

TO THE INVESTOR AS ADDRESSED

29 March 2019

**LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)  
ARSN 089 343 288 ('the Fund' or 'FMIF')**

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I now provide my 25<sup>th</sup> update report to investors. This report is prepared in accordance with the Exemption granted by the Australian Securities and Investments Commission (ASIC Exemption) in relation to financial reporting obligations of the Fund. In this regard, the ASIC Exemption requires a report to be made available to investors for each period of six months starting on 1 January 2016, which includes the following information:

- (i) Information about the progress and status of the winding up of the Fund, including details 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; and
  - D. The expected time to complete the winding up.
- (ii) The financial position of the Fund as at the last day of the relevant period (based on available information);
- (iii) Financial information about receipts (and payments) of the Fund during the period; and
- (iv) The following information at the end of the period:
  - A. The value of the Fund's property; and
  - B. The potential return to investors.

This report covers, inter alia, the period 1 July 2018 to 31 December 2018 (the Period).

On 15 March 2018 ASIC extended the exemption on financial reporting obligations of the Fund until 16 March 2020. A copy of the exemption (relief instrument) is available for viewing at [www.lmfimif.com](http://www.lmfimif.com).

## 1. Executive Summary

There has been significant progress made during the Period in the winding up of the FMIF, and subsequently, in the following respects:

- The AIS proceedings commenced by the MPF were discontinued on 10 August 2018 (refer to section 2.1.1.2)
- The Secured Creditor, Deutsche Bank, retired the Receivers and Managers, McGrathNicol, on 10 December 2018, I applied to Court on 1 February 2019 seeking directions to make an interim distribution to investors and seeking orders as to the treatment of the foreign currency investors in that distribution (refer to sections 2.1.1.3 and 2.2.3);
- The Feeder Funds claim was successfully mediated, and a Deed of Settlement has been agreed and signed by all parties thereto. I applied to Court on 1 February 2019 seeking judicial advice on the settlement which will be heard on 2 May 2019 (refer to section 2.2.3). Subject to the Court confirming the acceptability of the terms of settlement and agreeing to the distribution, a distribution will be made to members within 21 days of the granting of the order. This is expected to be at least 6 cents in the dollar;
- The claim against LMIM, certain directors of LMIM and the MPF has been listed for a two week trial commencing 1 April 2019 (refer to section 2.1.2);
- The parties to the claim against the former auditors participated in a mediation on 4 and 5 March 2019. No resolution was reached at the mediation and the matter will now progress to trial (refer to section 2.2.1).

A summary of the other matters covered in this report is as follows:

- Cash at bank as at 28 February 2019 was \$66.8 million;
- The estimated return to investors at 31 December 2018 is 13.3 cents per unit as detailed at Section 3.3 below and before taking into account future costs and recoveries from legal proceedings on foot;
- Settlement of the Bellpac Liquidator's \$8M Bonds litigation has progressed, however the Sunset Date for complying with the remaining condition precedent has been further extended to 31 March 2019 (refer to section 2.2.2).
- A Second Remuneration Application filed on 17 July 2018 by FTI sought \$743,889.89 from the property of the FMIF. I opposed certain parts of the application. The application was heard on 6 September 2018 and 3 October 2018, and judgement was reserved (refer to section 2.2.5.2);
- FTI have been undertaking the proof of debt process required by the orders made on 17 December 2015 and I am hopeful this can be completed in the near future. A set-off against any claims that may be made by LMIM for indemnity from the FMIF with respect to proofs of debt lodged in the liquidation of LMIM may be available (refer to section 2.2.5.3);
- A further application was filed on 10 October 2018 by FTI seeking directions in relation to the dual appointment of Mr Park (FTI) and myself in relation to the winding up the FMIF. The application was heard on 10 December 2018 and judgement has been reserved (refer to section 2.2.5.5);
- The claim against LMIM remains stayed (refer to section 2.2.5.6).

## **2. Progress and Status of the Winding Up**

### **2.1 Position of the Secured Creditor, the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ('MPF') and claims filed against the Fund**

#### **2.1.1 Proceedings by the Trustee of the MPF against LMIM and the Fund**

##### **2.1.1.1 Assigned Loans Claims**

I refer to my previous updates to investors in relation to these proceedings, in which the Trustee of the MPF (MPF) is the plaintiff, and the defendants are LMIM, and myself as Receiver of the property of the FMIF.

The relief claimed by the Trustee of the MPF in these proceedings included equitable compensation against LMIM and claims against the assets of the FMIF in the total sum of about \$24.1 million plus interest.

The MPF Trustee applied to the Court for directions as to whether it would be justified discontinuing the proceedings, and on 7 June 2018 the Court directed it would be. Notices of discontinuance have accordingly been filed in both proceedings.

Cost orders were made in my favour against the plaintiff upon discontinuance of the proceeding. The quantum of these costs orders is being assessed.

##### **2.1.1.2 AIIS Loan Claim**

I refer to my previous updates to investors in relation to these proceedings, in which the Trustee of the MPF (MPF) is the plaintiff, and the defendants are LMIM, and myself as Receiver of the property of the FMIF.

The MPF claimed approximately \$16.82 million as equitable compensation against LMIM and relief against the assets of the FMIF for approximately \$3.9 million.

This proceeding was discontinued by the Plaintiff on 10 August 2018.

##### **2.1.1.3 Position of the Secured Creditor**

The Secured Creditor (Deutsche Bank) retired the Receivers and Managers (McGrathNicol) on 10 December 2018, and I thereafter, subject to any directions of the Court, made an application on 1 February 2019 for the authority to make an interim distribution. The application was heard on 13 March 2019 and judgment has been reserved; the Court has indicated that judgment is not likely to be delivered until on or after 2 May 2019, to be delivered in conjunction with the delivery of judgment on the Feeder Funds application - see paragraph 2.2.3 below for further details.

#### **2.1.2 Proceedings against the MPF, LMIM and the Directors of LMIM**

I refer to my previous updates to investors in relation to a statement of claim I caused to be filed in the Supreme Court of Queensland, against a number of parties, including the MPF Trustee, in respect of loss allegedly suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter. The claim is for approximately \$15.5M plus interest.

The parties have now undertaken discovery and the defendants who are participating in the proceedings have all now filed defences to which I have filed replies.

The matter was reviewed by the Court on 14 December 2018, where directions were made for the further progression of the matter including:

- I am to file an application for leave to amend the statement of claim by 21 December 2018, with the application to be heard on 1 February 2019;
- The defendants must file their material in regard to the application for leave to amend the statement of claim by 25 January 2019;
- The proceeding is set down for a 2 week trial from 1 April 2019;
- By 15 February 2019, the defendants are to provide an index identifying any objection to any documents in the trial bundle being admitted for all purposes and to provide a further index of any additional documents they wish to be included in the trial bundle;
- By 1 March 2019, I must deliver a bundle of agreed documents and a bundle of documents to which objection is taken;
- By 8 March 2019, I must deliver affidavits, witness summaries (as required) and a draft trial bundle;
- By 15 March 2019, the defendants are to deliver affidavits, witness summaries (as required) and any suggested amendments to the draft trial plan;
- By 22 March 2019, I am to deliver any further affidavits and witness summaries.

Orders were subsequently made granting the plaintiff leave to file its further amended statement of claim and a timetable was ordered for the delivery of amended defences and replies.

The plaintiff has now filed its further amended statement of claim and amended defences and replies have now been delivered.

The parties are now progressing the proceedings to trial and undertaking the steps ordered by the Court as set out above, including finalising a trial bundle, exchange of evidence and a trial plan.

I have recently reached a settlement with the MPF. The proceedings against the other defendants remain on foot.

The proceedings are ongoing and an update will be provided in the next report.

## **2.2 Legal Actions/Potential Recoveries**

### **2.2.1 Claim against the former auditors**

I refer to my previous updates to investors and briefly summarise the background as follows:

- A public examination (PE) of the former auditors and certain directors and former directors (Directors) of LM Investment Management Limited (In Liquidation) was conducted in 2015;
- Following the PEs, a further amended statement of claim was filed by me and served on the former auditors of the Fund on 14 April 2016.
- The former auditors filed a strike-out application and supporting affidavit on 27 April 2016 (amended on 15 December 2016) seeking orders to strike-out certain parts of the statement of claim.
- At the hearing of the former auditors' strike out application, the Court granted my application and placed the proceedings on the commercial list and reserved its decision on the auditors' strike out application.
- The reserved decision from the hearing of the strike out application was handed down on 8 May 2017. Orders were made that the statement of claim be amended to delete certain causes of action and to include details of the quantification of loss.

- The amended statement of claim 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. A significant amount of work has been undertaken in this regard, including quantifying the loss at 6 monthly hypothetical winding up dates between 1 July 2009 and 1 January 2013.
- Further particulars of loss and damage were also served on the auditors on 12 January 2018.
- I have received a number of requests pursuant to Rule 222 of the Court Rules (Rules) from the former auditors to provide documents referred to in the amended statement of claim which requests have been responded to.
- On 29 May 2018, the Court made Orders timetabling 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 further particulars of the further amended statement of claim was received on 19 June 2018. The response to this request was required 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.
- The Application for leave to amend the Claim was filed on 10 August 2018.
- The hearing of the application was held on 27 September 2018.
- On 8 October 2018 the Court gave judgment, in which it granted the plaintiff leave to file its amended claim, struck out one paragraph of the further amended statement of claim with leave to replead certain paragraphs and otherwise timetabled the ongoing conduct of the proceedings, including the filing of a further amended statement of claim.
- On 13 November 2018, the Court made further directions that:
  - The plaintiff is to file and serve a sixth further amended statement of claim (6FASOC) by 30 November 2018. The 6FASOC was served on 30 November 2018;
  - The plaintiff is to file and serve the response to the defendants request for particulars by 30 November 2018. The response was served on 3 December 2018. A further response was served on 18 January 2019;
  - The parties attend and participate in a mediation on a date to be agreed by the parties and the mediator, and to be completed by 15 March 2019;
  - The proceedings are to be reviewed on 18 March 2019;
  - The parties exchange position papers before the commencement of the mediation;
  - The period of the mediation is fixed at a maximum of two days and may extend beyond the period only with the authorisation of the parties;
  - the defendants file any third party notices by 1 March 2019, together with statements of claim.
- In accordance with these orders, the parties engaged in a mediation on 4 and 5 March 2019. No resolution of the proceedings was reached at that mediation.
- The defendants have also now filed and served third parties notices on the Feeder Funds, as well as directors, former directors, former officers and a former in-house counsel of LMIM.
- The proceedings were reviewed by the Court on 18 March 2019 and orders were made for:
  - The plaintiff to deliver any further and better particulars of the Sixth Further Amended Statement of Claim (the 6FASOC) by 29 March 2019;

- The defendants to advise by 12 April 2019 whether they consent to leave being granted to the plaintiff for the 6FASOC to be filed, and if not, the parties liaise to have the matter re-listed for a hearing regarding leave to file the 6FASOC;
- The defendants file and serve their defence or defences to the 6FASOC by 31 May 2019;
- The matter be listed for further review on a date to be fixed during the week commencing 10 June 2019.

The proceedings are ongoing and an update will be provided in the next report.

### 2.2.2 Bellpac Proceedings

In addition to the claim filed and served against the MPF in relation to a loss suffered by the Fund from litigation pertaining to the Bellpac loan noted at item 1 above, there is another matter relating to Bellpac that has been progressed during the Period, as detailed below.

#### Wollongong Coal Ltd (WCL) - \$10 million Convertible Bonds

I refer to my previous updates to investors and provide a brief summary as follows:

- The liquidator of Bellpac has received the settlement amount of \$2 million from WCL in relation to the claim for redemption of the \$2 million Bonds held in WCL;
- The defendants' appeal of the decision of the Court which acknowledged that Bellpac (under the control of a liquidator) is the true owner of the \$8 million convertible bonds was unsuccessful;
- In January 2016, the Bellpac Liquidator applied for the conversion of the \$8 million Bonds to shares. As WCL did not issue all of 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 converted to shares outside of the required time;
- The Bellpac liquidator and WCL have entered into a binding heads of agreement (HOA) which relates to the settlement of the litigation commenced against WCL. The terms of the heads of agreement include that WCL will pay to Bellpac a settlement sum of \$6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac;
- The conditions precedent to the settlement with WCL include obtaining necessary approvals to undertake the settlement transactions. In this regard:
  - The Bellpac Liquidator has obtained creditor approval to enter into the settlement with WCL;
  - The Court declined to exercise its discretion on WCL's application for approval to acquire and or cancel Bellpac's holding of WCL shares. WCL is now preparing to seek shareholder approval.
- The Trustees of the MPF (MPF) have demanded from the Liquidator circa \$680K plus interest out of the proceeds of the Bonds for repayment of funding the MPF allegedly made for the Bonds litigation from late 2010 to early 2013. The MPF has also reserved its rights in relation to claiming 35% of the funds realised from the successful Bonds proceedings.

Developments since my last update to investors are as follows:

- The remaining condition precedent (Sunset Date) to the settlement with WCL has been extended several times and the Liquidator was successful in negotiating, as part of the agreement to extend the Sunset Date, that WCL will pay interest at 3% p.a. from 2 October 2017 until settlement. The

Liquidator is in negotiations with WCL about extending the Sunset Date beyond the current agreed date of 31 March 2019. To date, WCL has paid \$2.5M towards the settlement into their solicitors trust account and subject to being released upon receiving shareholder approval.

In relation to the MPF claim for reimbursement of approximately \$680k for funding as referred to above, I have entered into a deed of settlement with the MPF which includes a condition that these monies will be paid to the FMIF.

### 2.2.3 Feeder Funds (Redemptions and Distributions paid to Class B Unit Holders)

I refer to my previous updates to investors and summarise the background as follows:

Investigations were undertaken via the PE conducted in 2015 and subsequent thereto in relation to redemptions and distributions paid to the Class B unit holders (Feeder Funds) when the Fund had suspended redemptions and distributions to other classes of members;

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).

On 28 July 2017, I caused to be filed an amended statement of claim against LMIM and the Feeder Funds and the claim was then formally served on the parties. The relief sought in the claim includes declarations to withhold from distributions or payments otherwise payable from the Fund to:

- CPAIF in the sum of \$40,583,109.06 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 amended 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 ICPAIF would otherwise have been entitled as referred to in the amended 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 amended statement of claim.
- In October 2017, I caused to be filed an application under Section 59 of the Trusts Act (1973) (QLD) 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 (2001) to seek leave to proceed against LMIM (which is required because it is in liquidation) (the Applications);
  - The parties consented to adjourn the hearing of the Applications (which was originally set down on 8 December 2017) to a date to be fixed.
  - A Commercial List Application and Statement was filed with the Court on 23 April 2018
  - On 24 April 2018 the Court proposed that the Commercial List Application and the leave to proceed application be listed for hearing on 29 May 2018.
  - At the hearing on 29 May 2018, the Court indicated it was content for:
    - The proceeding to be placed on the Commercial List; and
    - That the proceeding be referred to mediation.
  - However, the Court noted that the final form of the orders to be issued by it would be required to take into account how the individual members of the Feeder Funds were to be notified of the

proceeding and with that, given the opportunity to apply to the Court to be heard in the proceeding or represented in the mediation.

- Following the hearing on 29 May 2018, the draft orders were circulated by my solicitors and agreed to. The matter was then re-listed for a hearing on 13 June 2018 in order for the final form of the Orders to be reviewed by the Court.
- On 13 June 2018, the Court made Orders including the following:
  - The proceeding be placed on the Commercial List;
  - The plaintiff has leave to proceed pursuant to Section 500(2) of the Corporations Act 2001 against LMIM in liquidation;
  - How the differing interests of LMIM are to be represented pursuant to section 59 of the Trusts Act 1973 (QLD);
  - That The Trust Company Limited ACN 004 027 749 as custodian of the property of the LM WMIF (second defendant) is joined to the proceeding, as the fifth defendant;
  - The plaintiff has leave to file and serve a Further Amended Claim;
  - FTI are to provide a complete and up to date copy of the registers of members of the CPAIF and ICPAIF to the Receivers for the CPAIF and ICPAIF (Grant Thornton) and to me, by 22 June 2018. This has been done;
  - The plaintiff is to provide the Receivers for the CPAIF and ICPAIF (Grant Thornton) and the RE of the WMIF (Trilogy) specified categories of documentation, by 29 June 2018;
  - The plaintiff and FTI are required to give notice to members of the CPAIF and the ICPAIF of this proceeding, the Further Amended Claim, the Second Further Amended Statement of Claim and the form of notice attached to the Orders issued by the Court. This has been done;
  - The plaintiff is required to give notice to all members of the CPAIF and ICPAIF of further documents filed in these proceedings by posting the documents to [www.lmfimif.com](http://www.lmfimif.com);
  - The parties are directed to attend a mediation to be completed by 28 September 2018. This was subsequently extended with the mediation held on 5, 6 and 20 November 2018.
- The Feeder Funds claim was successfully mediated on 5, 6 and 20 November 2018, and a Deed of Settlement, subject to several conditions precedent, has been executed by all parties.
- The terms of the deed are confidential and are subject to several conditions precedent, including:
  - Mr Whyte, Mr Jahani, Trilogy Funds Management Limited (“Trilogy”) and the Trust Company Limited each apply for, and obtain judicial advice to the effect that the relevant party making the application is justified in entering into and performing the deed. The parties have each now made their application for judicial advice. Those applications are all listed for hearing before Justice Mullins on 2 May 2019;
  - orders are made by the Supreme Court of Queensland giving authority for an interim distribution to be made to FMIF members. An application filed by Mr Whyte seeking such authority on 1 February 2019 was heard on 13 March 2019 with judgement reserved. Judgement is not likely to be delivered until on or after 2 May 2019 in conjunction with

the delivery of judgement on the above judicial advice application, see paragraph 2.1.1.3 above.

#### 2.2.4 Various claims against guarantors

There are only two remaining matters that can be summarised, as follows

- A deed of settlement has been entered into with a guarantor for \$100,000 payable over the period to 1 November 2019 with \$40,000 paid to date.
- PTAL as custodian of the FMIF obtained judgment against a guarantor, for approximately \$3 million, plus interest and costs. The trustee in bankruptcy has identified potential recoveries for the benefit of creditors of which the Fund is a major creditor. I continue to liaise with the trustee in regard to his continuing investigations and negotiations with certain of the parties involved in a land development. The bankrupt, along with other parties, contributed land to a development. The land was subdivided, developed and sold, and the net proceeds of sale in the sum of approximately \$12 million is presently held in a solicitors trust account on an interim basis, protected by certain undertakings given by the solicitor holding the funds. The trustee claims an entitlement in respect of at least a portion of the funds held in the solicitors trust account however, other parties to the dispute allege that associated entities of the bankrupt are entitled to the funds. I have instructed PTAL as custodian of the FMIF to enter into a Deed of Indemnity to fund a public examination and any agreed recovery proceedings in respect of this matter. The relevant Court applications and other material are presently being finalised in that respect.

#### 2.2.5 Liquidators of LMIM (FTI Consulting)

##### 2.2.5.1 Remuneration claim and expenses claim

I refer to my previous reports to investors.

The judgement regarding and orders made in relation to FTI's first remuneration claim and indemnity claim are available on the websites [www.lmfimif.com](http://www.lmfimif.com) and [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com).

##### 2.2.5.2 Second FTI Remuneration Application

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 \$743,889.89 inclusive of GST from property of the FMIF, relating to various periods between 19 March 2013 and 30 June 2018. I opposed certain parts of the application. The application was heard on 6 September 2018 and 3 October 2018.

Judgement is reserved on the Second FTI Remuneration Application.

##### 2.2.5.3 Indemnity claim against the Fund and proof of debt process

If a debt or claim is admitted by FTI in the winding up of LMIM and a claim for indemnity out of the FMIF with respect to such debt or claim is identified, I summarise the process as outlined in the Orders made on 17 December 2015, as follows:

- FTI must notify me within 14 days of the admittance of a claim of any claim for indemnity against the assets of the Fund;
- Within 14 days I may seek further information in relation to the claim;

- Within 30 days of receipt of the claim from FTI or from receipt of further information I have requested, I am required to:
  - Accept the claim, or
  - Reject the claim, or
  - Accept part of it and reject part of the claim; and
  - To give FTI written notice of the decision;
- I am required to give FTI written reasons for rejecting any part of a claim within 7 days after giving notice of my decision including those claims identified through the proof of debt process mentioned above;
- Within 28 days of receiving a notice of rejection, FTI may apply to the Court for directions in relation to the rejection and advise the creditor of my decision and other specified matters.

FTI have informed me they have identified Creditor Indemnity Claims with respect to a proof of debt lodged by Norton Rose for the sum of \$315,601.21 (**Norton Rose Proof**) and a proof of debt lodged by EY in the sum of \$158,896.51 (**First EY Proof**).

I have written to FTI rejecting the Creditor Indemnity Claim made in respect of the claim notified by the Norton Rose Proof. It is not yet clear whether there will be any application for directions or to review my decision to reject that Creditor Indemnity Claim.

I am awaiting the provision of further information in relation to the First EY Proof before the time period for me to accept or reject that Creditor Indemnity Claim begins to run.

FTI have notified me that they have received a proof of debt lodged by EY for the sum of approximately \$180 million (**Second EY Proof**). That proof asserts that, to the extent that the claims made by LMIM as RE of the FMIF against EY in the claim against the former auditors are successful, EY will suffer loss or damage which is recoverable from LMIM. FTI have requested further information in relation to the Second EY Proof and they have not yet notified me of whether a Creditor Indemnity Claim has been identified in respect of the claim notified by the Second EY Proof.

I am hopeful that the process required by the 17 December 2015 orders can be completed in the near future so the quantum of any creditor claims against the Fund can be ascertained and dealt with as soon as possible. These claims may be subject to the “clear accounts rule” as described in previous reports to investors, and if so, a set off against that claim may be available.

An update will be provided to investors in relation to this matter in my next report.

#### 2.2.5.4 Expenses

FTI’s solicitors have notified my solicitors that FTI intends to claim indemnity from the FMIF (and other funds) for a portion of certain corporate expenses incurred during the administration and Liquidation of LMIM. The precise amount of this claim is not yet known.

An update will be provided to investors in relation to this matter in the next report.

#### 2.2.5.5 Further application by FTI for directions

On 10 October 2018, Mr Park filed an application seeking directions in relation to the dual appointments of Mr Park and I to wind up the FMIF including directions to the effect that:

- My appointment continues only in relation to certain specific legal proceedings and Mr Park take responsibility for ensuring the FMIF is wound up in accordance with its Constitution;

- That Mr Park is directed to act as contradictor to the Breach of Trust Proceedings and the Feeder Fund Proceedings;
- That Mr Park and I each submit budgets of remuneration and expenses to the conclusion of the winding up, that the remuneration of the Liquidator and the Receiver be fixed or determined on the hearing of the application in the amount of 50% of the amount stated in the relevant budget and paid during the course of the winding up, with all other remuneration and expenses of the Liquidator and Receiver to be deferred and sought at the conclusion of the winding up at which time the amounts stated in the budgets can be reduced, increased or stay the same.

The application was heard on 10 December 2018. Judgement is reserved.

An update will be provided to investors in relation to this matter in my next report.

#### 2.2.5.6 Claim filed against LMIM

I refer to my previous report to investors and summarise the background as follows:

- In November 2016, I caused LMIM as RE of the FMIF to commence a proceeding against LMIM in relation to certain transactions to avoid possible expiry of the statutory limitation periods for making the claims;
- This claim alleges that, *inter alia*, LMIM breached its duties to members of the FMIF by:
  - causing to be paid out of assets of the FMIF management fees in advance of it becoming entitled to payment of same;
  - overpaying management fees to itself out of assets of the FMIF;
  - causing to be paid to LMA additional fees purportedly for loan management and controllership services;
  - directing payments to be made by the MPF, purportedly in satisfaction of liabilities owed by the MPF to the FMIF, to be paid to itself as RE of the feeder funds;

On 25 July 2018, the Court directed that I represent the interests of LMIM as RE of the FMIF, that Mr Park represent the interests of LMIM in its own capacity, granted leave to proceed with this claim and ordered that the claim be stayed until further order. A stay of the proceeding was sought because the extent to which it is necessary to proceed with the claims made in the proceeding will not be clear until after the proof of debt process is completed.

Subject to any directions that may be made by the Court, if the claims made in this proceeding are successful, they may be able to be relied upon as a set-off against certain claims made by LMIM for indemnity out of assets of the FMIF, including those claims identified through the proof of debt process mentioned above or claims made by other parties seeking to subrogate to LMIM's alleged rights of indemnity.

The current status of this claim is that it remains stayed until further order. I will keep investors updated as to the progress of this claim.

### 3. Financial Position of the Fund

The management accounts for the year ending 31 December 2018 are available on the website [www.lmfimf.com](http://www.lmfimf.com) on the page titled 'Financial Statements & Other Key Documents'.

A summary of the financial position of the Fund as at 31 December 2018 is provided below.

Description	31 December 2018
<b>ASSETS</b>	\$
Cash and cash equivalents	66,426,687
Receivables	295,468
Loans & Receivables	100,000
<b>TOTAL ASSETS</b>	<b>66,822,155</b>
<b>LIABILITIES</b>	
Payables	1,761,969
Distributions payable	1,372,036
<b>Total liabilities excluding net assets attributable to unitholders</b>	<b>3,134,005</b>
<b>NET ASSETS</b>	<b>63,688,150</b>

These figures are subject to the disclaimers and qualifications set out in the management accounts

### 3.1 Fund Assets

The total assets of the Fund as at 31 December 2018 were \$66,822,155.

The balance includes cash at bank of \$66,426,687, interest receivable on term deposits of \$295,468 and net default loans of \$100,000.

### 3.2 Fund Liabilities

The total liabilities of the Fund as at 31 December 2018 were \$3,134,005.

The Distributions payable balance relates to distributions that appear to have been declared prior to the date of the Receiver's appointment which were not paid, or have been returned.

The Payables balance primarily consists of trade creditors, custodian fees, legal fees, receiver's fees and fees and expenses claimed by FTI, which remain unpaid as at 31 December 2018.

Some of these liabilities have not been verified, or may be subject to court approval being obtained.

### 3.3 Net Assets Attributable to Unit Holders

Net assets attributable to unit holders as at 31 December 2018 were \$63,688,150.

The net assets of the Fund and number of units on issue as at 31 December 2018 and 30 June 2018 is detailed in the table below.

Description	31 December 2018	30 June 2018
Estimated net amount of assets available to investors as at period end (\$)	63,688,150	66,884,414
Total investor units (# of units)	478,100,386	478,100,386

Estimated net asset amount per unit available to investors as at period end (cents in the dollar)	13.3 Cents	14 Cents
---	------------	----------

#### Investments made in Foreign Currencies

Investigations undertaken by BDO have identified that the number of units held by investors who invested in foreign currencies appears to be incorrectly recorded in the membership records of the FMIF.

It appears that when LMIM transferred the member records of the FMIF to a new database in 2010 the number of units of investors who invested in a foreign currency were incorrectly recorded in the new database, by allocating to the investors concerned one unit in the FMIF for each unit of foreign currency invested, rather than one unit in the FMIF for each \$1AUD invested (after the foreign currency amount invested had been converted to AUD at the applicable exchange rate) in accordance with the PDS and Constitution.

I applied to court on 1 February 2019 seeking directions to make an interim distribution to investors and seeking orders as to the treatment of the foreign currency investors in that distribution. The application was adjourned until 2 May 2019 - see paragraphs 1.1.1.3 and 1.2.3 above for further details.

#### 4. Receipts and Payments of the Fund

All receipts and payments for the Fund since McGrathNicol's appointment on 10 July 2013 until their retirement on 10 December 2018 are on the website [www.lmfimf.com](http://www.lmfimf.com) under Financial Statements & Other Key Documents.

Now that the Receivers and Managers have retired and relinquished control of the bank accounts, I have taken over responsibility for all receipts and payments and will upload copies of the Receipts and Payments lodged with ASIC from time to time.

The receipts and payments of the Fund, for the period 1 July 2018 to 31 December 2018 is summarised in the table below.

Description	\$
<b>Receipts</b>	
Interest	527,184.62
GST received	114,413.72
Loan Reductions	44,882.23
Litigation recoveries	212,700.83
Income from costs order	9,190.23
<b>Total receipts</b>	<b>908,371.63</b>
<b>Payments</b>	
Bank charges	(20.80)

Loan Draws	(77,750.00)
GST Paid	(19,336.00)
Custodian fees	(5,500.00)
Receivers & Managers fees and Disbursements	(129,649.02)
Receivers fees and disbursements	(2,000,007.70)
Bankrupt Trustee's fees in relation to Bankrupt Estate of Guarantor	(51,572.88)
Legal fees	(2,412,764.32)
IT expenses	(57,123.00)
Printing and stationary	(26,768.01)
Record management and storage	(6,760.50)
<b>Total payments</b>	<b>(4,787,252.23)</b>
<b>Net receipts (payments)</b>	<b>(3,878,880.60)</b>

## 5. Investor Information

### 5.1 Estimated Unit Price as at 31 December 2018

The estimated unit price as at 31 December 2018 is 13.3 cents.

Description	\$
Total Value of Fund Assets as at 31 December 2018	66,822,155
Less Creditors and Other Payables	3,134,005
<b>Total Net Value of Fund Assets</b>	<b>63,688,150</b>
<b>Total Number of Units</b>	<b>478,100,386</b>
<b>Unit Price Estimate</b>	<b>13.3 Cents</b>

I *attach* a copy of a letter confirming the unit price as at 31 December 2018, which may be forwarded to Centrelink to assist with the review of investors' pensions.

### 5.2 Distributions to Investors

Following the retirement of the DB Receivers, I am required to seek the directions of the Court before proceeding with an interim distribution. 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. As discussed at paragraphs 2.1.1.3 and 2.2.3, I applied to court on 1 February 2019 seeking

directions to make an interim distribution to investors and seeking orders as to the treatment of the foreign currency investors in that distribution.

### 5.3 Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor in the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if investors could nominate an email address as their preferred method to receive correspondence. Investors may update their details as outlined in Section 4.5 below. For those investors that do not have an email address, correspondence will continue to be sent to you via post.

My next report to investors will be issued by 30 June 2019.

### 5.4 Investors Queries

Arrangements are in place to ensure that any reasonable questions asked by members of the FMIF, about the winding up of the FMIF, will be answered within a reasonable period of time (generally seven days) and without charge to the investor.

For any changes to investors details, please review the Useful Forms/Procedures tab on the website [www.lmfmif.com](http://www.lmfmif.com) which includes information regarding the following procedures:

- Change of Contact Address/Bank Account Details
- Change of Contact Address/Bank Accounts Details of a Deceased Estate
- Change of Trustee of Self-Managed Super Fund
- Transfer of Unit Holding from a Super Fund/ Trustee Company to Personal Name(s)
- Transfer of Unit Holding from a Deceased Estate to a Sole Survivor
- Transfer from a Deceased Estate to a Beneficiary of an Estate

It is a requirement that advisors or other third parties acting on behalf of Unit Holders are doing so pursuant to a relevant Authority/Power of Attorney. Please ensure that a relevant Authority/Power of Attorney accompanies the abovementioned documents as necessary (if an Authority/Power of Attorney has not previously been provided).

It is preferable that all questions about the winding up, or communications are sent via email to [enquiries@lmfmif.com](mailto:enquiries@lmfmif.com) with original documents to be mailed as required to:

BDO  
GPO Box 457  
Brisbane QLD 4001  
Phone: +61 7 3237 5999  
Fax: +61 7 3221 9227

## 6. Receiver's Remuneration and Expenses

There have been ten applications to Court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 31 October 2018.

The tenth application for the approval of my remuneration for the period 1 May 2018 to 31 October 2018 was heard by the Court on 29 November 2018. The Court ordered that my remuneration for this

period be fixed in the amount of \$1,946,635.35 (inclusive of GST) in relation to my role as the person responsible for ensuring the FMIF is wound up in accordance with its constitution and \$20,902.75 (inclusive of GST) in relation to the controllerships for the retirement village assets (which are now finalised).

A copy of all documentation in relation to my applications can be found on the website [www.lmfif.com](http://www.lmfif.com).

In addition to the remuneration previously approved by the Court and the tenth application set out above, I calculate that, on a time basis, I have incurred further remuneration of \$915,315.68 (exclusive of GST) plus outlays of \$19,553.09 (exclusive of GST) from 1 November 2018 to 28 February 2019 as detailed in the attached summaries.

My next application to Court for the approval of my remuneration is likely to cover the period 1 November 2018 to 30 April 2019. A copy of my application in this respect will be posted to the website [www.lmfif.com](http://www.lmfif.com) and investors will be notified when this application has been lodged.

## **6.1 Actions taken during the Period**

I provide below a summary of actions taken during the period from 1 July 2018 to 31 December 2018:

- Work undertaken in relation to the litigation matters detailed at Section 2.1 and 2.2 of this report;
- Liaising with various parties in relation to the DB Receivers' retirement by the Secured Creditor;
- Maintaining the management accounts of the Fund and preparation of management accounts for the year ending 30 June 2018 and for the half year ending 31 December 2018;
- Undertaking the investor management function for approximately 4,600 investors including answering queries on the winding up of the Fund and maintaining the investment database, including any change in details or transfer of units;
- Preparing affidavit and supporting material for an application to Court for approval of the receiver's remuneration for the period 1 April 2018 to 31 October 2018;
- Finalising outstanding matters from the sale of five retirement villages, including tax compliance issues;
- Investigations into the migration of the Composer investor management database to the AX investor management database and determining steps to be taken in relation to membership records for investors that acquired units in foreign currencies;
- Attending to compliance with ASIC's grant of relief from the requirements of a half year review and annual audit of the financial reports and compliance plan;
- Preparation of unit price calculations as at 30 June 2018 and 31 December 2018; and
- Preparation of update reports to investors in June, September and December 2018.

## **6.2 Actions required to complete the winding up**

I provide below a summary of the proposed actions to be taken in the next 12 months in relation to the winding up of the Fund:

- Take steps to finalise the various ongoing litigation matters outlined in this report, including receiving the judgments that have been reserved by the Court and considering same;
- Continue to monitor and assist the Bellpac liquidator to achieve finalisation of the recovery in the \$8M bonds claim;
- Finalise all claims against guarantors;
- Receive and then resolve or have determined FTI's foreshadowed further indemnity claim against the Fund;
- Maintain the accounts of the Fund and prepare management accounts for the year ending 30 June 2019 and half year ending 31 December 2019;
- Maintain the investor management database;
- Obtaining appropriate orders in the Feeder Fund proceedings and approval from the Court, and (assuming orders are made as sought) process an interim distribution to investors;
- Report to investors on a quarterly basis; and
- Make applications to Court for remuneration approval.

Please note that the timing to finalise some of the above matters will be subject to judgments being handed down by the Court.

### **6.3 Actions required to complete the winding up**

I provide below a summary of the key actions required to complete the winding up:

- Finalise all litigation currently on foot and contemplated;
- Resolve or have determined FTI's further remuneration or indemnity claim against the Fund;
- Discharge all liabilities of the Fund;
- Obtain approval from the Court to process interim distributions and a final distribution to investors;
- Prepare final accounts for the Fund;
- Arrange for an auditor to audit the final accounts of the Fund after the Fund is wound up; and
- Obtain court orders in relation to the finalisation of my role in relation to the Fund.

I anticipate that the winding up of the Fund will be finalised in approximately 12 to 24 months, however, this may vary subject to the progression of the outstanding legal matters detailed in this report.

## **4. Queries**

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:

BDO  
GPO Box 457  
Brisbane QLD 4001  
Phone: +61 7 3237 5999



Fax: +61 7 3221 9227

Email: [enquiries@lmfmif.com](mailto:enquiries@lmfmif.com)

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Whyte'. The signature is fluid and cursive, with a large loop at the end.

David Whyte  
Receiver



**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2018 to 28 February 2019**  
**LM First Mortgage Income Fund (Receivers & Managers Appointed)**

Employee	Position	Rate	Totals		Task Area											
					Assets		Creditors		Trade On		Investigations		Administration			
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$		
Leisa Rafter	Partner	710	0.9	639.00					0.9	639.00						
Mark Molesworth	Partner	710	3.1	2,201.00					3.1	2,201.00						
David Whyte	Partner	595	298.6	177,667.00	159.4	94,843.00	14.7	8,746.50	96.2	57,239.00	3.4	2,023.00	24.9	14,815.50		
Andrew Fielding	Partner	595	1.0	595.00									1.0	595.00		
Clark Jarrold	Partner	595	219.3	130,483.50	219.3	130,483.50										
Chris Catanzaro	Partner	570	3.3	1,881.00					3.3	1,881.00						
Craig Jenkins	Partner	525	53.3	27,982.50	53.3	27,982.50										
Craig Jenkins	Partner	515	14.4	7,416.00	14.4	7,416.00										
Charles Haines	Associate Director	510	0.1	51.00									0.1	51.00		
Alastair Raphael	Senior Manager	485	73.7	35,744.50	27.0	13,095.00	26.4	12,804.00	20.3	9,845.50						
Arthur Taylor	Senior Manager	485	368.6	178,771.00	292.7	141,959.50	42.9	20,806.50	33.0	16,005.00						
Georgia Griffin	Manager	465	4.3	1,999.50					4.3	1,999.50						
Julie Pagcu	Associate Director	450	226.2	101,790.00	226.2	101,790.00										
Jayden Coulston	Manager	445	5.2	2,314.00			5.0	2,225.00					0.2	89.00		
Julie Pagcu	Associate Director	430	13.6	5,848.00	13.6	5,848.00										
Ainsley Watt	Senior Accountant - Experienced	360	167.6	60,336.00	13.3	4,788.00	83.0	29,880.00	33.9	12,204.00	1.1	396.00	36.3	13,068.00		
Antoinette Fielding	Accountant	265	0.6	159.00			0.6	159.00								
George Lethbridge	Graduate Accountant	220	217.3	47,806.00	83.9	18,458.00	86.7	19,074.00	8.8	1,936.00	4.7	1,034.00	33.2	7,304.00		
Antoinette Fielding	Accountant	220	35.5	7,810.00			33.0	7,260.00			1.8	396.00	0.7	154.00		
Sarah Cunningham	Accounting Assistant	220	18.2	4,004.00									18.2	4,004.00		
Eloise Carroll	Graduate Auditor	220	18.7	4,114.00			18.7	4,114.00								
Amy Glubb	Accountant	220	161.5	35,530.00	4.3	946.00	149.3	32,846.00					7.9	1,738.00		
Ryan Whyte	Graduate Accountant	220	261.3	57,486.00	54.8	12,056.00	114.9	25,278.00	84.0	18,480.00	3.0	660.00	4.6	1,012.00		
Ryan Whyte	Graduate Accountant	180	98.6	17,748.00	23.5	4,230.00	52.7	9,486.00	4.7	846.00	3.0	540.00	14.7	2,646.00		
Chris Catanzaro	Partner	172	0.1	17.18					0.1	17.18						
Julia Rose	Practice Assistant	135	7.5	1,012.50	7.5	1,012.50										
Moir Hattingh	Practice Assistant	100	39.1	3,910.00	0.2	20.00							38.9	3,890.00		
<b>TOTALS</b>			<b>2,311.6</b>	<b>915,315.68</b>	<b>1,193.4</b>	<b>564,928.00</b>	<b>627.9</b>	<b>172,679.00</b>	<b>292.6</b>	<b>123,293.18</b>	<b>17.0</b>	<b>5,049.00</b>	<b>180.7</b>	<b>49,366.50</b>		
			<b>GST</b>	<b>91,531.57</b>												
			<b>TOTAL INC GST</b>	<b>1,006,847.25</b>												
<b>AVERAGE HOURLY RATE</b>			<b>396</b>	<b>473</b>	<b>275</b>	<b>421</b>	<b>297</b>	<b>273</b>								

**Note:** All amounts exclude GST unless otherwise noted



Disbursements for the period 1 November 2018 to 28 February 2019

**LM First Mortgage Income Fund (Receivers & Managers Appointed)**

Expense Type	Amount (\$ ex GST)
Postage	18,140.94
Search Fee	876.16
General	341.06
Taxi fares	114.93
ASIC	80.00
<b>TOTAL</b>	<b>19,553.09</b>
<b>GST</b>	<b>1,955.31</b>
<b>TOTAL INC GST</b>	<b>21,508.40</b>

29 March 2019

**TO WHOM IT MAY CONCERN**

**LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)  
ARSN 089 343 288 ('the Fund' or 'FMIF')**

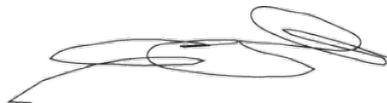
I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I provide an update on the estimated unit price of the fund as at 31 December 2018, calculated as follows:

Description	±\$
Total Value of Fund Assets as at 31 December 2018	66,822,155
Less Creditors and Other Payables	3,134,005
<b>Total Net Value of Fund Assets</b>	<b>63,688,150</b>
<b>Total Number of Units</b>	<b>478,100,386</b>
<b>Unit Price Estimate</b>	<b>13.3 Cents</b>

Should you have any queries in respect of the above, please contact my office on (07) 3237 5999 or [enquiries@lmfmif.com.au](mailto:enquiries@lmfmif.com.au).

Yours faithfully,



David Whyte  
Receiver