

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: **RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**

AND

First Respondent: **LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS
CAPACITY AS RESPONSIBLE ENTITY OF THE LM
FIRST MORTGAGE INCOME FUND**

AND

Second Respondent: **THE MEMBERS OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288**

AND

Third Respondent: **ROGER SHOTTON**

AND

Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION**

AFFIDAVIT OF DAVID WHYTE

I, **DAVID WHYTE**, of Level 10, 12 Creek Street, Brisbane in the State of Queensland, Registered Liquidator, solemnly and sincerely affirms and declares:-

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Signed: _____
Filed on behalf of the Applicant

Witnessed by: _____

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1. I am a Registered Liquidator and a Consultant in the employ of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand, and a professional member of the Australian Restructuring, Insolvency and Turnaround Association (“ARITA”).
2. I refer to my affidavit sworn on 29 June 2022, in support of my application to Court for approval of remuneration for the period 1 November 2021 to 30 April 2022 (**June 2022 Affidavit**).

Updated estimated return to members

3. In paragraph 18 of my June 2022 Affidavit, I depose that the total estimated return to members as at 31 December 2021 (including the interim distribution paid in October 2019) is 9.7 cents per unit, excluding future recoveries and costs.
4. I have since updated my estimate of the return to FMIF members, in light of recent developments in the winding up of the FMIF.
5. My current estimated return to FMIF members is between 17.4 to 18.1 cents in the dollar if the interim distribution paid in October 2019 is included. This estimate includes my current estimates of future recoveries and costs to finalise the winding up.
6. This estimate is based on the following key assumptions:
 - (a) that no significant further investigations are required by BDO in relation to distributions to investors in November 2010, and December 2010, which were not received (this may be subject to obtaining appropriate directions from the Court);
 - (b) that court approval can be obtained in a timely manner to make a final distribution to investors, without significant further litigation;

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Signed:

02186176-001

Witnessed by:



- (c) Payment of the FMIF's outstanding liabilities/estimated liabilities, including the adverse costs orders made in Supreme Court of Queensland Proceeding 12317/14;
- (d) That an exemption is obtained from ASIC or the Court, from compliance with the FMIF's financial reporting and audit obligations;
- (e) That the time taken to finalise the winding up is approximately 9 months. The time taken to wind up the FMIF may impact the cost as there are ongoing costs associated with the winding up, including the cost of maintaining and updating the register of members, and communications with members.

7. If any of these assumptions are not correct, that may impact the return to members.

The contents of this affidavit are true and correct. Where the contents of this affidavit are based on information and belief, those contents are true to the best of my knowledge and I have stated the source of that information and grounds for that belief and, if contained in a document, I have attached that document to this affidavit.

I understand that it is a criminal offence to provide a false matter in an affidavit.

This affidavit was made, signed and witnessed under part 6A of the Oaths Act 1867.

Affirmed by **DAVID WHYTE** on the 3rd day of August 2022 at Brisbane in the presence of:



Deponent



Alex Nase
Australian legal practitioner
Cowen Schwarz Marschke Lawyers
Special witness under the *Oaths Act*
1867

I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.