect that, “[s]ubject 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 right or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 12.4; ...”

Particulars.

- (i) At all material times, the above terms were contained in the Replacement Constitution of the FMIF dated 10 April 2008.

~~+8.26.~~ Further, the Constitution also included the following terms expressly by reference, or by necessary implication:

- (a) that the administration of the FMIF, including its winding up, is to be carried out pursuant to the principles of the law of trusts, except where those principles are inconsistent with the provisions of the Act concerning the obligations of an RE of a managed investment fund or the express terms of the Constitution;
- (b) that LMIM or its agent or assignee, by reference to those principles, is to be treated as a matter of accounting as having received by anticipation that part of the assets of the FMIF to which it or its agent or assignee will in due course become beneficially entitled, directly or through another party, as a Class B unitholder by anticipation, to the extent of its-LMIM’s unsatisfied obligation as RE and trustee of the FMIF to make good to the FMIF any breaches of trust or duty for which it is responsible;

- (c) that, by reference to those principles, and in relation to any person Unitholder who is liable to the FMIF:
- (i) that Unitholder person or their agent or assignee cannot share in the FMIF, directly or through another party, without first contributing to the FMIF by satisfying any its liability to make a contribution in aid of the FMIF; and
 - (ii) that Unitholder's person's obligation to contribute to the FMIF is treated as being in satisfaction of their or their agent or assignee's its-right to share, directly or through another party, in the income or assets of the FMIF to the extent of their the Unitholder's obligation or, in other words, that Unitholder's-their or their agent or assignee's right to share in the income or assets of the FMIF is appropriated in payment of its-their liability to contribute to the FMIF;
- (d) that, by reference to those principles, where LMIM as RE of the FMIF has made an overpayment or wrong payment to any Unitholder, LMIM is entitled to recoup any such overpayment or wrong payment from any capital or income remaining in, or coming into LMIM's hands, to which the overpaid or wrongly paid Unitholder or their agent or assignee would otherwise be entitled.

Particulars

- (i) The pleaded terms are incorporated into the Constitution expressly by the recognition in clause 2 of the Constitution that LMIM was the trustee of the FMIF for the members of the FMIF.
- (ii) In the alternative, the pleaded terms are to be implied in fact as being clear, obvious (in light of the law of trusts), reasonable and equitable, necessary to give business efficacy to the Constitution, and not inconsistent with any express term of the Constitution.

~~19.27.~~ Further and in the alternative the principles obligations and restrictions on LMIM referred to in sub-paragraphs (a) to (d) of paragraph 26 are were imposed on LMIM and its agents and assignees in Equity.

~~20.28.~~ As at 16 November 2012 when Trilogy became the RE of the WFMIF, the rights of Trilogy as RE of the WFMIF and of its agents and assignees and in that capacity as a Class B unitholder in the FMIF were thereafter qualified and limited by reference to the principles referred to in paragraphs 26 and 27 above, insofar as they those principles had applied to LMIM and its agents and assignees immediately before ~~it~~ LMIM ceased to be the RE of the WFMIF.

Unit holdings

~~21.29.~~ At all material times, there were three different classes of issued Units in the FMIF, as follows:

- (a) Class A units, which were held by (a) ordinary unitholders of the FMIF;

- (b) Class B units, all of which were held for the Feeder Funds by LMIM, apart from those transferred to Trilogy on 16 November 2012 as RE for the WFMIF as ~~pleaded in paragraph 6 above~~, and all of which were Australian dollar investments;
- (c) Class C units, which were held by unitholders of the FMIF who had invested in foreign currencies.

~~22.30.~~ At all material times, Class A and Class B units in the FMIF had the same paid up value, and the same rights and obligations.

~~23.~~ LMIM held Class B units in the FMIF on behalf of one of the CPAIF, the ICPAIF or, before it was replaced by Trilogy as RE of the WFMIF, the WFMIF.

~~24.~~ On and after 16 November 2012, Trilogy held all of its Class B units in the FMIF on behalf of the WFMIF.

CPAIF Units

31. At all material times the Class B units in the FMIF held for the CPAIF (“CPAIF Units”) were scheme property of the CPAIF, held by LMIM as the responsible entity for the CPAIF.

Particulars

- (a) On about 20 October 2004, PTAL applied for the issue to it of units in the FMIF as custodian for the CPAIF, i.e. as agent for LMIM as responsible entity for the CPAIF, not as a trustee of any trust as between PTAL and LMIM as responsible entity for the CPAIF.
- (b) From about April 2008 until about November 2011, the CPAIF Units were held in the register of members of the FMIF maintained by LMIM under Chapter 2C of the Act (“FMIF Unit Register”) in the name “LMIM atf, [as trustee for] LM Currency Protected Aust Income Fund”.
- (c) From then until 28 May 2018 the CPAIF Units were held in the FMIF Unit Register:
 - (i) initially in the name “The Trust Company (PTAL) Limited ATF [As Trustee For] LM Currency Protected Aust Income Fund”, the use of the acronym “ATF” instead of “ACF” (meaning As Custodian For) being a mistake in the FMIF Unit Register;
 - (ii) subsequently in the name “The Trust Company (PTAL) Limited ACF [As Custodian For] LM Currency Protected Australian Income Fund”.
- (d) On about 25 May 2018, Mr Whyte was first notified by PTAL that it had been removed as custodian of the property of the CPAIF with effect from 31 March 2016, and on 28 May 2018 LMIM and PTAL requested that the FMIF Unit Register be changed.

(e) From 28 May 2018, the CPAIF Units have been held in the FMIF Unit Register in the name "LM Investment Management Limited (In Liquidation) as RE for LM Currency Protected Australian Income Fund".

32. In the alternative, the CPAIF Units:

- (a) were held by LMIM as responsible entity for the CPAIF at all material times until about November 2011;
- (b) were then assigned to PTAL to hold on trust for LMIM as responsible entity for the CPAIF on the terms of the Custody Agreement, at all subsequent material times until 28 May 2018;
- (c) are now held by LMIM as responsible entity for the CPAIF.

33. In the premises and further to paragraphs 31 and 32 above (including in the alternative):

- (a) at all material times LMIM as the responsible entity for the CPAIF was a beneficiary of the FMIF;
- (b) at all material times LMIM as the responsible entity for the CPAIF held a beneficial interest in the property of the FMIF;
- (c) LMIM's rights in relation to the CPAIF Units are qualified by each of the principles referred to in paragraphs 26 and 27 above.

WFMIF Units

34. At all material times the Class B units in the FMIF held for the WFMIF ("WFMIF Units") were scheme property of the WFMIF, held by the responsible entity for the WFMIF from time to time.

Particulars

- (a) From about April 2008 until about November 2011, the WFMIF Units were held in FMIF Unit Register in the name "LMIM atf [as trustee for] LM Wholesale Mortgage Income Fund".
- (b) from then until 7 March 2013, the WFMIF Units were held in the FMIF Unit Register:
 - (i) initially in the name "The Trust Company (PTAL) Limited ATF [As Trustee For] LM Wholesale Mortgage Income Fund", the use of the acronym "ATF" instead of "ACF" (meaning As Custodian For) being a mistake in the FMIF Unit Register;
 - (ii) subsequently in the name "The Trust Company Limited ATF [As Trustee For] LM Wholesale Mortgage Income Fund", the use of the acronym "ATF" again being a mistake in the FMIF Unit Register;

(c) from 7 March 2013 to the date of this pleading, the WFMIF Units have been held in the name "The Trust Company Limited As Custodian For LM Wholesale First Mortgage Income Fund".

(d) The FMIF Unit Register presently records the WFMIF Units as being held by the business with ABN 59 080 383 679, being that ABN issued to the entity described as "TRILOGY FUNDS MANAGEMENT LIMITED".

35. In the alternative, the WFMIF Units:

(a) were held by LMIM as responsible entity for the WFMIF at all material times until about November 2011;

(b) were then assigned to PTAL to hold on trust for the responsible entity for the WFMIF from time to time on the terms of the Custody Agreement, at all material times until at least 16 November 2012;

(c) were then held by TCL on trust for Trilogy as responsible entity for the WFMIF on the terms of the Trilogy Custody Deed, at all material times from a date on or after 16 November 2012 and on or before 7 March 2013;

(d) are now held by TCL on trust for Trilogy as responsible entity for the WFMIF on the terms of the Trilogy Custody Deed.

36. In the premises and further to paragraphs 34 and 35 above (including in the alternative):

(a) at all material times the responsible entity for the WFMIF from time to time was a beneficiary of the FMIF;

(b) at all material times the responsible entity for the WFMIF from time to time held a beneficial interest in the property of the FMIF;

(c) Trilogy and TCL's rights in relation to the WFMIF Units are qualified by each of the principles referred to in paragraphs 26 to 28 above.

The ICPAIF Units

37. At all material times the Class B units in the FMIF held for the ICPAIF ("ICPAIF Units") were scheme property of the ICPAIF, held by LMIM as the responsible entity for the ICPAIF.

Particulars

(a) On about 28 November 2006, PTAL applied for the issue to it of units in the FMIF as custodian for the ICPAIF, i.e. as agent for LMIM as responsible entity for the ICPAIF, not as a trustee of any trust as between PTAL and LMIM as responsible entity for the ICPAIF.

(b) From about April 2008 until about November 2011, the ICPAIF Units were held in the FMIF Unit Register in the name "LMIM acf [as custodian for] LM

Institutional CPAIF” , the use of the acronym ‘acf’ instead of ‘atf’ (meaning as trustee for) being a mistake in the FMIF Unit Register for that period.

- (c) From then until 28 May 2018, the CPAIF Units were held in the FMIF Unit Register in the name “The Trust Company (PTAL) Limited acf [as custodian for] LM Institutional CPAIF”.
- (d) On about 25 May 2018, Mr Whyte was first notified by PTAL that it had been removed as custodian of the property of the ICPAIF with effect from 31 March 2016, and on 28 May 2018 LMIM and PTAL requested that the FMIF Unit Register be changed.
- (e) From 28 May 2018, the ICPAIF Units have been held in the FMIF Unit Register in the name “LM Investment Management Limited (In Liquidation) as RE for LM Institutional Currency Protected Australian Income Fund”.
- (f) The FMIF Unit Register has at all material times and continues to record the ICPAIF Units as being held by the business with ABN 92 510 262 319, being that ABN issued to the entity described as “The trustee for LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND”.

38. In the alternative, the ICPAIF Units:

- (a) were held by LMIM as responsible entity for the ICPAIF, at all material times until about November 2011;
- (b) were then assigned to PTAL to hold on trust for LMIM as responsible entity for the ICPAIF on the terms of the Custody Agreement, at all subsequent material times until 28 May 2018;
- (c) are now held by LMIM as responsible entity for the ICPAIF.

39. In the premises and further to paragraphs 37 and 38 above (including in the alternative):

- (a) at all material times LMIM as the responsible entity for the ICPAIF was a beneficiary of the FMIF;
- (b) at all material times LMIM as the responsible entity for the ICPAIF held a beneficial interest in the property of the FMIF;
- (c) LMIM’s rights in relation to the ICPAIF Units are qualified by each of the principles referred to in paragraphs 26 and 27 above.

Redemptions

35-40. Pursuant to s.601KA of the Act, the Constitution of the FMIF was entitled to make provision for members to withdraw from the FMIF:

- (a) while the FMIF is liquid, as defined in s.601GA(4) of the Act; or
- (b) while the FMIF is not liquid, but only in accordance with the provisions of Part 5C.6 of the Act.

26.41. Pursuant to s.601KA(3) of the Act, the RE was not permitted to allow a member to withdraw from the FMIF:

- (a) if the FMIF is liquid – otherwise than in accordance with the Constitution; or
- (b) if the FMIF is not liquid – otherwise than in accordance with the Constitution and ss.601KB to 601KE of the Act.

27.42. Pursuant to s.601KA(4) of the Act, the FMIF was liquid if liquid assets account for at least 80% of the value of the property of the FMIF.

Particulars.

- (a) Pursuant to s.601KA(5) of the Act, the following were liquid assets unless it is proved that LMIM as RE of the FMIF cannot reasonably expect to realise them within the period specified in the Constitution for satisfying withdrawal requests while the FMIF is liquid:
 - (i) money in an account or on deposit with a bank;
 - (ii) bank accepted bills;
 - (iii) marketable securities (as defined in section 9);
 - (iv) property of a prescribed kind.
- (b) Pursuant to s.601KA(6) of the Act, any other property was a liquid asset if LMIM as RE of the FMIF reasonably expected that the property can be realised for its market value within the period specified in the Constitution for satisfying withdrawal requests while the FMIF is liquid.

28.43. The Constitution made no provision for members to withdraw from the FMIF while the FMIF was not liquid in accordance with the provisions of Part 5C.6 of the Act.

29.44. The Constitution made provision for members to withdraw from the FMIF while the FMIF was liquid in terms to the following effect:

- (a) by clause 7.1, while the Scheme was liquid as defined in s.601KA(4) of the Act, 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);
- (b) by clause 7.2(a), the RE must, subject to clause 7.2(b), redeem Units the subject of a request made by any Member under clause 7.1 out of the Scheme Property for the Withdrawal Price (being the Net Fund Value divided by the total number of Units issued) within 365 days or 180 days (as provided therein), or within a shorter period in its absolute discretion (the “**Withdrawal Offer**”);

- (c) by clause 7.2(b), the RE may suspend the Withdrawal Offer as detailed in clause 7.2(a) for such periods as it determines where:
 - (i) the Scheme's cash reserves fall and remain below five per cent for ten consecutive days; or
 - (ii) if in any period of 90 days, the RE receives valid net Withdrawal Notices equal to 10 per cent 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 ten per cent 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;
- (d) by clause 7.3(b), a Unit is cancelled when the Member holding the Unit is paid the Withdrawal Price by the RE.

~~30-45.~~ At all material times from 14 April 2009, LMIM as RE of the FMIF was the recipient of relief from ASIC under s.601QA(1) of the Act ("**ASIC Relief**") by which it was:

- (a) exempted from s.601FC(1)(d) of the Act in relation to allowing a member of the FMIF to withdraw in accordance with s.601KEA of the Act as inserted by the ASIC Relief;
- (b) conferred (by s.601KEA thereby inserted) with the power to allow a member to withdraw from the FMIF in accordance with the Constitution if that member was experiencing circumstances of hardship as defined by the ASIC Relief, which included the power to allow LMIM to withdraw in accordance with the Constitution insofar as a member of one of the Feeder Funds was experiencing circumstances of hardship as so defined, subject to the limits defined by the ASIC Relief;
- (c) exempted (by s.601KA(3AA) thereby inserted) from s.601KA(3) of the Act to the extent of the power thereby conferred.

Particulars

The ASIC Relief was granted by the following instruments:

- (i) ASIC Instrument 09-00278 dated 14 April 2009; and
- (ii) ASIC Instrument 09-00963 dated 11 November 2009.

~~34-46.~~ From time to time after 14 April 2009, LMIM as RE of the FMIF permitted certain redemptions in accordance with the ASIC Relief (hereinafter referred to as "**Genuine Hardship Redemptions**").

~~32-47~~. On or about 11 May 2009, LMIM as RE of the FMIF suspended the Withdrawal Offer under clause 7.2(b) of the Constitution, purportedly with the exception of:

- (a) those approved under the ASIC Relief; and
- (b) those requested by ~~itself as a Class B unitholders~~ for distributions to investors in the Feeder Funds or for the expenses of the Feeder Funds, as the cash flow of the FMIF allowed.

Particulars

- (i) LMIM stated in its Second Supplementary Product Disclosure Statement dated 3 March 2009 that "... payment of investor withdrawals is likely to take 365 days. The Manager may also suspend withdrawals for such periods as it determines".
- (ii) LMIM stated in its Third Supplementary Product Disclosure Statement dated 30 October 2009 that "In order to protect all investments, the Manager has, as it determines, suspended withdrawals, with the exception of those approved under hardship provisions and feeder fund payments for investor distributions and fund expenses, as the cash flow allows".

~~33-48~~. In the premises, the exception to the suspension of the Withdrawal Offer referred to in paragraph ~~47(b)~~~~32(b)~~ above was not authorised by the Constitution, the Act or the ASIC Relief.

~~34-49~~. At no time after 11 May 2009, did LMIM as RE of the FMIF:

- (a) lift the suspension referred to in paragraph ~~47~~~~32~~ above; or
- (b) re-instate the Withdrawal Offer.

~~35-50~~. Despite the suspension of the Withdrawal Offer, between 11 May 2009 and 31 January 2013:

- (a) LMIM made or caused to be made requests to redeem CPAIF Units, WFMIF Units and ICPAIF Units ~~as a Class B unitholder made requests to redeem Class B units, which were not Genuine Hardship Redemptions;~~
- (b) LMIM as RE of the FMIF granted such requests, and in satisfaction of each thereof:
 - (i) caused to be paid amounts from the assets of the FMIF at the direction of LMIM as responsible entity for the Feeder Fund for which the unit the subject of the request was held; or

- (ii) recognised or reconciled a prior payment of an amount or prior payments of amounts from the assets of the FMIF which it had previously caused to be paid for the benefit of that a Feeder Fund at the direction of LMIM as its responsible entity;

Particulars of (i) and (ii)

- (1) the amounts paid, ~~or~~ recognised or reconciled by LMIM in respect of the redemptions of the Class B units equalled the value of the units the subject of that request, calculated as the Net Fund Value divided by the total number of units issued in the FMIF at that time, multiplied by the number of units the subject of the request;
- ~~(2)~~ the amounts were paid to various entities at the direction of LMIM as a Class B unit holder;
- ~~(3)~~(2) LMIM as RE of the FMIF satisfied requests in respect of 45,240,212.36 units held for by LMIM as RE of the CPAIF for an aggregate value of \$42,510,704.06, of which all but \$24,830.41 was satisfied before 16 November 2012;
- ~~(4)~~(3) LMIM as RE of the FMIF satisfied requests in respect of 11,271,272.09 units held for by LMIM as RE of the WFMIF for an aggregate value of \$9,796,090.76, the latest of which was satisfied on 15 November 2012;
- ~~(5)~~(4) LMIM as RE of the FMIF satisfied requests in respect of 5,335,882.97 units held for by LMIM as RE of the ICPAIF for an aggregate value of \$5,069,118.30, the latest of which was satisfied on 13 November 2012;
- ~~(6)~~(5) The amounts referred to in sub-paragraphs (2) to ~~(4)~~(5) hereof include amounts which were reported by LMIM to ASIC as Genuine Hardship Redemptions in respect of the CPAIF of \$1,927,595, in respect of the WFMIF of \$364,000 and in respect of the ICPAIF of \$25,000;
- ~~(7)~~(6) The amount referred to in sub-paragraphs ~~(2)~~(3) hereof includes amounts which had previously been paid by LMIM as trustee of the MPF at its direction as RE of the CPAIF, which had been accounted for as being in satisfaction of liabilities owed by the MPF to the FMIF and as creating a receivable owed by the CPAIF to the FMIF, and which were then recognised or reconciled by and were recognised as being in satisfaction of redemption withdrawals requests in an aggregate amount of approximately \$12,191,153.59 across the financial years ended 30 June 2010 and 30 June 2011;
- ~~(8)~~(7) The amount referred to in sub-paragraphs ~~(3)~~(4) hereof includes amounts which had previously been paid by LMIM as trustee of the

MPF at its direction as RE of the WFMIF, which had been accounted for as being in satisfaction of liabilities owed by the MPF to the FMIF and as creating a receivable owed by the WFMIF to the FMIF, and which were then recognised or reconciled by and were recognised as being in satisfaction of redemption withdrawals requests in an aggregate amount of \$67,295.91 across the financial year ended 30 June 2011;

~~(9)(8)~~ The amount referred to in sub-paragraphs ~~(4)(5)~~ hereof includes amounts which had previously been paid by LMIM as trustee of the MPF at its direction as RE of the ICPAIF, which had been accounted for as being in satisfaction of liabilities owed by the MPF to the FMIF and as creating a receivable owed by the ICPAIF to the FMIF, and which were then recognised or reconciled by and were recognised as being in satisfaction of redemption withdrawals requests in an aggregate amount of \$677,439.07 across the financial year ended 30 June 2011.

- (c) in relation to each request, LMIM as RE of the the Feeder Funds for which the unit the subject of the request was held and a holder of Class B units accepted the payment, or recognition or reconciliation tendered as pleaded in sub-paragraph (b) above.
- (d) LMIM then purported to cancel CPAIF Units, WFMIF Units and ICPAIF Units, Class B units to the extent of each such request.

Breach in relation to Redemptions

36.51. As at 11 May 2009 and thereafter until it was wound up, around 94% or more of the value of the property of the FMIF comprised its loans and receivables.

Particulars

- (a) The audited accounts for the year ending 30 June 2008, record that at least around 96% of the value of the property of the FMIF comprised its loans and receivables.
- (b) The audited accounts for the year ending 30 June 2009, record that at least around 96% of the value of the property of the FMIF comprised its loans and receivables.
- (c) The audited accounts for the year ending 30 June 2010, record that at least around 98% of the value of the property of the FMIF comprised its loans and receivables.
- (d) The audited accounts for the year ending 30 June 2011, record that at least around 94% of the value of the property of the FMIF comprised its loans and receivables.
- (e) The audited accounts for the year ending 30 June 2012, record that at least around 97% of the value of the property of the FMIF comprised its loans and receivables.

37.52. As at 11 May 2009 and at all material times thereafter, LMIM as RE of the FMIF did not have any reasonable basis on which to expect that the loans and receivables of the FMIF could be realised for their market value within 365 days.

38.53. In the premises of paragraphs 5136 and 5237 above, on and from at least 11 May 2009 the FMIF was not liquid within the meaning of s.601KA(4) of the Act.

39.54. In the premises, by approving the withdrawal requests and making or causing to be made the payments referred to in paragraph 5035 above while the FMIF was not liquid and while the Withdrawal Offer was suspended, LMIM:

- (a) acted outside the scope of any power conferred on it by the Constitution or the Act, or otherwise by law;
- (b) made payments out of the property of the FMIF which were not authorised by the Constitution or the Act, in that:
 - (i) it approved withdrawal requests from itself of Class B units which were not Genuine Hardship Redemptions, while the FMIF was not liquid;
 - (ii) in the alternative, if the FMIF was liquid at the time any such request was approved, it approved that request without authority to do so under the Constitution;
- (c) gave priority to its own interests as a holder of Class B units in the FMIF over the interests of the members of the FMIF as a whole;
- (d) preferred the interests of the members of the Feeder Funds over the interests of the members of the FMIF;
- (e) failed to treat members who hold interests of different classes, namely Class A and Class B units, fairly; and
- (f) failed to act in the best interests of the members of the FMIF as a whole.

40.55. In the premises, LMIM as RE of the FMIF breached the terms of its trust, and the obligations set out in paragraphs 2345 and 4126 above.

41.56. In the premises, the FMIF suffered loss or damage by reason of LMIM's breaches and contraventions referred to in paragraph 5540 above.

Particulars

The FMIF suffered loss or damage in the following amounts:

- (a) \$40,583,109.06 referable to redemptions of Class B units held as RE of the CPAIF, plus interest;
- (b) \$9,432,090.76 referable to redemptions of Class B units held as RE of the WFMIF, plus interest;
- (c) \$5,044,118.30 referable to redemptions of Class B units held as RE of the ICPAIF, plus interest.

~~42.57.~~ In the premises, LMIM is liable to compensate the FMIF to the extent of the loss or damage referred to in paragraph ~~5641~~ above.

Particulars

(a) LMIM is liable as pleaded both in equity, and pursuant to section 1317H of the Act.

~~43.58.~~ In the premises, LMIM's rights in relation to the CPAIF Units as a Class B unitholder in the FMIF are subject to the principles referred to in paragraphs ~~2618(a) to (d)~~ and 27 above to the extent of ~~its LMIM's~~ liabilities referred to in paragraphs ~~5641~~ and ~~5742~~ above, alternatively so far as they concern the CPAIF ~~and the ICPAIF~~.

~~44.59.~~ In the premises, ~~as at and from 16 November 2012 when Trilogy became the RE of the WFMIF, Trilogy's and, further and in the alternative, TCL's~~ rights in relation to the WFMIF Units as a Class B unitholder in the FMIF were and remain are subject to the principles referred to in paragraphs ~~2618~~ to ~~2820~~ above to the extent of the liabilities referred to in paragraphs ~~5641~~ and ~~5742~~ above (except for the \$24,830.41 referred to in paragraph ~~50(b)(ii)(2)~~ above), alternatively so far as they concern the WFMIF.

60. In the premises, LMIM's rights in relation to the ICAPIF Units are subject to the principles referred to in paragraphs 26 and 27 above to the extent of LMIM's liabilities referred to in paragraphs 56 and 57 above, alternatively so far as they concern the ICPAIF.

~~45.61.~~ In the premises, each cancellation of Class B units referred to in paragraph ~~50(d)35(d)~~ of this Statement of Claim is void *ab initio* and of no effect, or alternatively voidable.

Indemnity against the assets of the Feeder Funds

~~46.62.~~ The Constitution of each Feeder Fund conferred on LMIM as RE thereof a right to be indemnified from the assets of that fund on a full indemnity basis, in respect of a matter unless, in respect of that matter, it had acted negligently, fraudulently or in breach of trust, in that capacity.

Particulars

(a) Clause 18.3 of the Constitution of the CPAIF, clause 19.1(c) of the Constitution of the WFMIF, and clause 18.3 of the Constitution of the ICPAIF.

~~47.63.~~ In acting as pleaded in paragraph ~~5035~~ above, and in respect of each request for withdrawal of Class B units from the FMIF, LMIM:

(a) was acting both as the RE of the FMIF and as the RE of a Feeder Fund;

~~(b) conferred a financial benefit on the Feeder Fund in question;~~

~~(c)~~ acted in the proper performance of its duties to the Feeder Fund in question;

~~(d)~~(c) became entitled to an indemnity out of the assets of the Feeder Fund in question in respect of its liability for the loss to the FMIF pleaded in paragraphs ~~5641~~ and ~~5742~~ above, insofar as that loss relates to each such request; and

(c)(d) became entitled to a lien or charge over the assets of the Feeder Fund in question to secure and to the extent of that indemnity.

~~48.~~ Further and in relation to the loss and damage pleaded in paragraphs 41 and 42 above, LMIM as RE of the FMIF is entitled to exercise or be subrogated to LMIM's right to the indemnity referred to in paragraph 47(d) above, or to enforce the lien or charge referred to in paragraph 47(e) above.

~~49.~~~~64.~~ In the premises and further to paragraphs ~~5843~~ and 44 above, LMIM's rights in relation to the CPAIF Units as a Class B unitholder in the FMIF are subject to the principles referred to in paragraphs ~~2618~~(a) and (c) and thereby in paragraph 27 above to the extent of its LMIM's rights as RE of the FMIF as set out in paragraphs ~~63~~(c) and ~~63~~(d) 48 above, alternatively so far as they concern the CPAIF and the ICPAIF.

~~50.~~~~65.~~ In the premises and further to paragraph 59 above, as at and from 16 November 2012 when Trilogy became the RE of the WFMIF, Trilogy's and, further and in the alternative, TCL's rights in relation to the WFMIF Units as a Class B unitholder in the FMIF were and remain are subject to the principles referred to in paragraphs ~~2618~~(a) and (c) and thereby in paragraphs 27 ~~to~~and 28~~20~~ above to the extent of the liabilities referred to in paragraphs ~~5641~~ and ~~5742~~ above so far as they concern the WFMIF.

66. In the premises and further to paragraph 60 above, LMIM's rights in relation to the ICPAIF Units are subject to the principles referred to in paragraphs 26(a) and (c) and thereby in paragraph 27 above to the extent of LMIM's rights as set out in paragraphs 63(c) and 63(d) above so far as they concern the ICPAIF.

Income Distributions

~~51.~~~~67.~~ The Constitution made provision for making income distributions to members of the FMIF, to the following effect:

- (a) by clause 11.1, the Income of the Scheme for each Financial Year will be determined in accordance with the applicable Accounting Standards;
- (b) by clause 11.2, for each Financial Year:
 - (i) (sub-paragraph a) the expenses of the Scheme will be determined in accordance with the applicable Accounting Standards; and
 - (ii) (sub-paragraph 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 applicable Accounting Standards including, but not limited to, provisions for income equalisation and capital losses.

- (c) by clause 11.3, 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;
- (d) upon the true construction of clauses 11.1, 11.2 and 11.3, the Distributable Income could be no greater than the Fund's income less its expenses determined in accordance with the Australian Accounting Standards;
- (e) by clause 12.1, the Distribution Period is one calendar month for Australian dollar investments or as otherwise determined by the RE in its absolute discretion;
- (f) by clause 12.2, the RE must distribute the Distributable Income relating to each Distribution Period within 21 days of the end of each Distribution Period;
- (g) by clause 12.3, 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;
- (h) by clause 12.4, the RE may distribute the 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;
- (i) by clause 12.6:
 - (i) (sub-paragraph 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;
 - (ii) (sub-paragraph 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;
 - (iii) (sub-paragraph c) The RE may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer;
 - (iv) (sub-paragraph 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;
- (j) by clause 3.2, 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.

~~52.68.~~ Upon the true construction of the clauses 11.3 and 12.2 of the Constitution, the power to distribute income of the FMIF was conditional on LMIM making a determination of the Distributable Income for the relevant Distribution Period.

~~53.69.~~ Upon the true construction of the power conferred by clause 11.3 of the Constitution, the RE in exercising its power to determine the Distributable Income of the FMIF for a Distribution Period was:

- (a) required to act in good faith and for a proper purpose;
- (b) required to consider and take into account:
 - (i) the income of the FMIF, determined in accordance with applicable Accounting Standards, pursuant to clause 11.1 of the Constitution; and
 - (ii) the expenses of the FMIF, determined in accordance with applicable Accounting Standards, pursuant to clause 11.2 of the Constitution; and
- (c) not empowered to determine that there was any Distributable Income for a Distribution Period where the said expenses exceeded the said income for that Distribution Period.

~~54.70.~~ LMIM as RE of the FMIF: ~~Between 31 July 2011 and 1 November 2012:~~

- (a) ~~LMIM as RE of the FMIF from time to time recognised further income distributions to the Class B unitholders for the CPAIF Units, the WFMIF Units and the ICPAIF Units on the last calendar day of each Distribution Period from 1 July 2011 to 31 October 2012;~~

Particulars

These distributions were recorded in the ledgers maintained by LMIM as RE of the FMIF ~~in respect of~~ in relation to the each of the Feeder Funds, as follows:

- (i) ~~it was recorded that PTAL as trustee for the CPAIF received income distributions were recorded as having been made in relation to the CPAIF Units for each pleaded Distribution Period, and in the aggregate amount of \$12,231,875.90;~~
 - (ii) ~~it was recorded that PTAL as trustee for the WFMIF received income distributions were recorded as having been made in relation to the WFMIF Units for each pleaded Distribution Period, and in the aggregate amount of \$6,219,464.37, the latest of which was recorded as at 31 October 2012; and~~
 - (iii) ~~it was recorded that PTAL as trustee for the ICPAIF received income distributions were recorded as having been made in relation to the ICPAIF Units for each pleaded Distribution Period, and in the aggregate amount of \$1,131,173.50;~~
- (b) LMIM as RE of the FMIF recognised a re-investment of each of the income distributions referred to in sub-paragraph (a) in further units in the FMIF on the first day of the next Distribution Period in the ledger which it maintained in

respect of in relation to the relevant Feeder Fund, and in the FMIF Unit Register register of the members of the FMIF;

Particulars

- (i) ~~LMIM as RE of~~ The CPAIF increased its investment in the FMIF by an aggregate of 16,036,932.56 units therein.
 - (ii) ~~LMIM as RE (as it then was) of~~ The WFMIF increased its investment in the FMIF by aggregate of 8,190,010.02 units therein, the latest of which were issued on 1 November 2012.
 - (iii) ~~LMIM as RE of~~ The ICPAIF increased its investment in the FMIF by aggregate of 1,484,259.16 units therein.
- (c) ~~LMIM as RE of the FMIF~~ did not recognise any further distributable income payable to Class A unitholders.

Breach in relation to Distributions

~~55.71.~~ From and including the financial year ended 30 June 2009 a significant number of the loans made on behalf of the FMIF were in default for non-payment or were otherwise impaired.

~~56.72.~~ As a consequence including of the matters pleaded in paragraph ~~7155~~, at all material times between 1 January 2011 and 1 November 2012 the expenses of the FMIF exceeded the income of the FMIF, determined in accordance with the applicable accounting standards.

Particulars

- (a) The financial statements of the FMIF for the year ended 30 June 2011 recorded a net loss before distributions to unitholders of \$77,418,896.
- (b) The financial statements of the FMIF for the year ended 30 June 2012 recorded a net loss before distributions to unitholders of \$88,615,577.
- (c) The unaudited draft management accounts of the Fund for the half year ended 31 December 2012 recorded a net loss before distributions to unitholders of \$19,117,976.

~~57.73.~~ Further:

- (a) LMIM suspended income distributions from the FMIF as from 1 January 2011;

- (b) by doing so, LMIM made a determination or determinations that the FMIF had no Distributable Income for the period 1 January 2011 to December 2011.

Particulars to sub-paragraphs (a) and (b)

This may be inferred from following facts:

- (i) the notes to the financial statements of the FMIF for the year ended 30 June 2012 which state that “Distributions have been suspended from 1 January 2011”.
- (ii) The directors of LMIM stated in an update to investors dated 24 August 2011 that “The Fund will not be declaring or paying interest distributions for the period 1 January 2011 until 31 December 2011, at which time the distribution strategy will be reviewed dependent on performance of the Fund’s assets.”
- (iii) The directors of LMIM, in a letter to investors dated 14 September 2011, stated that “The Fund is declaring zero income from January 2011 to December 2011, in order to focus on unit price.”

~~58-74.~~ Between 1 January 2011 and 1 November 2012, LMIM did not make any determination that the FMIF had any Distributable Income.

~~59-75.~~ In the premises, and as to each Distribution Period between 1 July 2011 and 28 February 2013, LMIM had no power under the Constitution or the Act, or otherwise at law:

- (a) to distribute any income of the FMIF to any unitholder of the FMIF; or
- (b) further and in the alternative, to make any determination that the FMIF had any Distributable Income.

~~60-76.~~ Further, the purpose of LMIM in recognising each of the distributions to and re-investments by Class B (but not Class A) unitholders referred to in paragraphs 70(a) and 70(b)~~54(b)~~ above was to increase the value of units in each of the Feeder Funds so that they remained the same as the value of units in the FMIF.

Particulars

This may be inferred from the following facts:

- (a) The statement in the notes to the financial statements of the FMIF for the year ended 30 June 2012 that “These distributions were declared to enable the feeder funds to recognise distribution income to match expenses incurred”.
- (b) On 20 August 2012, Mr Grant Fischer, Executive Director and Chief Financial Officer of LMIM agreed in an email to Eryn Vannucci, Financial Controller of LMIM, that “we planning on running a Feeder Fund distribution from FMIF to the Feeder Funds for the period Jan to Jun 2012 to align their unit prices once the impairment figures are finalized like we did at December 11”.

~~61-77.~~ The effect of LMIM recognising each of the distributions to and re-investments by Class B (but not Class A) unitholders referred to in paragraphs 70(a) and 70(b)~~54(b)~~ above was to increase the beneficial interest in the FMIF of one class of unitholders over another.

~~62-78.~~ The purpose set out in paragraph 7660 above was not a proper purpose to make a determination to:

- (a) recognise distributions to and re-investments by Class B and not Class A unitholders;
- (b) increase the beneficial interest of one class of unitholders over another.

~~63-79.~~ In the premises, LMIM:

- (a) acted outside the scope of any power conferred on it by the Constitution or the Act, or otherwise by law;
- (b) in the alternative to sub-paragraph (a), exercised the powers conferred by clauses 3.2, 11.3 and 12.6 of the Constitution for an improper or foreign purpose.

~~64-80.~~ Further, in the premises of the matters set out in paragraphs 2921 and 30 to 23 above, the recognition of the distributions to and re-investments in the FMIF for the CPAIF Units, the WFMIF Units and the ICPAIF Units and not for the Class A Units by Class B and not Class A unitholders referred to in paragraph 7054 above for the purpose set out in paragraph 7660 above and having the effect set out in paragraph 7761 above, was not fair to the Class A unitholders.

~~65-81.~~ Further and in the premises of the same matters referred to in paragraph 80 above, In the premises of paragraphs 4, 21 to 23, 55 to 62 and 64 above, by recognising each of the distributions to and re-investments by Class B and not Class A unitholders in the circumstances set out in LMIM as RE of the FMIF:

- (a) gave priority to its own interests as a holder of Class B units in the FMIF (as pleaded in paragraphs 29 to 39 above) over the interests of the members of the FMIF as a whole;
- (b) preferred the interests of the members of the Feeder Funds over the interests of the members of the FMIF;
- (c) failed to treat members who hold interests of different classes, namely Class A and Class B units, fairly.

~~66-82.~~ In the premises, LMIM as RE of the FMIF, in exercising a power to recognise each of the distributions to and re-investments by Class B unitholders referred to in paragraph 7054 above, breached the terms of its trust and the obligations set out in paragraph 2315 above.

~~67.83.~~ In the premises, each issue of further units referred to in paragraph ~~70(b)54(b)~~ above is void and of no effect, or alternatively voidable.

The capital distributions

~~68.84.~~ In around February and March 2013, LMIM as RE of the FMIF declared and paid a distribution of the capital of the FMIF to the ~~M~~members of the FMIF (**First Capital Distribution**).

Particulars

The following cash amounts were paid to the members of the FMIF:

- (a) ~~on about 26 February 2013, \$2,062,739.66 in relation to the CPAIF Units to LMIM as RE of the CPAIF;~~
- (b) ~~on about 8 March 2013, \$1,700,317.84 in relation to the WFMIF Units to Trilogy as RE of the WFMIF;~~
- (c) ~~on about 26 February 2013, approximately \$159,799.91 in relation to the ICPAIF Units to LMIM as RE of the ICPAIF; and~~
- (d) \$4,466,923.68 to Class A and Class C unit holders.

~~69.85.~~ In around June 2013, LMIM as RE of the FMIF declared a distribution of the capital of the FMIF to the members of the FMIF (**Second Capital Distribution**).

Particulars

The following cash amounts were paid to the members of the FMIF:

- (a) \$958,156.73 ~~in relation to the CPAIF Units to LMIM as RE of the CPAIF;~~
- (b) \$789,645.73 ~~in relation to the WFMIF Units to Trilogy as RE of the WFMIF;~~
- (c) \$74,228.16 ~~in relation to the ICPAIF Units to LMIM as RE of the ICPAIF;~~
- (d) \$2,079,798.69 to Class A and Class C unit holders.

~~70.86.~~ Further, ~~a~~At the time of the First and Second Capital Distributions, each of LMIM as RE of the ICPAIF, LMIM as RE of the CPAIF and Trilogy as RE of the WFMIF ~~each of the CPAIF Units, the WFMIF Units and the ICPAIF Units:~~

- (a) ~~were held their units in the FMIF subject to the principles referred to in paragraphs 2618 to 2820 above, to the extent of LMIM's liability to the FMIF for loss and damage, as pleaded in paragraphs 5641 to 6044 above;~~
- (b) ~~their respective holders were therefore not entitled to be paid either the First or the Second Capital Distribution in cash; and~~
- (c) ~~LMIM as RE of the FMIF was entitled instead to account for the amounts to be paid in relation to those units in accordance with the principles referred to in paragraphs 26 to 28 above. were instead entitled to recognition of an amount in partial satisfaction of the said liability.~~

71. In the premises, LMIM's rights as a Class B unitholder in the FMIF are further subject to the principle referred to in paragraph 18(d) above, to the extent of the overpayment or wrong payments referred to in paragraphs 68, 69 and 70 above so far as they concern the ICPAIF and CPAIF.
72. In the premises, Trilogy's rights as a Class B unitholder in the FMIF are further subject to the principle referred to in paragraphs 18(a) and (d) above, to the extent of the overpayment or wrong payments referred to in paragraphs 68, 69 and 70 above so far as they concern the WFMIF.
- 73-87. Further and in the premises of paragraphs 4561 and 8367 above:
- (a) at the time of the First and Second Capital Distributions, respectively, the number of CPAIF Units, WFMIF Units and ICPAIF Units units held by each of LMIM as RE of the ICPAIF, LMIM as RE of the CPAIF and Trilogy as RE of the WFMIF was different to the numbers thereof recorded in the FMIF Unit Register unit register of the FMIF, at the time of the First and Second Capital Distributions;
 - (b) accordingly, LMIM as RE of the FMIF's the entitlement of LMIM and Trilogy in such capacities in relation to the First and Second Capital Distributions, referred to in paragraph 86(c)70(e) above, was to different amounts than the amounts in fact paid as pleaded in paragraphs 84 and 85 above to them;
 - (c) if this Honourable Court declares each cancellation of Class B units referred to in paragraph 50(d)35(d) above void, then the said entitlement will be for a greater amount than the amount in fact paid, which amount will depend on whether or not this Court declares each issue of further units referred to in paragraph 70(b)54(b) above to be void;
 - (d) alternatively, if this Honourable Court does not declare each cancellation of Class B units referred to in paragraph 50(d)35(d) above void, but declares that each issue of further units referred to in paragraph 70(b)54(b) above to be void, then the said entitlement will be for a lesser amount than the amount in fact paid.

Particulars

- (i) Further particulars will be provided.

The plaintiff claims the following relief:

1. A declaration that the Plaintiff is entitled to withhold from distributions or payments otherwise payable in relation to the Class B units in the to LMIM as a Class B unitholder in the LM First Mortgage Income Fund ARSN 089 343 288 (formerly the LM Mortgage Income Fund) (FMIF) held for the LM Currency Protected Australian Income Fund ARSN 110 247 875 ("CPAIF", "CPAIF Units") and for the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("ICPAIF", "ICPAIF Units"):
 - (a) the sum of \$55,059,318.12 plus interest, being the aggregate amount of the loss and damage referred to in paragraph 5644 of the Statement of Claim; and
 - (b) as adjusted for the difference between the sum paid in the First and Second Capital Distributions (as defined in paragraphs 8468 and 8569 of the Statement of Claim), and the amount ~~which LMIM as RE of the CPAIF and ICPAIF would otherwise have been entitled as referred to in paragraph 8773 of the Statement of Claim.~~

2. A declaration that the Plaintiff is entitled to withhold from distributions or payments otherwise payable in relation to the Class B units in the FMIF held for the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 ("WFMI", "WFMI Units"): ~~to the Second Defendant as a Class B unitholder in the FMIF:~~
 - (a) the sum of \$55,034,487.71, being the aggregate amount of the loss and damage set out in paragraph 5644 of the Statement of Claim accruing before 16 November 2012, plus interest; and
 - (b) as adjusted for the difference between the sum paid in the First and Second Capital Distributions, and the amount ~~which the Second Defendant would otherwise have been entitled as referred to in paragraph 8773 of the Statement of Claim.~~

3. In the alternative to paragraphs 1 and 2, declarations that the Plaintiff:
 - (a) is entitled to withhold from distributions or payments otherwise payable in relation to the CPAIF Units: ~~to the First Defendant as a Class B unitholder in FMIF:~~
 - (i) the sum of \$40,583,109.06, plus interest;
 - (ii) as adjusted for the difference between the sum paid in the First and Second Capital Distributions in relation to the CPAIF Units, and the amount ~~which the First Defendant would otherwise have been entitled as referred to in paragraph 8773 of the Statement of Claim~~ in relation thereto;

- (b) is entitled to withhold from distributions or payments in relation to the WFMIF Units otherwise payable to the Second Defendant as a Class B unitholder in the FMIF:
 - (i) the sum of \$9,432,090.76, plus interest;
 - (ii) as adjusted for the difference between the sum paid in the First and Second Capital Distributions in relation to the WFMIF Units, and the amount which ~~the Second Defendant would otherwise have been entitled as referred to in paragraph 8773~~ of the Statement of Claim in relation thereto; and
- (c) is entitled to withhold from distributions or payments otherwise payable to in relation to the ICPAIF Units~~the Third Defendant as a Class B unitholder in the FMIF:~~
 - (i) the sum of \$5,044,118.30, plus interest;
 - (ii) as adjusted for the difference between the sum paid in the First and Second Capital Distributions in relation to the ICPAIF Units, and the amount which ~~the Third Defendant would otherwise have been entitled as referred to in paragraph 8773~~ of the Statement of Claim in relation thereto.

4. Further and in the alternative, declarations that:

- (a) LMIM is liable to the FMIF for loss and damage in the amount of \$55,059,318.12 plus interest, being the aggregate amount of the loss and damage referred to in paragraph ~~5644~~ of the Statement of Claim; and
- (b) ~~the Plaintiff~~ LMIM is entitled to exercise its or be subrogated to LMIM's rights to an indemnity from the assets of the respective Feeder Funds in satisfaction of that liability, in the following proportions:
 - (i) from the assets of the CPAIF, \$40,583,109.06 plus interest;
 - (ii) from the assets of the WFMIF, \$9,432,090.76 plus interest; and
 - (iii) from the assets of the ICPAIF, \$5,044,118.30 plus interest.

5. A declaration that each cancellation of Class B units referred to in paragraph ~~50(d)35(d)~~ of this Statement of Claim is void ab initio and of no effect, or alternatively voidable.

6. A declaration that the purported issue of each additional unit in the FMIF referred to in paragraph ~~70(b)54(b)~~ of the Statement of Claim is void and of no effect, or alternatively voidable.

7. Further to paragraphs 5 and 6, consequential orders under section 175(1) of the Corporations Act 2001 (Cth), or alternatively in the Court's equitable jurisdiction, for the correction or rectification of the register of members of the FMIF, as now maintained by Mr David Whyte pursuant to order 13(c) of the orders of this Honourable Court made on 17 December 2015.

7.8. In the alternative to paragraph 6, a declaration that the additional units in the FMIF referred to in paragraph 70(b)54(b) of the Statement of Claim are held on constructive trust for LMIM as RE of the FMIF.

8.9. Interest.

9.10. Costs.

10.11. Such further or other order as this Honourable Court sees fit.

Signed:

Aadens.

Description: Solicitor for the plaintiff

The further amendments to this pleading were settled by Mr Ananian-Cooper of Counsel in consultation with Mr McKenna of Queen's Counsel.

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend.

Deed of Settlement and Release

Date

Details

LM Investment Management Limited (receivers and managers appointed) (in liquidation) ACN 077 208 461 as Responsible Entity of the LM First Mortgage Income Fund ARSN 089 343 288 (receiver appointed)

of C-/ Gadens Lawyers, Level 11, 111 Eagle Street, Brisbane,
Queensland 4000

Email: scott.couper@gadens.com

and

LM Investment Management Limited (receivers and managers appointed) (in liquidation) ACN 077 208 461 as Responsible Entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875

of C-/ HWL Ebsworth Lawyers, Level 19, 480 Queen Street, Brisbane,
Queensland 4000

Email: dofarrell@hwle.com.au

esingleton@hwle.com.au

and

Trilogy Funds Management Limited ACN 080 383 679 as Responsible Entity of the LM Wholesale First Mortgage Income Fund ARSN 099 857 511

of C-/ Squire Patton Boggs, Level 17, 88 Phillip Street, Sydney, New
South Wales, 2000

Email: susan.goodman@squirepb.com

and

LM Investment Management Limited (receivers and managers appointed) (in liquidation) ACN 077 208 461 as responsible entity of the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868

of C-/ HWL Ebsworth Lawyers, Level 19, 480 Queen Street, Brisbane,
Queensland 4000

Email: dofarrell@hwle.com.au

esingleton@hwle.com.au

and

**David Whyte as court appointed receiver of the assets of the LM
First Mortgage Income Fund ARSN 089 343 288 (receiver appointed)**

of C-/ Gadens Lawyers, Level 11, 111 Eagle Street, Brisbane,
Queensland 4000

Email: scott.couper@gadens.com

and

**Said Jahani as receiver and manager of the assets of LM
Investment Management Limited (receivers and managers
appointed) (in liquidation) as Responsible Entity of the LM Currency
Protected Australian Income Fund ARSN 110 247 875 and the LM
Institutional Currency Protected Australian Income Fund ARSN 122
052 868**

of C-/ HWL Ebsworth Lawyers, Level 19, 480 Queen Street, Brisbane,
Queensland 4000

Email: dofarrell@hwle.com.au and

esingleton@hwle.com.au

and

**The Trust Company Limited ACN 004 027 749 as custodian of the
property of the LM Wholesale First Mortgage Income Fund ARSN
099 857 511**

of C-/ Squire Patton Boggs, Level 17, 88 Phillip Street, Sydney, New
South Wales, 2000

Email: susan.goodman@squirepb.com

(collectively, the Parties)

Background

- A. LMIM is the RE of the FMIF, which is a unit trust registered as a managed investment scheme under Chapter 5C.2 of the *Corporations Act 2001* (Cth).
- B. Whyte is the person appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution and as receiver of the property of the FMIF, pursuant to the

- (f) a month means a calendar month;
- (g) if the date for the performance of any act or thing falls on a Saturday, Sunday or public holiday in Brisbane, then the date for performance will be the next business day following that date;
- (h) a reference to a Party, part, clause, annexure or schedule is a reference to a Party, part, clause, annexure or schedule to this Deed as modified or varied from time to time;
- (i) references to any Party to this Deed include its executors, administrators, substitutes, nominees, agents, successors and permitted assigns;
- (j) a reference to writing includes a facsimile or e-mail transmission and any means of reproducing words in a tangible and permanently visible form;
- (k) if any term of this Deed is legally unenforceable or made inapplicable, it will be severed or read down but so as to maintain, as far as possible, all other terms of this Deed. This shall apply unless doing so would change the underlying principal commercial purpose of this Deed; and
- (l) no rule of construction will apply to a provision of this Deed to the disadvantage of a Party merely because that Party put forward the provision or would otherwise benefit from it.

2. Effective Date

This Deed is effective on the Effective Date.

3. Conditions Precedent to this Deed coming into effect

3.1 Conditions Precedent

Each of the following is a condition precedent to this Deed coming into effect:

- (a) Whyte receives written advice from his Counsel to the effect that the terms of this Deed are satisfactory. This condition precedent is for the benefit of Whyte only;
- (b) orders are made by the Supreme Court of Queensland to the following effect, or to substantially the same effect as acceptable to Whyte:

That David Whyte as the person appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution and as receiver of the property of the FMIF, pursuant to the orders of the Supreme Court of Queensland made on 21 August 2013 and 17 December 2015, and any further orders which may be made under section 601NF of the Corporations Act 2001 (Cth) in due course concerning the winding up of the FMIF, is justified in settling the

Proceeding on the terms set out in this Deed, and in causing LMIM as RE of the FMIF to enter into and perform this Deed.

This condition precedent is for the benefit of Whyte only.

- (c) Jahani receives written advice from his Counsel to the effect that the terms of this Deed are satisfactory. This condition precedent is for the benefit of Jahani only;
- (d) orders are made by the Supreme Court of Queensland to the following effect, or to substantially the same effect as acceptable to Jahani:

Pursuant to s 424 of the Corporations Act 2001 (Cth), Said Jahani in his capacity as receiver and manager of the assets of LMIM as RE of the CPAIF and the ICPAIF is justified in entering into and performing, and in procuring that the First Defendant and Third Defendant enter into and perform, the Deed.

This condition precedent is for the benefit of Jahani only.

- (e) Trilogy as RE of the WFMIF and Trust Company receive written advice from their Counsel to the effect that the terms of this Deed are satisfactory. This condition precedent is for the benefit of Trilogy as RE of the WFMIF and Trust Company only;
- (f) orders are made by the Supreme Court of Queensland to the following effect, or to substantially the same effect as acceptable to Trilogy as RE of the WFMIF and Trust Company:

Pursuant to s.96 of the Trusts Act 1973 (Qld), the second and fifth defendants are justified in entering into and performing the Deed.

This condition precedent is for the benefit of Trilogy as RE of the WFMIF and Trust Company only;

- (g) orders are made by the Supreme Court of Queensland giving authority for the Interim Distribution to be made from the FMIF Fund in an amount of at least 30 million dollars. This condition precedent is for the benefit of Whyte only; and
- (h) the Interim Distribution is made from the FMIF Fund in an amount of at least 30 million dollars. This condition precedent is for the several benefit of the Relevant Defendants.

3.2 Time for fulfilment of the Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(c) and 3.1(e) of this Deed must be fulfilled, or waived, by 14 December 2018. Each of:
 - (i) Whyte (as to clause 3.1(a));
 - (ii) Jahani (as to clause 3.1(c)); and

- (iii) Trilogy as RE of the WFMI and Trust Company (as to clause 3.1(e)), must provide notice in accordance with clause 8.6 of this Deed to each of the other Parties of the fulfilment, non-fulfilment, or waiver, of these conditions precedent by 14 December 2018.
- (b) Whyte must file applications to seek the orders referred to in clauses 3.1(b) and 3.1(g) above, or provide notice in accordance with clause 8.6 of this Deed to each of the other Parties of the waiver of that Condition Precedent, by 1 February 2019.
- (c) Jahani, and Trilogy and Trust Company, must, respectively, file applications to seek the orders referred to in clauses 3.1(d) and 3.1(f), or provide notice in accordance with clause 8.6 of this Deed to each of the other Parties of the waiver of those Conditions Precedent, by 1 February 2019.
- (d) The Parties must utilise their best endeavours to ensure that the applications for the orders referred to in clauses 3.1(b), (d), (f) and (g) are heard by 15 March 2019.
- (e) Each of:
- (i) Whyte (as to clause 3.1(b) and (g));
 - (ii) Jahani (as to clause 3.1(d)); and
 - (iii) Trilogy as RE of the WFMI and Trust Company (as to clause 3.1(f)), must within 7 days after the date on which the Court delivers its judgment(s) in respect of the applications referred to in clauses 3.1(b), (d), (f) and (g) provide notice in accordance with clause 8.6 of this Deed to each of the other Parties of the fulfilment, non-fulfilment, or waiver, of these Conditions Precedent.
- (f) The time for the fulfilment or waiver of the Condition Precedent in clause 3.1(h) of this Deed expires 3 weeks after the date on which the Court delivers its judgment in respect of the application referred to in clause 3.1(g). Each of the Relevant Defendants must provide notice in accordance with clause 8.6 of this Deed to each of the other Parties of the fulfilment, non-fulfilment, or waiver, of this Condition Precedent.

3.3 Notification of the applications referred to in clause 3.1(b), (d) and (f)

Whyte, Jahani, Trilogy and Trust Company must promptly notify each other, EY and the liquidator of LMIM of their respective applications for the orders referred to in clauses 3.1(b), (d) and (f) of this Deed.