

**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**

**AFFIDAVIT**

Philip Ryan of Level 23, 10 Eagle Street, Brisbane, Queensland states on oath:

1. I am the Managing Director of Trilogy Funds Management Limited ACN 080 383 679 as Responsible Entity of the LM Wholesale First Mortgage Income



AFFIDAVIT  
Filed on Behalf of the Second and Fifth Defendants

Form 46, Version 1  
Uniform Civil Procedure Rules 1999  
Rule 43.1

Name: Squire Patton Boggs  
Address: Level 17, 88 Phillip Street,  
SYDNEY NSW 2000

Phone No: (02) 8248 7888  
Fax No: (02) 8248 7899  
Email: [Amanda.banton@squirepb.com](mailto:Amanda.banton@squirepb.com)/  
[susan.goodman@squirepb.com](mailto:susan.goodman@squirepb.com)

017-8323-8279/1/AUSTRALIA

*[Handwritten signature]*  
Solicitor


Fund ARSN 099 857 511) (**Trilogy**), the Second Defendant in the Proceedings.

2. I am authorised to make this affidavit on behalf of the Second and Fifth Defendants.
3. Since about 16 November 2012, Trilogy has been the responsible entity of the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 (**WFMIF**), a feeder fund in a unit trust known as the LM First Mortgage Income Fund (**FMIF**). Prior to that date, LM Investment Management Limited (**LMIM**) was the responsible entity of WFMIF. Trilogy holds the scheme property of the WFMIF on trust for its unit holders pursuant to s.601FC(2) of the *Corporations Act 2001* (Cth) (**Act**).
4. The Trust Company Limited ACN 004 027 749 is Custodian of the property of the WFMIF (**Trust Company**). The Trust Company holds the scheme property of the WFMIF as agent for Trilogy as the RE of the WFMIF.
5. I make this affidavit in support of the Second and Fifth Defendants' Application dated 1 February 2019 (**Application**), seeking an order pursuant to s96 of the *Trusts Act 1973* (QLD), that the Second and Fifth Defendants are justified in entering and performing the obligations under a Deed of Settlement and Release.
6. Shown to me at the time of swearing this affidavit is a bundle of documents marked "**Exhibit PR-1**". Where I refer to documents and page numbers throughout this affidavit, I am referring to the documents and page numbers in the Exhibit PR-1.
7. I intend to swear a further affidavit which contains confidential information (the **Confidential Affidavit**) and which exhibits a bundle of confidential documents marked "Confidential Exhibit PR-1" (**Confidential PR-1**). I propose to ask the Court to make a suppression order over the Confidential Affidavit and Confidential Exhibit PR-2.

#### **Background**

8. By orders of the Supreme Court of Queensland dated 21 August 2013 and 17 December 2015 Mr David Whyte ("**Whyte**") was appointed:
  - a. as receiver of the property of the FMIF; and

  
Signed:

Taken by:   
017-8323-8279/1/AUSTRALIA  
*Solicitor*

- b. as the person responsible for ensuring that the FMIF is wound up in accordance with its Constitution.

Included at pages 1 to 12 of Exhibit PR-1 are copies of the orders of the Supreme Court of Queensland dated 21 August 2013 and 17 December 2015.

- 9. The units in the FMIF are divided into three classes: A, B and C-class units. The B-class units in the FMIF are held by three managed investment schemes, known collectively as the **Feeder Funds**:

- a. the WFMIF, via its RE Trilogy and its Custodian Trustee Trust Company;
- b. LMIM as RE of the LM Currency Protected Australian Income Fund ARSN 110 247 875 (**CPAIF**); and
- c. LMIM as RE of the LM Institutional Currency Protected Australian Income Fund (**ICPAIF**).

- 10. As at 30 June 2008, the FMIF had 481,418,849 units on issue, at a unit price of \$1.00. Included at pages 13 to 62 of Exhibit PR-1 is the FMIF's Annual Financial Report dated 30 June 2008.

- 11. As at 21 July 2008, the three Feeder Funds held a total of 218.3 million units in the FMIF, at a \$1.00 unit price, being approximately 45% of the units issued in the scheme. LMIM as RE of the WFMIF held 91.5 million of these units. These units were the WFMIF's only asset. See the statements exhibited at pp. 296, 313 and 323 to the first affidavit of Whyte.

- 12. As at 4 April 2018, the FMIF's unit register records that the fifth defendant holds 99,488,928.68 units as custodian for the WFMIF, valued at \$14,326,405.78 (based on a unit price of \$0.1440). See the statements exhibited at pp. 296, 313 and 323 to the first affidavit of Whyte.

- 13. The Proceedings were commenced on 23 December 2016 by way of Claim and Statement of Claim, filed by the plaintiff, naming Trilogy as the Second Defendant.

- 14. The pleadings were amended three times over the course of the Proceedings.

  
Signed:

Taken by:   
017-8323-8279/1/AUSTRALIA  
*Solicitor*

15. The Second Further Amended Statement of Claim (**2FASOC**) and Further Amended Claim (**FAC**) were filed on the 21 June 2018 and named the Trust Company as the Fifth Defendant to the Proceedings. A copy of the 2FASOC is included at pages 63 of 95 of Exhibit.
16. No orders have been made for the filing and service of defences and to the best of my knowledge no defences have been filed and served in the proceeding.

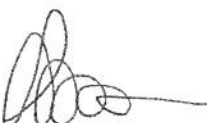
### Settlement

17. On 13 June 2018, the Court made orders, including that the parties participate in a mediation at an early stage. In particular, the plaintiff proposed that the mediation take place before the defendants were required to deliver any Defences. Trilogy and Trust Company consented to participate in a mediation on this basis. Included at pages 96 to 101 of Exhibit PR-1 is a copy of the Court's orders dated 13 June 2018.
18. On 4 September 2018, the Court made orders that a mediation be held in these proceedings on 5 and 6 November 2018. Included at pages 102 to 103 of Exhibit PR-1 is a copy of the Court's orders dated 4 September 2018.
19. On 5, 6 and 20 November 2018, the Plaintiff and First to Third and Fifth Defendants attended a mediation and agreed in principle to a resolution of the Proceeding.
20. A Deed of Settlement and Release (**Settlement Deed**) has since been executed by the parties, as has a Variation to the Settlement Deed. A copy of the Settlement Deed and the Variation are included at pages 105 to 143 of Confidential Exhibit PR-2.

### Costs

21. The Second and Fifth Defendants' legal costs and disbursements incurred to date in relation to the Proceeding are in excess of \$370,000.
22. I am informed by Squire Patton Boggs (**SPB**), the solicitors for the Second and Fifth Defendants and believe that if the Proceeding progresses to final hearing, SPB are of the opinion that:
- a. the final hearing would likely run for five to eight days;

  
Signed:

Taken by:   
017-8323-8279/1/AUSTRALIA  
*Solicitor*



- b. Trilogy and Trust Company would likely need to file and serve:
  - i. at least one lay affidavit;
  - ii. at least two expert reports;
- c. Queens Counsel, Junior Counsel and SPB would be required to prepare for and attend the trial.

23. I am also informed by SPB, and believe, that they estimate that the cost to the Second and Fifth Defendants if the Proceeding runs to trial will be in the order of \$1,399,600.40 (GST exclusive). A copy of the budget that SPB has prepared with respect to the Proceeding is at pages 104 to 109 of the Exhibit.

Sworn by Philip Ryan on 1 February 2019 at Brisbane in the presence

Signed:

Deponent



Lily Mary Berkeley  
Solicitor

**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

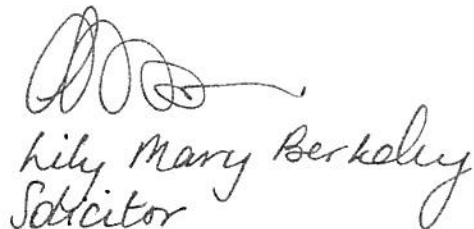
Fourth Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461**  
AND

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**

**CERTIFICATE OF EXHIBIT**

Exhibit PR-1 to the affidavit of Philip Ryan sworn 1 February 2019:

Deponent



Lily Mary Berkeley  
Solicitor

CERTIFICATE OF EXHIBIT  
Filed on Behalf of the Second and Fifth Respondent

Form 47, Version 2  
Uniform Civil Procedure Rules 1999  
Rule 435

Name: Squire Patton Boggs  
Address: Level 17, 88 Phillip Street,  
SYDNEY NSW 2000

Phone No: (02) 8248 7888  
Fax No: (02) 8248 7899  
Email: Amanda.banton@squirepb.com

*Duplicate*

**SUPREME COURT OF QUEENSLAND**

**REGISTRY: Brisbane**  
**NUMBER: 3383/13**

**Applicants:**  
**PATRICIA BRUCE**

**RAYMOND EDWARD BRUCE AND VICKI**

**AND**

**First Respondent:**  
**CAPACITY**  
**MORTGAGE**

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

**AND**

**Second Respondent:**  
**MORTGAGE**

**THE MEMBERS OF THE LM FIRST**  
**INCOME FUND ARSN 089 343 288**

**AND**

**Third Respondent:**

**ROGER SHOTTON**

**AND**

**Intervener:**  
**COMMISSION**

**AUSTRALIAN SECURITIES & INVESTMENTS**

**ORDER**

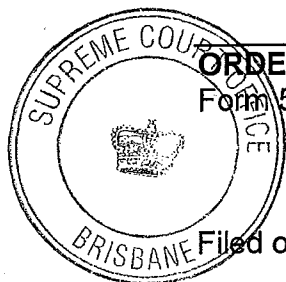
**Before: Justice Dalton**

**Date: 21 August, 2013**

**Initiating document: Application filed 29 April, 2013 by Roger Shotton and**  
**Application filed 3 May 2013 by Australian Securities**  
**and Investments Commission ("Applications").**

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to section 601ND(1)(a) of the Corporations Act 2001 (Cth) ("the Act") LM Investment Management Limited (Administrators



**ORDER**  
**Form 59 R.661**

**Filed on behalf of the Third Respondent**

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

Appointed) ACN 077 208 461 ("LMIM") in its capacity as Responsible Entity of the LM First Mortgage Income Fund is directed to wind up the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF") subject to the orders below.

2. Pursuant to section 601NF(1) of the Act, David Whyte ("Mr Whyte"), Partner of BDO Australia Limited ("BDO"), is appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution ("the Appointment").
3. Pursuant to section 601NF(2), that Mr Whyte:-
  - (a) have access to the books and records of LMIM which concern the FMIF;
  - (b) be indemnified out of the assets of the FMIF in respect of any proper expenses incurred in carrying out the Appointment;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by employees of BDO who perform work in carrying out the Appointment at rates and in the sums from time to time approved by the Court and indemnified out of the assets of the FMIF in respect of such remuneration.
4. Nothing in this Order prejudices the rights of:
  - (a) Deutsche Bank AG pursuant to any securities it holds over LMIM or the FMIF; or
  - (b) the receivers and managers appointed by Deutsche Bank AG, Joseph David Hayes and Anthony Norman Connelly.
5. Pursuant to sections 601NF (2) of the Act, Mr Whyte is appointed as the receiver of the property of the FMIF.
6. Pursuant to sections 601NF (2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to paragraph 5 above, the powers set out in section 420 of the Act.
7. Without derogating in any way from in any way from the Appointment or the Receiver's powers pursuant to these Orders, Mr Whyte is authorised to:
  - (a) take all steps necessary to ensure the realisation of property of FMIF held by LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as Responsible Entity of the FMIF by exercising any legal right of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as Responsible Entity of the FMIF in relation to the property, including but not limited to:

- (i) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate and/or finalise the sale of the property;
    - (ii) providing a response as appropriate to matters raised by receivers of property of LMIM as Responsible Entity of the FMIF to which receivers have been appointed;
    - (iii) dealing with any creditors with security over the property of the FMIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of property;
    - (iv) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
    - (v) executing contracts, transfers, releases, or any such other documents as are required to carry out any of the above; and
  - (b) bring, defend or maintain any proceedings on behalf of FMIF in the name of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as is necessary for the winding up of the FMIF in accordance with clause 16 of its constitution, including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions.
8. The First Respondent must, within 2 business days of the date of this Order:
- (a) send an email to all known email addresses held by the First Respondent for Members of the FMIF notifying of Mr Whyte's appointment, and a copy of this Order; and
  - (b) make a copy of this order available, in PDF form, on:
    - (i) its website [www.lmaustralia.com](http://www.lmaustralia.com), together with a link to the [www.bdo.com.au](http://www.bdo.com.au) website;
    - (ii) its website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com), together with a link to the [www.bdo.com.au](http://www.bdo.com.au) website.
9. The costs of the Third Respondent, Roger Shotton, of and incidental to the Applications, including reserved costs, shall be assessed on the indemnity basis, and shall be paid from the FMIF.
10. All other questions of costs of or incidental to the Applications and the Application filed 15 April 2013 by Raymond and Vicki Bruce are adjourned to a date to be fixed by the Court.

**IT IS DIRECTED THAT:**

11. Any party wishing to contend that the First Respondent is not entitled to indemnity from the ~~FMR~~<sup>Fund</sup> in relation to the Applications shall file an application to be heard and determined at the same time as the other issues as to costs.
12. Any application for the costs of complying with subpoenas issued in the proceedings are adjourned to a date to be fixed, and any time limitation imposed by rule 418 (5) of the UCPR is extended pursuant to rule 7 of the UCPR, to allow for the hearing of any such application at the date to be fixed.

Signed: *nee*



**Duplicate**

**SUPREME COURT OF QUEENSLAND**

**REGISTRY: Brisbane**  
**NUMBER: 3508 of 2015**

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

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

**AND**

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

**AND**

**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**

**ORDER**

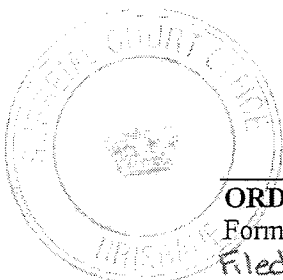
**Before: Jackson J**

**Date: 17 December 2015**

**Initiating document: Originating Application filed 8 April 2015; Amended Originating Application filed 20 July, 2015; Further Amended Originating Application filed 16 December, 2015**

**THE ORDER OF THE COURT IS THAT:-**

1. In respect of the 60 members of the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF") to whom reference is made in paragraph 26 of the Affidavit of Murray Daniel sworn on 17 July 2015 and filed on 20 July 2015, the notice sent to those members in the manner described in paragraphs 27 to 30 of the Affidavit of Mr Daniel is taken to be sufficient notice for the purposes of Order 4(ii) of the Order of this Court made on 7 May 2015.



**ORDER**

Form 59 R.661

Filed on behalf of the Respondent

Tucker + Cowen Solicitors  
15 Adelaide Street  
BRISBANE, QLD 54001

2. Subject to the matters expressly set out in this Order, nothing in this Order derogates from the powers and rights conferred upon David Whyte ("**Mr Whyte**") by Order of this Court dated 21 August 2013 in proceeding BS3383 of 2013 (the "**existing Order**") as the person appointed:
  - (a) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution ("**the Appointment**"); and
  - (b) as the receiver of the property of the FMIF.
3. Pursuant to section 601NF(2) of the *Corporations Act 2001* ("**the Act**") Mr Whyte is empowered to determine, in accordance with paragraphs 4 to 10 herein, whether, and if so to what extent, the Second Applicant ("**LMIM**") is entitled to be indemnified from the property of the FMIF in respect of any expense or liability of, or claim against, LMIM in acting as Responsible Entity of the FMIF.
4. The First Applicants ("**the Liquidators**") are directed to:-
  - (a) ascertain the debts payable by, and the claims against, LMIM in accordance with the Act;
  - (b) adjudicate upon those debts and claims in accordance with the provisions of the Act;
  - (c) identify whether LMIM has a claim for indemnity from the property of the FMIF in respect of any, or any part of any, debt payable by or claim against LMIM which is admitted by the Liquidators in the winding up of LMIM (each such claim for indemnity referred to below as a "**Creditor Indemnity Claim**");
  - (d) identify whether LMIM has (at the date of this Order and from time to time) a claim for indemnity from the property of the FMIF in respect of any, or any part of any, expense or liability incurred by John Richard Park and Ginette Dawn Muller in acting as administrators or liquidators of LMIM (whether incurred in their own name or in the name of LMIM) insofar as the expense or liability was or is incurred in connection with LMIM acting as Responsible Entity for the FMIF (each such claim for indemnity referred to below as an "**Administration Indemnity Claim**"); and
  - (e) identify whether LMIM has a claim for indemnity from the property of the FMIF in respect of any, or any part of any, other expense or liability incurred and paid by LMIM in its capacity as Responsible Entity for the FMIF or by John Richard Park and Ginette Dawn Muller in acting as administrators or liquidators of LMIM (whether incurred in their own name or in the name of LMIM) insofar as the expense or liability was or is incurred in connection with LMIM acting as Responsible Entity for the FMIF (being an expense or liability to which paragraphs 4(c) and 4(d) above do not apply) (each such claim for indemnity referred to below as a "**Recoupment Indemnity Claim**").

5. Within sixty days of the date of this Order the Liquidators must notify Mr Whyte in writing of any Administration Indemnity Claim and any Recoupment Indemnity Claim identified by the Liquidators as at the date of this Order.
6. Within 14 days after:-
  - (a) any debt or claim is admitted by the Liquidators in the winding up of LMIM and, in respect of such debt or claim, a Creditor Indemnity Claim is identified by the Liquidators;
  - (b) any Administration Indemnity Claim (being one to which paragraph 5 of this Order does not apply) is identified by the Liquidators; or
  - (c) any Recoupment Indemnity Claim (being one to which paragraph 5 of this Order does not apply) is identified by the Liquidators,the Liquidators must notify Mr Whyte in writing of such claim.
7. When notifying Mr Whyte of a claim in accordance with paragraphs 5 or 6 of this Order (each such claim for indemnity referred to below as an "**Eligible Claim**"), the Liquidators must:-
  - (a) Provide Mr Whyte with:-
    - (i) (if the Eligible Claim is a Creditor Indemnity Claim) a copy of the relevant proof of debt and supporting documentation relating to the Eligible Claim; and
    - (ii) Such other information the Liquidators consider relevant to LMIM's claim for indemnity from the property of the FMIF;
  - (b) Within 14 days of receipt of a request from Mr Whyte pursuant to paragraph 8(a) below for further information in respect of an Eligible Claim, provide such reasonably requested further information to Mr Whyte.
8. Mr Whyte is directed to:-
  - (a) Within 14 days of receipt of an Eligible Claim, request any further material or information he reasonably considers necessary to assess the Eligible Claim;
  - (b) Within 30 days of receipt of an Eligible Claim or of the information requested in accordance with paragraph 8(a) above (whichever is the later):-
    - (i) accept the Eligible Claim as one for which LMIM has a right to be indemnified from the property of the FMIF; or
    - (ii) reject the Eligible Claim; or
    - (iii) accept part of it and reject part of it;

and give to the Liquidators written notice of his determination; and

- (c) If Mr Whyte rejects an Eligible Claim, whether in whole or in part, provide the Liquidators with written reasons for his decision when, or within 7 days after, giving notice of his determination.
9. Within 28 days of receiving notification from Mr Whyte of the reasons for rejecting, in whole or in part, any Eligible Claim ("**Rejected Claim**"), the Liquidators:-
- (a) may make an application to this Honourable Court for directions as to whether or not the Eligible Claim is or is not one for which LMIM has a right of indemnity out of the scheme property of the FMIF; or
  - (b) must notify the relevant creditor for any Rejected Claim of:-
    - (i) Mr Whyte's decision;
    - (ii) any reasons provided by Mr Whyte for that decision;
    - (iii) any material provided pursuant to paragraphs 6, 7 or 8 hereof; and
    - (iv) whether they intend to make an application for directions in respect of the Rejected Claim pursuant to paragraph 9(a) hereof.
10. Mr Whyte has liberty to apply to the Court for direction in respect of any question arising in connection with his consideration or payment of an Eligible Claim.
11. Pursuant to section 601NF(2) of the Act, the parties are directed that for so long as the Appointment and the appointment of Mr Whyte as receiver of the property of the FMIF continue, LMIM shall not be responsible for, and is not required to discharge, the functions, duties and responsibilities set out in clauses 16.7(c), 16.7(f), 16.7(g) and 18.2 of the constitution of the FMIF.
12. Pursuant to section 601NF(2) of the Act, Mr Whyte is directed not to make any distribution to the members of the FMIF, without the authority of a further Order of the Court.
13. Pursuant to section 601NF(2) of the Act:-
- (a) the Liquidators are directed not to carry out the functions of LMIM pursuant to clauses 9, 10 and 22 of the constitution of the FMIF;
  - (b) LMIM is relieved of the obligations imposed by clauses 9, 10 and 22 of the constitution of the FMIF; and
  - (c) Mr Whyte is authorised and empowered to exercise the powers of, and is responsible for the functions of, the Responsible Entity as set out in Clauses 9, 10 and 22 of the constitution of the FMIF.

14. Pursuant to section 601NF(2) of the Act:
  - (a) Mr Whyte is directed to apply to ASIC to obtain relief from the financial reporting and audit obligations imposed by Part 2M.3 of the Act and section 601HG of the Act; and
  - (b) in the event that the parties are unable to obtain relief from those financial reporting and audit obligations, then Mr Whyte is directed to provide to LMIM all reasonably requested information as is necessary to enable LMIM to comply with the financial reporting obligations imposed on LMIM as responsible entity of the FMIF under Part 2M.3 of the Act and the constitution of the FMIF.
15. Pursuant to section 1322(4)(c) of the Act, Mr Park and Ms Muller are relieved in whole from any civil liability in respect of a contravention or failure to discharge LMIM's financial reporting obligations under Part 2M.3 of the Act for the period from 19 March 2013 to 31 December 2015.
16. Nothing in this Order prejudices the rights of:
  - (a) Deutsche Bank AG pursuant to any securities it holds over LMIM or the FMIF; or
  - (b) The receivers and managers appointed by Deutsche Bank AG, Joseph David Hayes and Anthony Norman Connelly.
17. The Liquidators are directed to notify any claim for the reasonable costs and expenses of LMIM of carrying out the work it is required to do by and under this order as an Administration Indemnity Claim under paragraph 4 and may make such a claim from time to time.
18. The Liquidators are entitled to claim reasonable remuneration in respect of the time spent by them and employees of FTI Consulting who perform work in carrying out the work they are required to do by and under this order in connection with the FMIF at rates and in the sums from time to time approved by the Court and to be indemnified out of the assets of the FMIF in respect of such remuneration.
19. Service of the Further Amended Originating Application dated 16 December, 2015 ("**the Further Application**") under s.96 of the Trusts Act be effected on the members of the LM Cash Performance Fund ARSN 087 304 032, the LM Currency Protected Australian Income Fund ARSN 110 247 875, the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868, the LM Australian Income Fund ARSN 133 497 917 and the LM Australian Structured Products Fund ARSN 149 875 669 ("**Other Funds**") and on the members of the FMIF as follows:-
  - (a) by the First Applicants uploading to the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com) copies of this application, the statement of facts to be filed, the Notice to Members in the form of Schedule 7 to the Further Application ("**the Notice**"), any order made as to service and the substantive affidavits (including all the exhibits) that the First Applicants intend to rely upon in support of the Further Application;


- (b) by the Respondent sending by email to those members of the FMIF for whom an email address is recorded, the Notice and stating that they may view all substantive Court documents upon which the First Applicants intend to rely on the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com);
  - (c) by the First Applicants sending by email to those members of the Other Funds for whom an email address is recorded, the Notice and stating that they may view all substantive Court documents upon which the First Applicants intend to rely on the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com);
  - (d) where the First Applicants receive a response to an email that indicates the email was not received, or if the First Applicants do not hold an email address for any member, and the First Applicants have a postal address for those members, the First Applicants are to post the Notice to the postal address of those members; and
  - (e) where the Respondent receives a response to an email that indicates the email was not received, or if the Respondent does not hold an email address for any member, and the Respondent has a postal address for those members, the Respondent is to post the Notice to the postal address of those members.
20. That service of the Further Amended Originating Application under s.511 of the Act be effected on the creditors of the Second Applicant as follows:-
- (a) by the First Applicants uploading to the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com) copies of this application, the statement of facts to be filed, the Notice to Creditors in the form of Schedule 8 to the Further Application ("**the Creditors' Notice**"), any order made as to service and the substantive affidavits (including all the exhibits) that the First Applicants intend to rely upon in support of the Further Application;
  - (b) by sending by email to those creditors of the Second Applicant, for whom an email address is recorded, the Creditors' Notice and stating that they may view all substantive Court documents upon which the First Applicants intend to rely in support of the Further Application on the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com); and
  - (c) where the First Applicants receive a response to an email that indicates the email was not received, or if the First Applicants do not hold an email address for any creditor, and the First Applicants have a postal address for those creditors, the First Applicants are to post the Creditors' Notice to the postal address of those creditors.
21. That service of the Further Application in accordance with any orders made be deemed to be effective on each of the members of the FMIF and Other Funds and the creditors of the Second Applicant.
22. That, where the First Applicants propose to rely on further material in support of the Further Application, they may serve that material by uploading the material to the website and sending notice by email or, where the First Applicants do not hold a

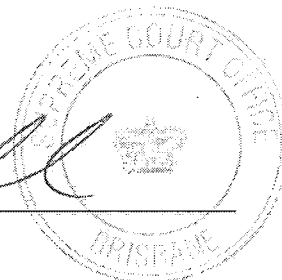


valid email address, by post to those members or creditors, with such notice to direct the members or creditors to the further material which has been uploaded at the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com).

23. That the First Applicants and Respondent not be required to take further steps to serve the members of the FMIF, the Other Funds or creditors of the Second Applicant whose email addresses return permanent undeliverable receipts and for whom the First Applicants or the Respondent (as the case requires) do not have a postal address.
24. That the Respondent be at liberty to upload any material served by the Applicants on the website [lmfmif.com](http://lmfmif.com).
25. Directions for the hearing of the relief sought by the Further Application as follows:-
  - (a) by no later than 27 January, 2016, the Applicants are to file any affidavit material in support of the Further Application;
  - (b) by no later than 27 January, 2016, the Applicants are to serve, pursuant to Part 4 of Chapter 4 of the Uniform Civil Procedure Rules 1999 (Qld), this Further Amended Originating Application and any supporting affidavit material on which the Applicants intend to rely, on the Respondent;
  - (c) by no later than 4 February, 2016, any party other than the Respondent who wishes to appear at the hearing of the Further Application shall file and serve, at the Applicants' address for service, a Notice of Appearance in Form 4;
  - (d) by no later than 18 February, 2016, the Respondent is to file and serve any affidavit upon which he intends to rely at the hearing of the Further Application;
  - (e) by no later than 18 February, 2016, any party other than the Respondent who has filed a Notice of Appearance in accordance with sub-paragraph (c) herein is to file any affidavit upon which it intends to rely at the hearing of the Further Application.
26. The parties' costs of and incidental to this application, including the costs reserved by Orders of this Court on 7 May 2015, be paid out of the assets of the FMIF on the indemnity basis.
27. Any person affected by these Orders has liberty to apply.
28. The Further Amended Originating Application filed 15 December, 2015 is otherwise adjourned to 10am on 22 February, 2016.

Signed:

  
Deputy Registrar







LM Investment Management Ltd

# LM First Mortgage Income Fund

ARSN 089 343 288

## ANNUAL FINANCIAL REPORT 30 June 2008

ABN 68 077 208 461 Responsible Entity & AFS: No. 220287

GOLD COAST SYDNEY HONG KONG AUCKLAND LONDON DUBAI

HEAD OFFICE: Level 4 9 Beach Rd Surfers Paradise Qld 4217 Australia T: +61 7 5584 4500 F: +61 7 5592 2505 Freecall: 1800 062 919 E: mail@LMaustralia.com www.LMaustralia.com



1 April 2009

### Audited financial reports for the year ended 30 June 2008

The directors of LM have released the **audited financial accounts** for the LM First Mortgage Income Fund and its related feeder funds (LM funds) for the **year ended 30 June 2008**. The delay in the release of the accounts is primarily due to the finalisation of the banking arrangements for the LM First Mortgage Income Fund, thus impacting the accounts of the associated feeder funds, due to their investments in the LM First Mortgage Income Fund.

In summary, the LM funds performed well during the year, whilst delivering to investors **rates of interest greater than cash and a stable unit price of AUD\$1.00**.<sup>1,2</sup>

Although the accounts are dated as at 30 June 2008, the unit price of AUD\$1.00 is verified as current up until date of signing, being 10 March 2009.<sup>1,2</sup>

During 2008, the LM funds were, and continue to be, impacted by events surrounding the global credit crisis. Lack of liquidity in the finance sector first saw a general slowdown in the repayment of loans from those borrowers who were relying on refinances from other institutions, to repay their loans to the LM First Mortgage Income Fund. Secondly, the introduction of the Australian government guarantee on bank deposits in Australia and in some other countries has also impacted the LM funds, with an increase in withdrawal requests received from investors in the LM funds, following the implementation of the guarantee. Thirdly, a reflection of the credit crisis has now resulted in the LM First Mortgage Income Fund's external financier requiring its loan facility to be repaid in priority to most investor redemptions.

These three events, combined with the continuation of unprecedented general market conditions and the lack of liquidity within the banking sectors, have seen the LM funds delay the payment of redemptions for a period of 365 days as per the constitution, and in order to **protect the investment capital for all investors**.

The directors of LM have a good, long standing relationship with the LM First Mortgage Income Fund's **external financier**, and believe that the finalised negotiations will, over time, provide a fair outcome to all investors in the fund. Whilst the fund is undergoing its repayment program with the external financier, **investor distributions continue**. The financier has agreed to allow LM Investment Management Ltd, as Responsible Entity, to pay redemptions if an investor provides satisfactory evidence of financial or medical hardship, and also allows redemptions to be paid within the current expected timeframes, ie 365 days from maturity date of the investment.

The financial statements of the LM funds and the accompanying audit reports make reference to the uncertainty surrounding the ability of the fund to finalise the repayment of its credit facility by 31 July 2009. This is discussed as part of the report under Note 2 on page 11. The directors concur with this statement in relation to the uncertainty which exists in the current marketplace, however, the directors also believe the LM First Mortgage Income Fund will be able to meet its obligations to the financier, through repayment of existing loans. The Responsible Entity has the experienced staff and capabilities necessary to assist LM First Mortgage Income Fund borrowers in doing all things possible to accelerate repayment of loans from borrowers in a timely manner, without detriment to the unit price.

**LM is a fund manager committed to achieving the best results for the unit holders in our funds.** Should you have any questions regarding your investment, please contact your financial adviser.

Yours faithfully

**LM Investment Management Ltd**

The LM funds are issued by LM Investment Management Ltd ABN 68 077 208 461 Responsible Entity and AFSL No. 220281. Investors should read and consider the current product disclosure statement/s before making a new investment, or adding to their existing investment, available at [www.LMaustralia.com](http://www.LMaustralia.com).

<sup>1</sup> Past performance is not a reliable indicator of future performance.

<sup>2</sup> Investment risks are different to cash, investment is not guaranteed and returns may be lower than expected. The unit price may vary depending on the performance and value of the assets of the fund.

**LM FIRST MORTGAGE INCOME FUND**

**ABN: 66 482 247 488**

**Annual Report**

**For the year ended 30 June 2008**

# LM FIRST MORTGAGE INCOME FUND

ABN: 66 482 247 488

Annual Report – 30 June 2008

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The Responsible Entity of LM First Mortgage Income Fund is LM Investment Management Ltd (ABN 68 077 208 461).  
The Responsible Entity's registered office is Level 4, RSL Building, 9 Beach Road, Surfers Paradise QLD 4217.



# LM FIRST MORTGAGE INCOME FUND

## Directors' Report

### DIRECTORS' REPORT

The directors of LM Investment Management Limited, the Responsible Entity of the LM First Mortgage Income Fund, present their report together with the consolidated financial report of the LM First Mortgage Income Fund ("the Scheme") and its subsidiary ("the consolidated entity"), for the year ended 30 June 2008. The directors' report is not part of the financial report.

### DIRECTORS

The following persons held office as directors of LM Investment Management Limited, during the year or since the end of the year and up to the date of this report:

Name	Period of directorship
Mr Peter Charles Drake	Appointed 31 January 1997
Ms Lisa Maree Darcy	Appointed 15 September 2003
Mr John Dillon	Appointed 8 June 2005; resigned 28 August 2008
Mr Eghard van der Hoven	Appointed 22 June 2006
Ms Francene Mulder	Appointed 30 September 2006
Mr John Vallander Llewellyn	Appointed 1 June 2007; resigned 1 July 2008
Mr John O'Sullivan	Appointed 27 November 2007

### PRINCIPAL ACTIVITIES

During the year, the Scheme continued the principal activity of investing unitholders' funds in registered first mortgages and cash investments in Australia, in accordance with the Scheme's Constitution and in accordance with the investment policy of the Scheme as outlined in the current product disclosure document.

The Scheme did not have any employees during the year.

### SCHEME INFORMATION

The Scheme is an Australian registered scheme and was constituted in September 1999. The Responsible Entity of LM First Mortgage Income Fund is LM Investment Management Limited, who has been the Responsible Entity since registration of the Scheme.

The registered office and principal place of business of the Responsible Entity and the Scheme is Level 4, 9 Beach Road, Surfers Paradise, Queensland.

### REVIEW OF RESULTS AND OPERATIONS

#### Results

During the year the Scheme continued to invest in registered first mortgage loans secured by property in Australia and cash assets.

The Scheme performed well during the year and delivered to investor's rates of interest greater than cash and a stable unit price of \$1.00. The net profit attributable to unitholders for the year ended 30 June 2008 was \$51,289,597 (2007: \$64,161,393).

During 2008, the Scheme had and continues to be impacted by events surrounding the global credit crisis. Lack of liquidity in the finance sector first saw a general slowdown in repayment of loans from those borrowers who were relying on refinances from other institutions to repay their loans to the scheme.

## LM FIRST MORTGAGE INCOME FUND

### Directors' Report

Secondly, the introduction of the Australian Government Guarantee on bank deposits in Australia has also impacted the Scheme with an increase in withdrawal requests received from members following the implementation of the guarantee. Thirdly, a reflection of the credit crisis has also now resulted in the Schemes external financier requiring its loan facility to be repaid in priority to most investor redemptions.

The directors believe the Scheme will be able to meet its obligations to the financier under the current repayment plan through repayment of existing loans, however there is a risk to the unit price should the financier exercise its rights and require asset sales which are less than current valuations in order to satisfy its debt repayment schedule.

These three events in combination with the continuation of unprecedented general market conditions and the lack of liquidity within the banking sectors investment capital has seen the Scheme delay the payment of redemptions for a period of 365 days as per its constitution and in order to protect the investors.

Total assets under management were \$634,110,877 as at 30 June 2008 (2007: \$879,253,887). Investor funds under management decreased during the year by \$301,946,394 (2007: decreased by \$94,350,212) this was due to a combination of events mentioned above. Investor funds under management invested by related managed investment schemes in LM FMIF decreased by \$175,300,000 (2007: increased by \$38,950,000) to \$218,750,000 (2007: \$394,050,000).

The performance of the Scheme, as represented by the results of its operations, was as follows:

	30 June 2008	30 June 2007
	\$	\$
Net operating income/(loss) before distributions	49,797,814	64,161,393
Financing costs: Distributions to unitholders	(51,289,597)	(64,161,393)
(Increase) / decrease in net assets attributable to unitholders	-	-
Net profit/(loss)	(1,491,783)	-

### UNITS ON ISSUE

There were 481,418,849 units on issue at 30 June 2008 (2007: 783,324,637). During the year 157,043,148 units were issued by the Scheme (2007: 253,296,241) and 458,948,936 were withdrawn (2007: 347,646,453).

### SCHEME ASSETS

At 30 June 2008, the Scheme held assets to a total value of \$634,110,877 (2007: \$879,253,887). The basis for valuation of assets is disclosed in Note 2 to the financial statements.

### FEES PAID TO THE RESPONSIBLE ENTITY AND ASSOCIATED COMPANIES

The following fees were paid to LM Investment Management Limited and its associated companies out of Scheme property during the financial year, for funds management and administrative services provided on behalf of the Responsible Entity:

## LM FIRST MORTGAGE INCOME FUND

### Directors' Report

	2008	2007
	\$	\$
• Management fees paid directly to LM Administration Pty Ltd	5,801,477	9,934,860
• Expenses incurred by the Responsible Entity and its associated entities which are reimbursed in accordance with the provisions of the Scheme's Constitution, including administration and custodian fees	-	386,755
• Expenses incurred by LM Administration Pty Ltd which are reimbursed in accordance with the provisions of the Scheme's Constitution, including administration and custodian fees	826,743	-
• Loan origination fees received by borrowers within the Scheme that were reimbursed to the Responsible Entity for the administration of loan origination services	9,410,607	3,381,487

#### SIGNIFICANT CHANGES IN THE STATE OF AFFAIRS

In the opinion of the directors, there were no significant changes in the state of affairs of the Scheme that occurred during the financial year under review.

#### SIGNIFICANT EVENTS AFTER THE BALANCE DATE

Other than the matters disclosed in Note 19 of the financial report there has been no matter or circumstance that has arisen since the end of the financial year that has significantly affected or may affect the Scheme's operations in future financial years, the results of those operations of the Scheme's state of affairs in future years.

#### LIKELY DEVELOPMENTS AND EXPECTED RESULTS

Further information on likely developments in the operation of the Scheme and the expected results of those operations has not been included in this report because the Responsible Entity believes it would likely to result in unreasonable prejudice to the Scheme.

#### ENVIRONMENTAL REGULATION AND PERFORMANCE

The operations of the Scheme are not subject to any particular or significant environmental regulations under a law of the Commonwealth or a State or Territory. There have been no known significant breaches of any other environmental requirements applicable to the Scheme.

## **LM FIRST MORTGAGE INCOME FUND**

### **Directors' Report**

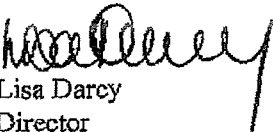
#### **INDEMNIFICATION AND INSURANCE OF DIRECTORS AND OFFICERS**

No insurance premiums are paid for out of the assets of the Scheme in regards to insurance cover provided to either the officers of LM Investment Management Ltd or the auditors of the Scheme. Provided the officers of LM Investment Management Ltd act in accordance with the Scheme Constitution and the Law, the officers remain indemnified out of the assets of the Scheme against losses incurred while acting on behalf of the Scheme. The auditors of the Scheme are in no way indemnified out of the assets of the Scheme.

#### **AUDITOR'S INDEPENDENCE DECLARATION**

A copy of the auditor's independence declaration as required under section 307C of the Corporations Act 2001 is set out on page 7.

Signed in accordance with a resolution of the Directors of LM Investment Management Limited.



Lisa Darcy  
Director  
Gold Coast

10 March 2009



**ERNST & YOUNG**

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**Auditor's Independence Declaration to the Directors of LM Investment Management Limited as Responsible Entity for LM First Mortgage Income Fund**

In relation to our audit of the financial report of LM First Mortgage Income Fund for the financial year ended 30 June 2008, to the best of my knowledge and belief, there have been no contraventions of the auditor independence requirements of the Corporations Act 2001 or any applicable code of professional conduct.

*Ernst & Young*

Ernst & Young

*Paula McLuskie*

Paula McLuskie  
Partner  
Brisbane  
10 March 2009

# LM FIRST MORTGAGE INCOME FUND

## INCOME STATEMENT

For the year ended 30 June 2008

		30 June 2008		30 June 2007	
	Notes	Consolidated \$	Scheme \$	Consolidated \$	Scheme \$
<b>Income</b>					
Changes in the fair value of investments	3(a)	28,379	-	377,052	-
Interest revenue – loans and advances	3(b)	81,612,059	81,645,183	80,704,491	81,106,122
Interest revenue – cash assets	3(b)	1,504,559	1,501,881	3,449,423	3,424,562
Other income	3(a)	2,005,949	2,005,949	3,945,714	3,945,714
<b>Total revenue and other income</b>		<b>85,150,946</b>	<b>85,153,013</b>	<b>88,476,680</b>	<b>88,476,398</b>
<b>Expenses</b>					
Management fees	12	5,801,477	5,801,477	9,934,860	9,934,860
Custodian fees		157,876	157,876	185,054	185,054
Advisor commissions		2,640,504	2,640,504	3,856,517	3,856,517
Impairment losses on loans and receivables	9(d)	6,154,911	6,157,884	2,563,242	2,563,242
Finance costs		10,169,709	10,169,709	3,520,151	3,520,151
Legal fees		36,949	36,949	35,411	35,411
Other expenses	4	10,391,706	10,390,800	4,220,052	4,219,770
<b>Total expenses excluding distributions to unitholders</b>		<b>35,353,132</b>	<b>35,355,199</b>	<b>24,315,287</b>	<b>24,315,005</b>
<b>Net profit attributable to unitholders</b>		<b>49,797,814</b>	<b>49,797,814</b>	<b>64,161,393</b>	<b>64,161,393</b>
Distributions to unitholders	3(c)/7	(51,289,597)	(51,289,597)	(64,161,393)	(64,161,393)
<b>Changes in net assets attributable to unitholders</b>		<b>(1,491,783)</b>	<b>(1,491,783)</b>	<b>-</b>	<b>-</b>
Income tax expense		-	-	-	-
<b>Changes in net assets attributable to unitholders after income tax expense</b>		<b>(1,491,783)</b>	<b>(1,491,783)</b>	<b>-</b>	<b>-</b>



# LM FIRST MORTGAGE INCOME FUND

## BALANCE SHEET

As at 30 June 2008

		30 June 2008		30 June 2007	
		Consolidated	Scheme	Consolidated	Scheme
		\$	\$	\$	\$
	Notes				
<b>ASSETS</b>					
Cash and cash equivalents	14	14,643,332	14,643,332	28,593,772	28,332,244
Receivables	13	4,797,790	4,797,789	6,997,000	6,934,391
Prepayments	12	7,845,017	7,845,017	3,482,170	3,482,170
Investments	8	-	1	5,654,350	1
Loans and receivables	9	606,824,738	606,824,738	834,505,081	840,505,081
<b>TOTAL ASSETS</b>		<b>634,110,877</b>	<b>634,110,877</b>	<b>879,232,373</b>	<b>879,253,887</b>
<b>LIABILITIES</b>					
Payables	10	878,796	878,796	481,752	503,266
Interest bearing loans and borrowings	11	150,000,000	150,000,000	90,466,662	90,466,662
Distributions payable	3(c)	3,305,015	3,305,015	4,959,322	4,959,322
Fair value of forward exchange contracts		40,606	40,606	-	-
<b>TOTAL LIABILITIES EXCLUDING NET ASSETS ATTRIBUTABLE TO UNITHOLDERS</b>		<b>154,224,417</b>	<b>154,224,417</b>	<b>95,907,736</b>	<b>95,929,250</b>
<b>NET ASSETS ATTRIBUTABLE TO UNITHOLDERS</b>	6	<b>479,886,460</b>	<b>479,886,460</b>	<b>783,324,637</b>	<b>783,324,637</b>

## STATEMENT OF CHANGES IN EQUITY

For the year ended 30 June 2008

Net assets of the Scheme that are attributable to unitholders are classified as a liability rather than equity. As a result there was no equity at the start or end of the year. A *Statement of Changes in Net Assets Attributable to Unitholders* is disclosed in note 6.

# LM FIRST MORTGAGE INCOME FUND

## CASH FLOW STATEMENT

For the year ended 30 June 2008

	Notes	30 June 2008		30 June 2007	
		Consolidated \$	Scheme \$	Consolidated \$	Scheme \$
<b>Cash flows from operating activities</b>					
Interest and distributions received		22,918,375	22,827,388	35,249,640	34,910,335
Management fees paid		(9,724,881)	(9,724,881)	(10,467,111)	(10,467,111)
Other operating expenses		(17,970,388)	(17,990,996)	(6,635,397)	(6,539,445)
Other income received		4,231,876	4,229,198	1,611,118	1,547,484
GST and withholding tax (paid)/received		729,911	729,911	(481,965)	(481,965)
Finance costs paid		(10,169,709)	(10,169,709)	(3,520,151)	(3,520,151)
<b>Net cash inflow/(outflow) from operating activities</b>	14(b)	(9,984,816)	(10,099,089)	15,756,134	15,449,147
<b>Cash flows from investing activities</b>					
Payments for secured mortgage loans		(320,147,455)	(320,117,304)	(386,157,123)	(385,755,492)
Receipts from settled mortgage loans		611,498,185	611,843,835	464,782,349	464,776,872
<b>Net cash inflow/(outflow) from investing activities</b>		291,350,730	291,726,531	78,625,226	79,021,380
<b>Cash flows from financing activities</b>					
Proceeds from borrowings		59,533,338	59,533,338	60,050,000	60,050,000
Receipts from the issue of units		145,782,718	145,782,718	236,754,786	236,754,786
Distributions paid		(41,683,474)	(41,683,474)	(47,941,585)	(47,941,585)
Payment for redemption of units		(458,948,936)	(458,948,936)	(347,646,486)	(347,646,486)
<b>Net cash inflow/(outflow) from financing activities</b>		(295,316,354)	(295,316,354)	(98,783,285)	(98,783,285)
<b>Net increase/(decrease) in cash and cash equivalents</b>		(13,950,440)	(13,688,912)	(4,401,925)	(4,312,758)
<b>Cash and cash equivalents at beginning of the year</b>		28,593,772	28,332,244	32,995,697	32,645,002
<b>Cash and cash equivalents at the end of the year</b>	14(a)	14,643,332	14,643,332	28,593,772	28,332,244

## LM FIRST MORTGAGE INCOME FUND

### NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2008

#### 1. CORPORATE INFORMATION

The financial report of LM First Mortgage Income Fund ("the Scheme") for the year ended 30 June 2008 was authorised for issue in accordance with a resolution of the directors of the Responsible Entity on 9 March 2009.

The Scheme is an Australian registered Scheme, constituted on 13 April 1999. The Scheme will terminate on 13 April 2080 unless terminated earlier in accordance with the provision of the Scheme Constitution (as amended).

LM Investment Management Limited, the Responsible Entity of the Scheme, is incorporated and domiciled in Australia. The registered office of the Responsible Entity is located at Level 4, 9 Beach Road, Surfers Paradise, Queensland.

The nature of the operations and principle activities of the Scheme are described in the Directors' report.

#### 2. 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 is a general purpose financial report that has been prepared in accordance with the Scheme Constitution, and the requirements of the Corporations Act 2001, which includes applicable Accounting Standards.

The financial statements have been prepared under the historical cost convention, except for the valuation of investments in financial assets, which have been measured at fair value or amortised cost.

The balance sheet presents assets and liabilities in decreasing order of liquidity and does not distinguish between current and non-current items, in accordance with AASB 101 – *Presentation of Financial Statements*.

Subsequent to balance date the scheme has been negatively impacted by a further tightening in credit markets.

The financial statements have been prepared on the basis the Scheme is a going concern. As detailed in Note 11, the Responsible Entity has been able to negotiate an extension to its external financing facilities until 31 July 2009, with a requirement for the full balance to be repaid in instalments, in priority to any redemptions over this period, as below:

	Tranche A	Tranche B	Total
28 February 2009	10,000,000		10,000,000
31 March 2009	17,500,000		17,500,000
30 April 2009	20,000,000		20,000,000
31 May 2009	27,500,000	15,000,000	42,500,000
30 June 2009		45,000,000	45,000,000
31 July 2009		15,000,000	15,000,000

## LM FIRST MORTGAGE INCOME FUND

As at the date of this report, the Scheme has not made the repayment under the facility due on the 28 February 2009. This repayment is now overdue and the failure to make this repayment constitutes a breach under the facility. Correspondence has been received from the external financier stating that it is reviewing its options in respect of the facility, including the right to enforce its security and reserves its rights in respect of this breach.

The directors believe the Scheme will be able to meet its remaining obligations under the repayment plan through repayment of existing loans including the refinancing of existing loans with alternative financing providers; the repayment of loans from related entities; and the repayment of the prepaid management fee from LM Administration Pty Ltd.

The timing of these cash inflows is not at the discretion of the Scheme, as the Scheme is reliant on events outside the Schemes control and these events impact the Schemes ability to meet repayments of the financiers. In this event, this would require the Directors to secure continued support from the external financier or alternate sources of finance. The Directors believe that therefore there remains significant uncertainty as to the Scheme's ability to make the requirement repayments to the financiers as required within the timeframes set out in the loan agreement.

As a result of these matters there is significant uncertainty whether the Scheme will continue as a going concern, and therefore whether it will realise its assets and extinguish its liabilities in the normal course of business and at the amounts stated in the financial report. The financial report does not include any adjustments relating to the recoverability and classification of recorded asset amounts or to the amounts and classification of liabilities that might be necessary should the Scheme not continue as a going concern.

For further information relating to the prepaid management fee refer to note 12, other receivables from related parties refer to note 12 and borrowings refer to note 11.

### **b) Statement of compliance**

The financial report complies with Australian Accounting Standards, which include Australian equivalents to International Financial Reporting Standards ('AIFRS'). Compliance with AIFRS ensures that the financial report, comprising the financial statements and notes thereto, complies with International Financial Reporting Standards ('IFRS').

Australian Accounting Standards that have recently been issued or amended but are not yet effective have not been adopted for the annual reporting period ended 30 June 2008 are shown in the following tables. None of the standards issued or amended have an impact on the accounting policies adopted by the Scheme.

# LM FIRST MORTGAGE INCOME FUND

Reference	Title	Summary	Application date of standard*	Impact on Scheme financial report	Application date for Scheme*
AASB 8 and AASB 2007-3	Operating Segments and consequential amendments to other Australian Accounting Standards	New standard replacing AASB 114 <i>Segment Reporting</i> , which adopts a management reporting approach to segment reporting.	1 January 2009	AASB 8 is a disclosure standard so will have no direct impact on the amounts included in the Scheme's financial statements. The amendments may have an impact on the Scheme's segment disclosures.	1 July 2009
AASB 101 (Revised) and AASB 2007-8	Presentation of Financial Statements and consequential amendments to other Australian Accounting Standards	Introduces a statement of comprehensive income. Other revisions include impacts on the presentation of items in the statement of changes in equity, new presentation requirements for restatements or reclassifications of items in the financial statements, changes in the presentation requirements for dividends and changes to the titles of the financial statements.	1 January 2009	These amendments are only expected to affect the presentation of the Scheme's financial report and will not have a direct impact on the measurement and recognition of amounts disclosed in the financial report. The Scheme has not determined at this stage whether to present a single statement of comprehensive income or two separate statements.	1 July 2009
AASB 127 (Revised)	Consolidated and Separate Financial Statements	Under the revised standard, a change in the ownership interest of a subsidiary (that does not result in loss of control) will be accounted for as an equity transaction.	1 July 2009	These amendments are not expected to have any impact on the Scheme's financial report.	1 July 2009

# LM FIRST MORTGAGE INCOME FUND

Reference	Title	Summary	Application date of standard*	Impact on Scheme financial report	Application date for Scheme*
Amendments to International Financial Reporting Standards	Improvements to IFRSs	The improvements project is an annual project that provides a mechanism for making non-urgent, but necessary, amendments to IFRSs. The IASB has separated the amendments into two parts: Part 1 deals with changes the IASB identified resulting in accounting changes; Part II deals with either terminology or editorial amendments that the IASB believes will have minimal impact.	1 January 2009 except for amendments to IFRS 5, which are effective from 1 July 2009.	The Scheme has not yet determined the extent of the impact of the amendments, if any.	1 July 2009
AASB 2008-5  &  AASB 2008-6	Amendments to Australian Accounting Standards arising from the Annual Improvements Project  Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project	The improvements project is an annual project that provides a mechanism for making non-urgent, but necessary, amendments to IFRSs. The IASB has separated the amendments into two parts: Part 1 deals with changes the IASB identified resulting in accounting changes; Part II deals with either terminology or editorial amendments that the IASB believes will have minimal impact.	1 January 2009  1 July 2009	The Scheme has not yet determined the extent of the impact of the amendments, if any.	1 July 2009

# LM FIRST MORTGAGE INCOME FUND

Reference	Title	Summary	Application date of standard*	Impact on Scheme financial report	Application date for Scheme*
AASB 2008-7	Amendments to Australian Accounting Standards – Cost of an Investment in a Subsidiary, Jointly Controlled Entity or Associate	<p>The main amendments of relevance to Australian entities are those made to AASB 127 deleting the 'cost method' and requiring all dividends from a subsidiary, jointly controlled entity or associate to be recognised in profit or loss in an entity's separate financial statements (i.e., parent company accounts). The distinction between pre- and post-acquisition profits is no longer required. However, the payment of such dividends requires the entity to consider whether there is an indicator of impairment.</p> <p>AASB 127 has also been amended to effectively allow the cost of an investment in a subsidiary, in limited reorganisations, to be based on the previous carrying amount of the subsidiary (that is, share of equity) rather than its fair value (An issue sometimes known as a "dividend trap" in newcos).</p>	1 January 2009	<p>Recognising all dividends received from subsidiaries, jointly controlled entities and associates as income will likely give rise to greater income being recognised by the parent entity after adoption of these amendments.</p> <p>In addition, if the Scheme enters into any reorganisation establishing new parent entities, an assessment will need to be made to determine if the reorganisation meets the conditions imposed to be effectively accounted for on a 'carry-over basis' rather than at fair value.</p>	1 July 2009

\*designates the beginning of the applicable annual reporting period unless otherwise stated

The following standards have been amended, however they do not affect the Scheme:

- AASB Int. 12 and AASB 2007-2: Service Concession Arrangements and consequential amendments to other Australian Accounting Standards
- AASB Int. 4 (Revised): Determining whether an Arrangement contains a Lease
- AASB Int. 129: Service Concession Arrangements: Disclosures
- AASB Int. 13: Customer Loyalty Programmes
- AASB Int. 14: AASB 119 – The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction
- AASB Int. 15: Agreement for the Construction of Real Estate

## LM FIRST MORTGAGE INCOME FUND

- AASB Int. 16: Hedges of a Net Investment in a Foreign Operation
- AASB 2007-9: Amendments to Australian Accounting Standards arising from the Review of AASs 27, 29 and 31
- AASB 1004 (revised): Contributions
- AASB Int. 1038 (Revised): Contributions by Owners Made to Wholly-Owned Public Sector Entities
- AASB 1049: Whole of Government and General Government Sector Financial Reporting
- AASB 1050: Administered Items
- AASB 1051: Land Under Roads
- AASB 1052: Disaggregated Disclosures
- AASB 123 (Revised) and AASB 2007-6: Borrowing Costs and consequential amendments to other Australian Accounting Standards
- AASB 2008-1: Amendments to Australian Accounting Standard – Share-based Payments: Vesting Conditions and Cancellations
- AASB 2008-2: Amendments to Australian Accounting Standards – Puttable Financial Instruments and Obligations arising on Liquidation
- AASB 3 (Revised): Business Combinations: Business Combinations
- AASB 2008-3: Amendments to Australian Accounting Standards arising from AASB 3 and AASB 127
- AASB 2008-8: Amendments to Australian Accounting Standards – Eligible Hedged Items
- AASB 2008-9: Amendments to AASB 1049 for consistency with AASB 101
- AASB 2008-10: Amendments to Australian Accounting Standards – Reclassification of Financial Assets (Amendments to AASB 139 Financial Instruments: Recognition and Measurement and AASB 7 Financial Instruments Disclosures)
- Amendments to International Financial Reporting Standards: Eligible Hedged Items
- IFRIC 15: Agreements for the Construction of Real Estate
- IFRIC 16: Hedges of a Net Investment in a Foreign Operation

### c) Basis of consolidation

This consolidated financial report comprises the financial report of LM First Mortgage Income Fund and its subsidiary as at 30 June 2008 (“the consolidated entity”). The financial report of the subsidiary is prepared for the same reporting period as the Scheme, using consistent accounting policies.

In preparing the consolidated financial statements all intercompany balances and income and expenses and profit and losses resulting from intra-group transactions have been eliminated in full. Adjustments are made to bring into line any dissimilar accounting policies that may exist.

Subsidiaries are fully consolidated from the date on which control is transferred to the group and cease to be consolidated from the date on which control is transferred out of the group.

### d) Significant accounting judgements, estimates and assumptions

#### (i) Significant accounting judgements

In the process of applying the Group’s accounting policies, management has made judgements, apart from those involving estimations, which have had an impact on the amounts recognised in the financial statements. No judgements have been determined to be individually significant.

#### (ii) Significant accounting estimates and assumptions

The carrying amounts of certain assets and liabilities are often determined based on estimates and assumptions of future events. The key estimates and assumptions that have a significant risk of causing



## LM FIRST MORTGAGE INCOME FUND

a 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. This requires an estimation of the value of future cash flows. The Scheme's policy for calculation of impairment losses is disclosed in Note 2(h)(ii).

#### **e) 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 Cash Flow Statement, cash and cash equivalents consist of cash and cash equivalents as defined above, net of outstanding bank overdrafts.

#### **f) Revenue and income recognition**

Revenue is recognised and measured at the fair value of the consideration received or receivable to the extent that it is probable that the economic benefits will flow to the Scheme and the revenue can be reliably measured. The following specific recognition criteria must also be met before income is recognised:

##### **i) Dividend and distribution income**

Dividend or distribution income is recognised when the shareholders' or unitholders' right to receive the payment is established.

##### **ii) 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.

##### **iii) 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.

#### **g) Finance costs**

Interest on borrowings is recognised in the income statement in the period to which it relates. Issue costs associated with borrowings are capitalised and amortised over the term of the borrowing to which they relate using the effective interest method.

## LM FIRST MORTGAGE INCOME FUND

### **h) Investments and other financial assets**

Financial assets in the scope of AASB 139 *Financial Instruments: Recognition and Measurement* are classified as either financial assets at fair value through profit or loss, loans and receivables, held-to-maturity investments, or available-for-sale investments, 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 consolidated entity 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) Financial assets at fair value through profit or loss**

Financial assets classified as held for trading are included in the category 'financial assets at fair value through profit or loss'. Financial assets are classified as held for trading if they are acquired for the purpose of selling in the near term. Derivatives are also classified as held for trading unless they are designated as effective hedging instruments. Gains or losses on investments held for trading are recognised in profit or loss.

#### **ii) 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 the loans and 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 doubtful debts when there is objective evidence that the consolidated entity will not be able to collect the receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision for impairment has been recognised in relation to a 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 income statement.

The amount provided for impairment of loans is determined by management of the Scheme and the Credit Committee. 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

## LM FIRST MORTGAGE INCOME FUND

of a loan or similar facility through the enforcement of security arrangements.

"Restructured loans" arise when the borrower is granted a concession due to continuing difficulties in meeting the original terms and new terms are not comparable to the revised terms. These loans are removed from 'restructure loans' after a period of 12 months of performance against loan revised terms and conditions. Loans with revised terms are included in 'loans in arrears' when impairment provisions are required.

When the Responsible Entity determines interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the Responsible Entity's analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectible.

### **i) Advisor Commissions**

Advisor commissions may be paid to the unitholders' investment advisors and are calculated as a percentage of funds invested in the Scheme. These commissions are paid monthly in arrears and are brought to account on an accrual basis. The Scheme ceases to pay advisor commissions when the related units are redeemed.

### **j) Payables**

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

Trades are recorded on trade date, and normally settled within three business days. Purchases of securities and investments that are unsettled at reporting date are included in payables.

The distribution amount payable to investors as at the reporting date is recognised separately on the balance sheet as unit holders are presently entitled to the distributable income as at 30 June 2008 under the Scheme's Constitution.

Foreign currency received from investors for investment into the Scheme is classified as a payable until it is subject to hedging by the Scheme entering into forward exchange contracts, at which time the foreign currency is invested into the Scheme and units issued.

### **k) 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.

## **LM FIRST MORTGAGE INCOME FUND**

### **l) Distributions**

In accordance with the Scheme's Constitution, the Scheme fully distributes its distributable income to unitholders. Distributions are payable monthly. Such distributions are determined by reference to the net taxable income of the Scheme. Distributable income includes capital gains arising from the disposal of investments. Unrealised gains and losses on investments that are recognised as income are transferred to net assets attributable to unitholders and are not assessable and distributable until realised. Capital losses are not distributed to unitholders but are retained to be offset against any realised capital gains.

### **m) 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 75%.

Hence investment management fees, custodial fees and other expenses have been recognised in the statement of financial performance 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 receivable in the balance sheet. Cash flows relating to GST are included in the cash flow statement 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.

### **n) 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 of the net assets of the Scheme divided by the number of units on issue.

### **o) 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 (ie Unitholders are presently entitled to the income of the Scheme).

The price of a unit is based upon market values of underlying assets and thus may include a share of unrealised capital gains. Should such a gain be realised, that portion of the gain that is subject to capital gains tax will be distributed so that the Scheme is not subject to capital gains tax. Realised capital losses are not distributed to unitholders but are retained in the Scheme to be offset against any realised capital gains. If realised capital gains exceed realised capital losses, the excess is distributed to unitholders.

### **p) 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.

# LM FIRST MORTGAGE INCOME FUND

## 3. INTEREST INCOME AND DISTRIBUTIONS TO UNITHOLDERS

### a) Non-Interest income

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Changes in the fair value of investments	28,379	-	377,052	-
Other income:				
Default management fees	1,724,208	1,724,208	3,497,077	3,497,077
Other income	281,741	281,741	448,637	448,637
	<u>2,005,949</u>	<u>2,005,949</u>	<u>3,945,714</u>	<u>3,945,714</u>

### b) Interest income

	2008					
	Consolidated			Scheme		
	Average balance	Income	Average rate	Average balance	Income	Average rate
	\$	\$	%	\$	\$	%
Cash assets	25,331,798	1,504,559	5.94%	25,302,766	1,501,881	5.94%
Loans and advances	722,514,861	81,612,059	11.30%	722,514,861	81,645,183	11.30%
	<u>747,846,659</u>	<u>83,116,618</u>	<u>11.11%</u>	<u>747,817,627</u>	<u>83,147,064</u>	<u>11.11%</u>

	2007					
	Consolidated			Scheme		
	Average balance	Income	Average rate	Average balance	Income	Average rate
	\$	\$	%	\$	\$	%
Cash assets	61,964,147	3,449,423	5.57%	61,515,754	3,424,562	5.57%
Loans and advances	819,492,029	80,704,491	9.85%	819,992,024	81,106,122	9.89%
	<u>881,456,176</u>	<u>84,153,914</u>	<u>9.55%</u>	<u>881,507,778</u>	<u>84,530,684</u>	<u>9.59%</u>

### c) Distributions to unitholders

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Distributions paid	47,984,582	47,984,582	59,202,071	59,202,071
Distributions payable	3,305,015	3,305,015	4,959,322	4,959,322
	<u>51,289,597</u>	<u>51,289,597</u>	<u>64,161,393</u>	<u>64,161,393</u>

## LM FIRST MORTGAGE INCOME FUND

### 4. OTHER EXPENSES

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Loan origination expenses	9,410,607	9,410,607	3,381,487	3,381,487
Auditor's remuneration	236,001	236,001	196,441	196,441
Product disclosure statement production costs	62,972	62,972	134,413	134,413
Other expenses	682,126	681,220	507,711	507,429
	<u>10,391,706</u>	<u>10,390,800</u>	<u>4,220,052</u>	<u>4,219,770</u>

### 5. AUDITOR'S REMUNERATION

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Audit and review of the financial reports	219,235	219,235	182,464	182,464
Other regulatory audit services	16,766	16,766	13,977	13,977
	<u>236,001</u>	<u>236,001</u>	<u>196,441</u>	<u>196,441</u>

These expenses have been included within 'Other Expenses' in the Income Statement.

### 6. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

All units in the Scheme are attributed with a value of \$1. The units on issue in the Scheme and the consolidated entity are equal. Movements in number of units and net assets attributable to unitholders during the year were as follows:

	30 June 2008		30 June 2007	
	Scheme		Scheme	
	#	\$	#	\$
<b>Net assets attributable to unitholders</b>				
<b>Class A</b>				
Opening balance	389,274,637	389,274,637	522,574,849	522,574,849
Units issued during the year	47,186,284	47,186,284	65,204,786	65,204,786
Units redeemed during the year	(189,724,646)	(189,724,646)	(215,046,454)	(215,046,454)
Units issued upon reinvestment of distributions	11,259,497	11,259,497	16,541,456	16,541,456
<b>Closing Balance</b>	<u>257,995,772</u>	<u>257,995,772</u>	<u>389,274,637</u>	<u>389,274,637</u>
<b>Class B</b>				
Opening balance	394,050,000	394,050,000	355,100,000	355,100,000
Units issued during the year	93,870,624	93,870,624	171,550,000	171,550,000
Units redeemed during the year	(269,170,624)	(269,170,624)	(132,600,000)	(132,600,000)
Units issued upon reinvestment of distributions	-	-	-	-
<b>Closing Balance</b>	<u>218,750,000</u>	<u>218,750,000</u>	<u>394,050,000</u>	<u>394,050,000</u>

# LM FIRST MORTGAGE INCOME FUND

	30 June 2008 Scheme		30 June 2007 Scheme	
	#	\$	#	\$
<b>Class C</b>				
Opening balance	-	-	-	-
Units issued during the year	4,725,809	4,725,809	-	-
Units redeemed during the year	(53,666)	(53,666)	-	-
Units issued upon reinvestment of distributions	934	934	-	-
Change in fair value of derivatives	-	(40,606)	-	-
<b>Closing Balance</b>	<b>4,673,077</b>	<b>4,632,471</b>	<b>-</b>	<b>-</b>

<b>TOTAL</b>	30 June 2008 Scheme		30 June 2007 Scheme	
	#	\$	#	\$
Opening balance	783,324,637	783,324,637	877,674,849	877,674,849
Units issued during the year	145,782,717	145,782,717	236,754,786	236,754,786
Units redeemed during the year	(458,948,936)	(458,948,936)	(347,646,453)	(347,646,453)
Units issued on reinvestment of distributions	11,260,431	11,260,431	16,541,456	16,541,456
Transfers to and from the income statement	-	(1,491,783)	-	-
Change in fair value of derivatives	-	(40,606)	-	-
<b>Closing Balance</b>	<b>481,418,849</b>	<b>479,886,460</b>	<b>783,324,637</b>	<b>783,324,637</b>

Class A consists of unit holders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A.

Class B consists of related scheme unit holders. The distribution rate will be determined by the Funds Committee which is appointed by the Responsible Entity. The Responsible Entity has the discretion to waive the whole or part of the 1% trailing commission and the whole or part of its management fee for this class of unit holders.

Class C consist of unit holders who have invested in foreign currencies and are entitled to receive the declared distribution rate. There are a number of subclasses attached to class C.

All unitholders are entitled to receive distributions as declared from time to time and are entitled to one vote per unit at unitholders' meetings. In the event of winding up of the Scheme, all unitholders rank after creditors and are equally entitled to the proceeds of liquidation.

On the 3 March 2009, the manager announced that the fund will be paying any withdrawal requests up to 365 days after maturity.

## LM FIRST MORTGAGE INCOME FUND

Redemptions of the Scheme are currently not suspended. At 30 June 2008 \$15,117,968 of redemptions had been requested by unitholders but not yet paid. Of the total requested redemptions \$7,303,508 related to requests occurring within thirty days of year end. \$7,814,460 had been requested more than 30 days prior to year end. Redemptions also rank behind repayment of external financing facilities as detailed in Note 2(a).

### 7. DISTRIBUTIONS TO UNITHOLDERS

	30 June 2008	30 June 2007
Distributions	\$	\$
Class A	24,431,419	34,369,906
Class B	26,825,153	29,791,489
Class C	33,025	-
	<u>51,289,597</u>	<u>64,161,395</u>

### 8. INVESTMENTS

	2008	2008	2007	2007
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Financial assets held at fair value through profit and loss (i)	-	-	5,654,350	-
Investment in subsidiary (ii)	-	1	-	1
	<u>-</u>	<u>1</u>	<u>5,654,350</u>	<u>1</u>

- i). At 30 June 2008, the consolidated entity held nil units in the PM Capital Enhanced Yield Fund (2007: 4,978,736 units). The unit price at 30 June 2007 was \$1.1357.

### 9. LOANS AND RECEIVABLES

	30 June 2008	30 June 2008	30 June 2007	30 June 2007
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Secured Mortgage Loans	604,441,259	604,441,259	835,530,336	835,530,336
Other Unsecured Loans -- related party	5,100,000	5,100,000	-	6,000,000
Provision for impairment	(2,716,521)	(2,716,521)	(1,025,255)	(1,025,255)
Net loans and advances	<u>606,824,738</u>	<u>606,824,738</u>	<u>834,505,081</u>	<u>840,505,081</u>

#### a) Aggregate amounts receivable from related parties

Directors and director-related entities	-	-	-	-
Other related entities	-	-	-	6,000,000
Related managed investment schemes	-	-	-	-
Provision for impairment	-	-	-	-
LM Managed Performance Fund	7,008,047	7,008,047	-	-
	<u>7,008,047</u>	<u>7,008,047</u>	<u>-</u>	<u>6,000,000</u>



# LM FIRST MORTGAGE INCOME FUND

## 9. LOANS AND RECEIVABLES (Continued)

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
<b>b) Maturity analysis – Secured Mortgage Loans</b>				
Less than 3 months	207,820,725	207,820,725	201,435,919	201,435,919
3-6 months	97,953,294	97,953,294	144,628,228	144,628,228
6-12 months	143,723,462	143,723,462	54,191,912	54,191,912
12-18 months	101,817,897	101,817,897	224,938,707	224,938,707
18-24 months	24,482,446	24,482,446	49,981,868	49,981,868
24-36 months	28,643,435	28,643,435	68,573,704	68,573,704
36-48 months	-	-	51,154,823	51,154,823
48-60 months	-	-	40,625,175	40,625,175
	<u>604,441,259</u>	<u>604,441,259</u>	<u>835,530,336</u>	<u>835,530,336</u>

### c) Concentration of risk

As at 30 June 2008 no individual loan was greater than 10% of net assets attributable to unit holders.

For concentration of risks relating to mortgage type and geographical location refer to note 16.

### d) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

Specific provision	3,278,509	3,278,509	1,543,070	1,543,070
Collective impairment provision	-	-	-	-
Impairment losses realized directly in the Income Statement	2,876,402	2,879,375	1,020,172	1,020,172
	<u>6,154,911</u>	<u>6,157,884</u>	<u>2,563,242</u>	<u>2,563,242</u>

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
<i>Specific Provision</i>				
Opening balance	1,025,255	1,025,225	1,707,999	1,707,999
Impairment losses provided for during year	3,278,509	3,278,509	1,543,070	1,543,070
Utilisation of provisions (loans realized)	(1,587,243)	(1,587,243)	(2,225,814)	(2,225,814)
Closing balance	<u>2,716,521</u>	<u>2,716,521</u>	<u>1,025,255</u>	<u>1,025,255</u>
<i>Collective impairment provision</i>				
Opening balance	-	-	-	-
Impairment losses provided for during year	-	-	-	-
Closing balance	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>TOTAL PROVISION</b>	<u>2,716,521</u>	<u>2,716,521</u>	<u>1,025,255</u>	<u>1,025,255</u>

## LM FIRST MORTGAGE INCOME FUND

The collective provision for impairment is calculated by placing loans into pools with similar risk characteristics and collectively assessing for impairment.

### *Movement in Default loans*

Gross default loans opening balance	83,826,384	83,826,384	42,661,029	42,661,029
New and increased default loans	59,907,804	59,907,804	103,145,841	103,145,841
Balances written off	(754,152)	(754,152)	(1,020,709)	(1,020,709)
Returned to performing or repaid	(41,820,383)	(41,820,383)	(60,959,777)	(60,959,777)
Gross default loans closing balance	101,159,653	101,159,653	83,826,384	83,826,384
Specific provision	(2,716,521)	(2,716,521)	(1,025,254)	(1,025,254)
<b>Net default loans</b>	<b>98,443,132</b>	<b>98,443,132</b>	<b>82,801,130</b>	<b>82,801,130</b>

Further, the Directors of the Responsible Entity are in the process of finalising the sale of secured property in relation to default loans totalling NIL (2007: \$21,381,314) at balance date.

On 28 August 2008, it was resolved by the Board of Directors of the Responsible Entity, to transfer three mortgage loans to the value of \$33,513,345 and the related first mortgage security to the LM Managed Performance Fund (LM MPF). There is a fixed charge over these three specific secured properties plus a floating charge over the remaining assets of LM MPF to provide security to the Scheme in the event of default by the LM MPF. This loan between the Scheme and LM MPF is interest bearing at 10%, with the interest being capitalised and due to be repaid to the Scheme on 30 June 2009.

At 30 June 2008 the balance of loans that were past due but not impaired were \$63,789,822 (2007: \$77,077,546). As per the scheme's policy, loans are impaired once they exceed 90 days overdue.

At 30 June 2008 \$11,949,198 of loans were individually impaired, with a total impairment loss of \$1,616,521. These loans have been determined impaired based on loans with payments overdue by greater than 90 days.

Loans are secured by land, development property or completed construction property. The fair value of security over loans that are past due but not impaired at 30 June 2008 was \$73,192,466 (2007: \$91,850,400).

Interest on arrears loans is suspended and not brought to account if the RE considered that the amounts are not ultimately recoverable from the sale proceeds of the property. The amount of suspended interest at 30 June 2008 totalled \$3,078,983 (2007: \$1,318,418).

### 10. PAYABLES

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Audit and compliance fees payable	85,750	85,750	39,250	39,250
Foreign currency awaiting investment	445,982	445,982	-	-
Other payables	347,064	347,064	442,502	464,016
	<u>878,796</u>	<u>878,796</u>	<u>481,752</u>	<u>503,266</u>

## LM FIRST MORTGAGE INCOME FUND

### 11. INTEREST BEARING LOANS AND BORROWINGS

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Secured bank loan	150,000,000	150,000,000	90,446,662	90,446,662

On 4 February 2009, the Directors of the Responsible Entity, LM Investment Management Limited of the Scheme and the Scheme's external financier negotiated extended terms for the \$150 million facility which matured on 30 November 2008. This revised facility expires on 31 July 2009, the facility has two tranches, Tranche A \$75 million and Tranche B \$75 million. A condition on revised facility is full repayment of the facility by 31 July 2009 in line with the agreed repayment plan, as disclosed in note 2(a).

The interest rate payable on the extended facility is BBSY + 4% per annum in relation to Tranche A and BBSY + 7.5% per annum in relation to Tranche B. In the event that the repayment is not made in accordance with the repayment plan mentioned above, the interest rate payable on Tranche A is increased to BBSY + 6% and on Tranche B it is BBSY + 9.5%. As noted in not 2(a) above, the Scheme has not made the first repayment required under the revised facility and as such is currently in breach, this has resulted in the triggering of the increased interest levels being payable on the outstanding principal detailed above.

### 12. RELATED PARTIES

#### *Responsible Entity*

The Responsible Entity of LM First Mortgage Income Fund is LM Investment Management Limited (ABN 68 077 208 461). Administration and funds management services are provided to the Scheme on behalf of the Responsible Entity by LM Administration Pty Ltd, an associate of the Responsible Entity. LM Administration Pty Ltd is paid a management fee directly from the Scheme.

#### *Custodian*

The Custodian of the Scheme is Trust Company of Australia Limited.

#### *Directors*

The names of each person holding the position of director of LM Investment Management Limited during the financial year are disclosed in Note 15.

#### *Directors' remuneration*

No amounts are paid by the Scheme directly to the directors of the Responsible Entity. The amount of remuneration paid by the Responsible Entity and its related parties to directors of the Responsible Entity in connection with their responsibilities for the Scheme is separately identified in Note 15.

#### *Directors' holdings of units*

The interests of LM Investment Management Limited and its associates in the Scheme at year-end are set out below.

## LM FIRST MORTGAGE INCOME FUND

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
- LM Investment Management Limited	-	-	-	-
- Directors and director related entities	-	-	20,017	20,017
- Other Associates of LM Investment Management Limited	218,750,000	218,750,000	394,050,000	394,050,000

### *Investing activities*

The Scheme may purchase and sell units in other approved schemes or investment entities operated by LM Investment Management Limited or its associates in the ordinary course of business at application and redemption prices calculated in accordance with the constitutions of those schemes. At 30 June 2008 the Scheme had no investments in other schemes operated by LM Investment Management Limited or its affiliates (2007: nil).

### *Other transactions with the Scheme*

From time to time the directors of LM Investment Management Limited, or their director-related entities, may invest or withdraw from the Scheme. These investments or withdrawals are on the same terms and conditions as those entered into by other Scheme investors. Apart from the details disclosed in this note, no director has entered into a material contract with the Scheme since the end of the previous financial year and there were no material contracts involving directors' interests subsisting at year-end.

Administration and funds management services are provided to the Scheme on behalf of the Responsible Entity by LM Administration Pty Ltd, an associate of the Responsible Entity. LM Administration Pty Ltd is paid a management fee for these services directly from Scheme assets.

During the year, loan origination fees received by the borrowers within the Scheme were \$10,098,488 (2007: \$3,625,686) of which \$9,410,607 was reimbursed by the Scheme to the Responsible Entity for the administration of loan origination services (2007: \$3,381,487).

During the year the scheme advanced funds to a related scheme, the LM Managed Performance Fund, to finance a joint venture entered into with a borrower of the Scheme. At 30 June 2008 the balance of the loan to the related Scheme was \$7,008,047 (2007: \$4,725,000), which is secured by first mortgage of the assets of the unrelated borrower and by a guarantee from the LM Managed Performance Fund. This loan has been subject to the normal credit approval review procedures of the Scheme.

The LM Managed Performance Fund has second mortgages on loans that are first mortgages of the LM First Mortgage Income Fund totalling \$31,024,921 (2007: 18,718,980). The LM Managed Performance Fund may on occasion pay development and construction costs on those related loans. As part of the normal role as second mortgagee, the related scheme will fund interest payments from time to time within approved loan facility limits. During the 30 June 2008 year, interest payments totalling \$3,955,100 (2007: \$2,803,688) were paid from the related scheme on behalf of the borrowers.

## **LM FIRST MORTGAGE INCOME FUND**

On 28 August 2008, it was resolved by the Board of Directors of the Responsible Entity, to transfer three mortgage loans to the value of \$33,513,345 and the related first mortgage security to the LM MPF. There is a fixed charge over these three specific secured properties plus a floating charge over the remaining assets of LM MPF to provide security to the Scheme in the event of default by the LM MPF. This loan between the Scheme and LM MPF is interest bearing at 10%, with the interest being capitalised and due to be repaid to the Scheme on 30 June 2009.

At 30 June 2008, management assigned a \$5,100,000 receivable within the Scheme from LMIM to LM Managed Performance Fund. The loan will accrue interest at 10% per annum and is for a period of 12 months, expiring on 30<sup>th</sup> June 2009.

## LM FIRST MORTGAGE INCOME FUND

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
<b><i>Total remuneration received or due and receivable</i></b>				
• Fees for the year paid directly to LM Administration Pty Ltd	5,801,477	5,801,477	9,934,860	9,934,860
• Expenses including administration expenses incurred by the Responsible Entity and its associated entities, which are reimbursed in accordance with the provisions of the Constitution.	-	-	386,755	386,755
• Expenses including administration expenses incurred by LM Administration Pty Ltd, which are reimbursed in accordance with the provisions of the Constitution.	826,743	826,743	-	-
• Loan origination fees received by borrowers within the Scheme that were reimbursed to the Responsible Entity for the administration of loan origination services	9,410,607	3,381,487	9,410,607	3,381,487
<b><i>Custodian's remuneration</i></b>				
• Custodian's fees paid by the Scheme	157,876	157,876	185,054	185,054
<b><i>Balance with related parties</i></b>				
Aggregate amounts receivable from related parties by the Scheme were as follows:				
• LM Administration Pty Ltd (management fees prepaid by the Scheme)(i)	6,716,960	6,716,960	2,793,556	2,793,556
• LM MIF Investments Pty Limited (ii)	-	-	-	6,000,000
• Australian International Investments Pty Limited (iii)	7,780,093	7,780,093	2,520,000	2,520,000
• LM Managed Performance Fund (iv)	5,100,000	5,100,000	-	-
<p>i). These amounts are included in prepayments of \$7,845,017 at 30 June 2008. No amounts are payable to related parties by the Scheme. The average monthly balance of prepayments during the year was \$6,632,631 (2007: \$7,204,945) which was non-interest bearing. Interest foregone on the above amount if calculated at the weighted average cash rate of 5.94% would have been \$393,978 (2007: \$401,315). If this revenue had been collected, the sum foregone would have been paid to LM Administration Pty Ltd as management fees during the year.</p>				
<p>ii). LM MIF Investments Pty Limited had an unsecured interest bearing loan with the Scheme. This facility was entered into on an arms length basis and is on normal terms and conditions.</p>				
<p>iii). Peter Charles Drake is a director and guarantor of Australian International Investment Services Pty Ltd which is a joint borrower in a loan facility outstanding to the Scheme as at 30 June 2008 for \$7,780,093 (2007: \$2,520,000). This transaction was approved on an arms length basis and is on normal terms and conditions.</p>				

## LM FIRST MORTGAGE INCOME FUND

- iv). This amount relates to release of debt from LM Administration to LM MPF which was originally a prepayment of management fees from the scheme to LM administration. This transaction was approved on an arms length basis and is on normal terms and conditions.

### *Unitholder investing activities*

Details of holdings in the Scheme by LM Investment Management Limited, its affiliates including directors and director related persons or other schemes managed by LM Investment Management Limited are set out below:

Entity	Investment at year end #	Interest held in the scheme at year end	Units issued during the year	Units redeemed during the year	Distributions paid and payable
<b>30 June 2008</b>					
LM Currency Protected Australian Income Fund	119,300,000	24.78%	43,500,000	85,700,000	14,041,838
LM Institutional Currency Protected Australian Income Fund	7,500,000	1.56%	14,150,000	35,400,000	2,023,890
LM Managed Performance Fund	450,000	0.09%	29,420,624	33,770,624	395,977
LM Wholesale First Mortgage Income Fund	91,500,000	19.01%	6,800,000	114,300,000	10,362,449
Harold Ward	-	-	251	20,268	251
<b>Total</b>	<b>218,750,000</b>	<b>45.44%</b>	<b>93,870,875</b>	<b>269,190,892</b>	<b>26,824,405</b>

Entity	Investment at year end #	Interest held in the scheme at year end	Units issued during the year	Units redeemed during the year	Distributions paid and payable
<b>30 June 2007</b>					
LM Currency Protected Australian Income Fund	161,500,000	19.30%	109,400,000	14,900,000	9,244,308
LM Institutional Currency Protected Australian Income Fund	28,750,000	3.44%	32,050,000	3,300,000	916,401
LM Managed Performance Fund	4,800,000	0.57%	22,100,000	22,400,000	716,572
LM Wholesale First Mortgage Income Fund	199,000,000	23.78%	8,000,000	92,000,000	18,914,207
LM Investment Management Ltd	-	-	4,510	196,648	3,207
James and Pamela Craig	-	-	10,961	325,705	8,828
Harold Ward	20,017	0.00%	1,568	1,551	1,664
<b>Total</b>	<b>394,070,017</b>	<b>47.09%</b>	<b>171,567,039</b>	<b>133,123,903</b>	<b>29,805,187</b>

## LM FIRST MORTGAGE INCOME FUND

### 13. RECEIVABLES

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Interest and distribution receivable	54,641	54,641	62,609	-
Mortgage interest receivable	1,727,883	1,727,883	1,899,384	1,899,384
Penalty interest receivable	51,531	51,531	114,776	114,776
Default management fees receivable	2,702,333	2,702,333	4,834,917	4,834,917
GST receivable	84,908	84,908	85,314	85,314
Other	176,494	176,493	-	-
	<u>4,797,790</u>	<u>4,797,789</u>	<u>6,997,000</u>	<u>6,934,391</u>

### 14. CASH AND CASH EQUIVALENTS

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
<b>a) Reconciliation of cash and cash equivalents</b>				
For the purposes of the Balance Sheet and Cash Flow Statement, cash and cash equivalents comprise:				
- Cash at bank and in hand	<u>14,643,332</u>	<u>14,643,332</u>	<u>28,593,772</u>	<u>28,332,244</u>

Cash at bank and in hand earns interest at floating rates based on daily bank deposit rates.  
The fair value of cash and cash equivalents is \$14,643,332 (2007: \$28,593,772).

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

	30 June 2008		30 June 2007	
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Change in net assets attributable to unitholders	-	-	-	-
<i>Adjustments for:</i>				
Non cash impairment expense	6,154,911	6,157,884	2,563,242	2,563,242
Non cash interest income	(59,070,947)	(59,104,073)	(49,095,677)	(49,497,308)
Distributions to unitholders	51,289,597	51,289,597	64,161,393	64,161,393
(Increase)/decrease in interest and distribution receivable	2,481,469	2,418,863	(2,908,324)	(2,845,715)
(Increase)/decrease in other receivables	(9,745,107)	(9,745,107)	1,500,567	1,436,935
Increase/(decrease) in payables	397,044	375,530	(465,067)	(369,400)
(Over)/Under distributions	(1,491,783)	(1,491,783)		
Net cash flows from/(used in) operating activities	<u>(9,984,816)</u>	<u>(10,099,089)</u>	<u>15,756,134</u>	<u>15,449,147</u>

#### c) Reinvestment of distributions

During the financial year, the Scheme issued 11,260,431 units (2007: 16,541,455) as a result of reinvestment of distribution by unitholders totaling \$11,260,431 (2007: \$16,541,489). These transactions have not been included in the Cash Flow Statement.



## LM FIRST MORTGAGE INCOME FUND

### 15. KEY MANAGEMENT PERSONNEL DISCLOSURES

#### (b) Details of Key Management Personnel

##### (i) *Key Management Personnel*

The Key Management Personnel ("KMP") of the Scheme were deemed to be the Directors of the Responsible Entity. The Directors of the Responsible Entity during the year were:

##### *Executive directors*

Mr Peter Charles Drake	Appointed 31 January 1997
Ms Lisa Maree Darcy	Appointed 15 September 2003
Mr Eghard van der Hoven	Appointed 22 June 2006
Ms Francene Maree Mulder	Appointed 30 September 2006

##### *Non-executive directors*

Mr John Dillon	Appointed 8 June 2005; resigned 28 August 2008
Mr John Vallander Llewellyn	Appointed 1 June 2007; resigned 1 July 2008
Mr John O'Sullivan	Appointed 28 November 2007

#### (c) Compensation of Key Management Personnel

##### (i) *Compensation Policies and Principles*

Remuneration of KMP is paid by LM Administration Pty Ltd, appointed by LM Investment Management Ltd as per its service agreement with that entity. The KMP do not receive any remuneration directly from the Scheme and there are no agreements in place between the KMP and the Scheme. The remuneration of KMP as disclosed below has been allocated based on the each KMP's cost of remuneration applicable to the Scheme. The principles used to allocate these costs (for disclosure purposes only) are discussed below.

##### (ii) *Executive Directors*

The Executive Directors of the Board of the Directors of LM Investment Management Ltd are responsible for determining and reviewing compensation arrangements for the KMP of the Responsible Entity. The Executive directors assess the appropriateness of the nature and amount of emoluments of the KMP on a periodic basis by reference to relevant employment market conditions with the overall objective of ensuring maximum stakeholder benefit from the retention of a high quality board. It is intended that the manner of payment chosen will be optimal for the recipient without creating undue cost for the Responsible Entity.

It is the Executive Directors' policy that employment agreements shall only be entered into with the Executive Directors of the Responsible Entity, but with no other parties.

##### (iii) *Non-executive directors*

Fees paid to non-executive directors are based on decisions made by the Executive Directors. This takes into account workload requirements and responsibilities of each Director. Fees for duties as Directors are not paid to executive Directors as their remuneration is provided as part of their normal terms and conditions.

## LM FIRST MORTGAGE INCOME FUND

### (iv) *Principles of KMP Remuneration Allocations*

For all schemes managed by the Responsible Entity, the cost of total KMP remuneration has been allocated to each scheme. The Responsible Entity has estimated the amount of time spent by each KMP performing responsibilities and duties to individual schemes, and on a percentage basis, has allocated the remuneration cost to each scheme. Where a KMP has not spent time specifically on a scheme, but rather has acted in a role as KMP of the Responsible Entity only, remuneration cost has been allocated evenly across all schemes.

# LM FIRST MORTGAGE INCOME FUND

## (v) Remuneration of KMP

2008

<u>Specified KMP</u>	<u>Salary &amp; Fees</u>	<u>Primary Cash Bonus</u>	<u>Non Monetary Benefits</u>	<u>Post Employment Super</u>	<u>Retirement Benefits</u>	<u>Equity</u>	<u>Other</u>	<u>TOTAL</u>	<u>Total performance related</u>
	\$	\$	\$	\$	\$	\$	\$	\$	%
Drake, PC*	-	-	-	-	-	-	-	-	-
Darcy, LM**	47,762	-	-	4,299	-	-	-	52,061	-
Van der Hoven, E**	33,865	-	-	3,048	-	-	-	36,913	-
Mulder, F	32,142	-	-	2,893	-	-	-	35,035	-
Dillon, J	3,448	-	-	310	-	-	-	3,758	-
Llewellyn, V	3,448	-	-	310	-	-	-	3,758	-
O'Sullivan, J	2,058	-	-	185	-	-	-	2,243	-
	<u>122,723</u>	-	-	<u>11,045</u>	-	-	-	<u>133,768</u>	-

2007

<u>Specified KMP</u>	<u>Salary &amp; Fees</u>	<u>Primary Cash Bonus</u>	<u>Non Monetary Benefits</u>	<u>Post Employment Super</u>	<u>Retirement Benefits</u>	<u>Equity</u>	<u>Other</u>	<u>TOTAL</u>	<u>Total performance related</u>
	\$	\$	\$	\$	\$	\$	\$	\$	%
Drake, PC*	-	-	-	-	-	-	-	-	-
Darcy, LM**	23,488	-	-	2,114	-	-	-	25,602	-
Van der Hoven, E**	17,532	-	-	1,578	-	-	-	19,110	-
Mulder, Francene	11,139	-	-	1,002	-	-	-	12,141	-
Dillon, J	2,500	-	-	255	-	-	-	2,755	-
Llewellyn, JV	173	-	-	16	-	-	-	189	-
	<u>54,832</u>	-	-	<u>4,965</u>	-	-	-	<u>59,797</u>	-

\* Peter Charles Drake is the beneficial owner of 100% of the ordinary shares of the Responsible Entity. No salary and wages are paid to Peter Drake directly from the company or any of the schemes.

\*\* As executives of the Responsible Entity, LM Darcy, E van der Hoven and F Mulder are entitled to a termination benefit that is payable on cessation of employment or a significant change in ownership of the company. No amount has been reflected in the above disclosures in relation to this potential future benefit.

### Compensation by category: Key Management Personnel

	2008	2008	2007	2007
	Consolidated	Scheme	Consolidated	Scheme
	\$	\$	\$	\$
Short term	122,723	122,723	54,832	54,832
Post employment	11,045	11,045	4,965	4,965
Other long term	-	-	-	-
Termination benefits	-	-	-	-
Equity based payment	-	-	-	-
Other	-	-	-	-
	<u>133,768</u>	<u>133,768</u>	<u>59,797</u>	<u>59,797</u>

### Loans to Specified KMP

The Scheme has not made, guaranteed or secured, directly or indirectly any loans to the KMP or their related entities during the period.

### (d) Other Transactions and Balances with Specified KMP

Other than those items disclosed in the related party note 11, the Scheme has no other transactions and balances with specified KMP.

## 16. FINANCIAL RISK MANAGEMENT OBJECTIVES AND POLICIES

### a) Financial Risk Management Objectives, Policies, and Processes

Risks arising from holding financial instruments are inherent in the Scheme's activities, and are managed through a process of ongoing identification, measurement, and monitoring. The scheme is exposed to credit risk, liquidity risk, and market risk.

Financial instruments of the Scheme comprise investments in financial assets for the purpose of generating a return on the investment made by unitholders, in addition to derivatives, cash and cash equivalents, net assets attributable to unitholders, and other financial instruments such as trade debtors and creditors, which arise directly from its operations.

The Responsible Entity is responsible for identifying and controlling the risks that arise from these financial instruments.

The risks are measured using a method that reflects the expected impact on the results and net assets attributable to unitholders of the Scheme from reasonably possible changes in the relevant risk variables. Information about these risk exposures at the reporting date, measured on this basis, is disclosed below. Information about the total fair value of financial instruments exposed to risk, as well as compliance with established investment mandate limits, is also monitored by the Responsible Entity. These mandate limits reflect the investment strategy and market environment of the Scheme, as well as the level of risk that the Scheme is willing to accept.

This information is prepared and reported to relevant parties within the Responsible Entity on a regular basis as deemed appropriate, including the fund manager, compliance manager, other key management, Risk and Investment Committees, and ultimately the Board of Directors of the Responsible Entity.

As part of its risk management strategy, the Scheme uses foreign exchange contracts to manage exposures resulting from changes in foreign currencies.

Concentrations of risk arise when a number of financial instruments or contracts are entered into with the same counterparty, or where a number of counterparties are engaged in similar business activities, or activities in the same geographic region, or have similar economic features that would cause their ability to meet contractual obligations to be similarly affected by changes in economic, political, and other conditions.

In order to avoid excessive concentrations of risk, the Scheme monitors its exposure to ensure concentrations of risk remain within acceptable levels and either reduces the exposure or uses derivative instruments and collateral to manage the excessive concentrations when they arise.

#### **b) Credit Risk**

Credit risk represents the risk that the counterparty to the financial instrument will fail to discharge an obligation and cause the Scheme to incur a financial loss.

With respect to credit risk arising from the financial assets of the Scheme, other than derivatives, the Scheme's exposure to credit risk arises from default of the counterparty, with the current exposure equal to the fair value of these instruments as disclosed in the Balance Sheet. This does not represent the maximum risk exposure that could arise in the future as a result of changes in values, but best represents the current maximum exposure at the reporting date.

Credit risk arising from derivative financial instruments is, at any time, limited to those with positive fair values.

The Scheme minimizes credit risk by:

- undertaking credit assessment procedures on prospective borrowers
- dealing with Australian regulated banks for cash balances;
- obtaining independent valuations for all loans; and
- maintaining an average loan to valuation ratio not exceeding 75% of the mortgage securities.

At year end, 76% of the balance of mortgage loans is secured on construction/development property (2007: 66%) and 24% on commercial property (2007: 34%).

***Risk concentrations of credit risk***

Concentrations of credit risk are managed by counterparty and by geographical region. The percentage of loans secured by property in different geographical locations is as follows:

	2008	2007
Sydney CBD	0.00%	0.00%
Within 40km of Sydney CBD	11.03%	20.30%
New South Wales – Other	21.29%	15.37%
Melbourne – CBD	0.00%	0.00%
Within 40km of Melbourne CBD	7.22%	8.82%
Victoria – Other	2.34%	2.13%
Brisbane CBD	0.00%	0.00%
Within 40km of Brisbane CBD	2.11%	1.92%
Queensland – Other	39.80%	34.58%
Canberra – Other	1.29%	5.35%
Northern Territory	5.47%	5.18%
South Australia	0.00%	0.00%
Western Australia	9.00%	5.63%
Tasmania	0.45%	0.72%
	100.00%	100.00 %

The maximum credit risk exposure at year end in relation to mortgage loan is the carrying value of the assets as indicated in the balance sheet. No single mortgage investment exceeds 10% of the Scheme which ensure that there is no concentration of risk.

The scheme has a concentration of credit risk relating to the derivative instruments as all foreign currency swaps are entered into with the same counterparty.

***Credit quality of mortgage loans***

The credit quality of financial assets is managed by the Scheme using internal risk rating categories in accordance with the investment mandate of the Scheme. The scheme's exposure in each category is monitored on a daily basis. This review process allows the Responsible Entity to assess the potential loss as a result of risks and take corrective action.

The Scheme has taken possession of \$59.7M of assets during the year by taking possession of collateral it holds as security or calling on other credit enhancements such as guarantees. Assets obtained had all been sold as at 30 June 2008.

**c) Liquidity risk**

Liquidity risk is the risk that the Scheme may not be able to meet its obligations in relation to investment activities or funding unit holder redemptions.

The scheme invests in first mortgage commercial/industrial loans with an average loan maturity of 20 months (2007: 23 months). The nature of the investments entered into by the scheme commands that

liquidity be managed cautiously and aligned to the redemptions policy outlined within the constitution of the scheme. At 30 June 2008, the redemptions requested from unitholders was \$15,309,573 (2007:\$nil).

The Responsible Entity employs risk management strategies to ensure that the Scheme is able to meet its obligations as above. The liquidity risk associated with the need to satisfy unitholders requests for redemptions are mitigated by offering fixed term investment periods for investors and by maintaining sufficient cash funds to satisfy usual levels of demand for at-call investments.

In order to minimise liquidity risk, management assesses and monitors the liquidity requirements of both unitholder redemptions and investment activities and ensures that at all times the Scheme has adequate cash and cash equivalents to cover fund obligations and that liquidity is managed within the Scheme's policies and limits.

#### *Maturity Analysis of Financial Liabilities*

Financial liabilities of the scheme comprise trade and other payables, distributions payable, net assets attributable to unitholders, fair value of foreign exchange contracts and the secured bank loan. Trade and other payables and distributions payable have no contractual maturities but are typically settled within 30 days. Foreign exchange contracts mature within 12 months of year end.

Net assets attributable to unit holders mature over the following periods:

Period from 30 June 2008	Value
< 12 months	411,664,669
12-24 months	67,322,424
24-36 months	1,946,273
36-48 months	415,170
>48 months	29,707
Total	481,378,243

The secured bank loan (note 12) is repayable by 31 July 2009, as detailed in note 2(a). When drawn, the loan is secured by the assets of the Scheme.

#### **d) Market risk**

Market risk is the risk that the fair value or future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rates, foreign exchange rates, and equity prices. Market risk is managed and monitored using sensitivity analysis, and minimised through ensuring that all investment activities are undertaken in accordance with established mandate limits and investment strategies.

*Interest rate risk*

Interest rate risk arises from the possibility that changes in interest rates will affect future cash flows or the fair value of financial instruments. The Scheme has established limits on investments in interest bearing assets, which are monitored on a daily basis.

The Scheme's exposure to interest rate risk and the effect weighted average interest rate for classes of financial assets and financial liabilities is set out below:



# **CONSOLIDATED**

	Note	Weighted average interest rate		Floating Interest Rate		Fixed interest rate				Total	
						Securities contracted to mature in less than 1 year		Securities contracted to mature in more than 1 year but less than 5 years			
		2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
		%	%								
Cash assets	13(b)	5.94	5.57	14,643,332	28,593,772	-	-	-	-	14,643,332	28,593,772
Secured mortgage loans (gross)	9	11.30	9.55	-	-	449,497,482	400,256,059	154,943,777	435,274,277	604,441,259	835,530,336
Loan facility	10	11.11	6.44	(150,000,000)	(90,416,662)	-	-	-	-	(150,000,000)	(90,416,662)
<b>Total</b>				<b>(135,356,668)</b>	<b>(61,822,890)</b>	<b>449,497,482</b>	<b>400,256,059</b>	<b>154,943,777</b>	<b>435,274,277</b>	<b>469,084,591</b>	<b>773,707,446</b>

All other financial assets and liabilities are non-interest bearing.

# **SCHEME**

	Note	Weighted average interest rate		Floating Interest Rate		Fixed interest rate				Total	
						Securities contracted to mature in less than 1 year		Securities contracted to mature in more than 1 year but less than 5 years			
		2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
		%	%								
Cash assets	13(b)	5.94	5.57	14,643,332	28,332,244	-	-	-	-	146,433,332	28,332,244
Secured mortgage loans (gross)	9	11.30	9.89	-	-	449,497,482	400,256,059	154,943,777	435,274,277	604,441,259	835,530,336
Unsecured loan	10	-	6.5	-	-	-	-	-	6,000,000	-	6,000,000
Loan facility	9	11.11	6.44	(150,000,000)	(90,416,662)	-	-	-	-	(150,000,000)	(90,416,662)
<b>Total</b>				<b>(135,356,668)</b>	<b>(62,084,418)</b>	<b>449,497,482</b>	<b>400,256,059</b>	<b>154,943,777</b>	<b>441,274,277</b>	<b>469,084,591</b>	<b>779,445,918</b>

All other financial assets and liabilities are non-interest bearing.

## LM FIRST MORTGAGE INCOME FUND

### Notes to the Financial Statements for the year ended 30 June 2007

The following table demonstrates the sensitivity of the Scheme's income statement to a reasonably possible change in interest rates, with all other variables held constant.

The sensitivity of the income statement is the effect of the assumed changes in interest rates on the interest income for one year, based on the financial instruments held at 30 June 2008.

#### *Accounting assumptions*

The basis points sensitivity is based on the historical volatility of changes in interest rates.

2008

	Change in basis points		Sensitivity of interest income (000's)	
	<i>Increase</i>	<i>Decrease</i>	<i>Increase</i>	<i>Decrease</i>
	50	50	3,543	3,543
Financial instruments	100	100	7,086	7,086

2007

	Change in basis points		Sensitivity of interest income (000's)	
	<i>Increase</i>	<i>Decrease</i>	<i>Increase</i>	<i>Decrease</i>
	50	50	3,869	3,869
Financial Instruments	100	100	7,738	7,738

#### *Currency risk*

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate due to changes in foreign exchange rates. The Scheme enters into foreign exchange contracts principally to hedge the foreign exchange risk implicit in the value of the investor funds denominated in foreign currencies and to secure a particular exchange rate for a planned purchase or sale of investments. The term of the contracts rarely exceeds twelve months.

The fair value of forward exchange contracts held at 30 June 2008 was \$40,606 (2007: nil). The fair value adjustment to the carrying value of these contracts of \$40,606 was recognised in a derivatives reserve at 30 June 2008 (2007: nil).

The nominal Australian dollar value of forward exchange contracts held at 30 June 2008 was \$4,817,423 (2007: nil).

The table below indicates the currencies to which the Scheme had significant exposure at 30 June 2008 on its monetary assets and liabilities and forecast cash flows. The analysis calculates the effect of a reasonably possible movement of the currency rate against the Australian Dollar on the income statements, with all other variables held constant.

# LM FIRST MORTGAGE INCOME FUND

## Notes to the Financial Statements for the year ended 30 June 2007

### *Accounting Assumptions- Variability of foreign currency*

The sensitivity is based on the volatility of changes in global currency.

Currency	AUD equivalent in exposure by currency (000's)	2008		Effect on net assets attributable to unitholders (000's)	
		Change in currency rate in %			
		Increase	Decrease	Increase	Decrease
CAD	106	10	10	11	11
EUR	85	10	10	9	9
GBP	1,507	10	10	151	151
JPY	155	10	10	16	16
NZD	2,179	10	10	218	218
TRY	130	10	10	13	13
USD	656	10	10	66	66

The Scheme was not subject to foreign currency risk at 30 June 2007.

Non-Australian dollar investments in the fund are hedged in the relevant currency against Australian dollar currency movements. The fund hedges a non-Australian dollar investment through the use of forward foreign exchange contracts (FFEC).

The FFECs are facilitated by a global investment bank. This form of hedging reduces currency exposure to the fund and investors. The above table is only applicable if the FEC facilitator is unable to meet its obligation and the fund therefore seeks an alternative party to re hedge the FEC.

### *Equity Risk*

The Scheme is not subject to equity risk at 30 June 2008.

### **Cash Flow Hedges**

#### *Foreign Currency Contracts*

The Scheme uses derivative financial instruments such as forward currency contracts to hedge its risks associated with foreign currency fluctuations. The cash flows are expected to occur between 1 and 12 months. Movement in the foreign currency contract cash flow hedge reserve is detailed below:

	2008	2007
	\$	\$
Opening Balance	-	-
Charged to Equity	40,606	-
Closing Balance	40,606	-

Included in other expenses in the profit and loss is \$1,915 of foreign currency losses due to ineffectiveness of the cash flow hedges.

## **LM FIRST MORTGAGE INCOME FUND**

### **Notes to the Financial Statements for the year ended 30 June 2007**

#### **15. FAIR VALUES**

The Scheme's financial assets and liabilities included in the Balance Sheet are carried at their fair value as disclosed by class of financial instruments or at amounts that approximate their fair values.

Refer to Note 2 for the methods and assumptions adopted in determining fair values for investments.

#### **16. SEGMENT INFORMATION**

##### **(a) Business segment**

The Scheme is organised into one business segment which operates solely in the business of investment management within Australia.

##### **(b) Geographic segments**

The Scheme operates in Australia and all directly held assets are Australian. Geographic concentrations disclosed in Note 16.

#### **17. COMMITMENTS AND CONTINGENCIES**

There are no material contingent assets and liabilities or commitments as at 30 June 2008.

#### **18. EVENTS AFTER THE BALANCE SHEET DATE**

No significant events have occurred since balance date which would impact on the financial position of the consolidated entity disclosed in the balance sheet as at 30 June 2008 or on the results and cash flows of the consolidated entity for the year ended on that date, other than those detailed below:

##### **(a) Loans transferred to LM Managed Performance Fund (MPF)**

On 28 August 2008, it was resolved by the Board of Directors to transfer three mortgage loans to the value of \$33,513,345 and the related first mortgage security to the LM MPF. There is a fixed charge over these three specific secured properties plus a floating charge over the remaining assets of LM MPF to provide security to the Scheme in the event of default by the LM MPF. This loan between the Scheme and LM MPF is interest bearing at 10%, with the interest being capitalised and due to be repaid to the Scheme on 30 June 2009. As mentioned in note 1(b), in order to meet the repayment schedule between the Scheme and the external financier, a proportion of this loan needs to be repaid by LM MPF before 31 July 2009.

## **LM FIRST MORTGAGE INCOME FUND**

### **Notes to the Financial Statements for the year ended 30 June 2007**

#### **(b) Renegotiation of the Loan Facility**

On 4 February 2009, the Responsible Entity, LM Investment Management Limited of the Scheme and the Scheme's external financier negotiated extended terms for the \$150 million facility which matured on 30 November 2008. This revised facility expires on 31 July 2009, the facility has two tranches, Tranche A \$75 million and Tranche B \$75 million. A condition on revised facility is full repayment of the facility by 31 July 2009 in line with the agreed repayment plan, as disclosed in note 2(a).

The interest rate payable on the extended facility is BBSY + 4% per annum in relation to Tranche A and BBSY + 7.5% per annum in relation to Tranche B. In the event that the repayment is not made in accordance with the repayment plan mentioned above, the interest rate payable on Tranche A is increased to BBSY + 6% and on Tranche B it is BBSY + 9.5%. As noted in note 2(a) above, the Scheme has not made the first repayment required under the revised facility and as such is currently in breach, this has resulted in the triggering of the increased interest levels being payable on the outstanding principal detailed above.

#### **(c) Status of Scheme**

On 3 March 2009, the Scheme was closed to new investors and the manager will pay withdrawal requests up to 365 days after maturity. At 9 March 2009, \$60,491,946 of redemptions has been requested by unitholders but not yet paid. Redemptions rank behind repayment of external financing facilities as detailed in Note 2(a).

## LM FIRST MORTGAGE INCOME FUND

Notes to the Financial Statements for the year ended 30 June 2007

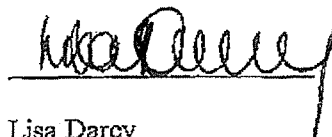
### DIRECTORS' DECLARATION

In accordance with a resolution of the Directors of LM Investment Management Limited, I state that:

- a) The financial statements and notes of the Registered Scheme set out on pages 7 to 40 are in accordance with the Corporations Act 2001, including:
  - (i) complying with Accounting Standards and the Corporation Regulations 2001; and
  - (ii) giving a true and fair view of the Scheme's financial position as at 30 June 2008, and of its performance, as represented by the results of its operations and its cash flows for the financial year ended on that date.
- b) there are reasonable grounds to believe that the Scheme will be able to pay its debts as and when they become due and payable; and
- c) the financial statements are in accordance with the provisions of the Scheme's Constitution.

On behalf of the Board

LM Investment Management Limited.

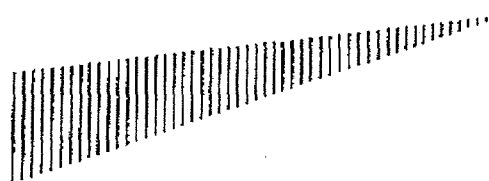


Lisa Darcy

Director

Gold Coast

10 March 2009



## **Independent Auditor's Report**

### **To the members of the LM First Mortgage Income Fund**

#### **Report on the Financial Report**

We have audited the accompanying financial report of LM First Mortgage Income Fund ("the Scheme"), which comprises the balance sheet as at 30 June 2008, and the income statement, statement of changes in equity and cash flow statement for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the directors' declaration.

#### **Directors' Responsibility for the Financial Report**

The directors of the Responsible Entity are responsible for the preparation and fair presentation of the financial report in accordance with the Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Act 2001. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances. In Note 1(b), the directors also state that the financial report, comprising the financial statements and notes, complies with International Financial Reporting Standards as issued by the International Accounting Standards Board.

#### **Auditor's Responsibility**

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards and International Standards on Auditing. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, we consider internal controls relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### **Independence**

In conducting our audit we have met the independence requirements of the Corporations Act 2001. We have given to the directors of the Responsible Entity a written Auditor's Independence Declaration, a copy of which is included in the directors' report.


**Auditor's Opinion**

In our opinion:  
the financial report of LM First Mortgage Income Fund is in accordance with the Corporations Act 2001,  
including:

- (i) giving a true and fair view of the financial position of LM First Mortgage Income Fund at 30 June 2008 and of its performance for the year ended on that date; and
- (ii) complying with Australian Accounting Standards (including the Australian Accounting Interpretations and the Corporations Regulations 2001.

**Material Uncertainty Regarding Continuation as a Going Concern**

Without qualifying our opinion, we draw attention to Note 2(a) in the financial report which indicates that the Scheme's financing arrangements expired and the amount outstanding was payable on 30 November 2008. The Responsible Entity has negotiated an extension to the facility with specific repayments through to 31 July 2009. The first required payment was due on the 28 February 2009 and was not made, resulting in a breach of the facility. As a result of these matters there is significant uncertainty whether the Scheme will continue as a going concern, and therefore whether it will realise its assets and extinguish its liabilities in the normal course of business and at the amounts stated in the financial report. The financial report does not include any adjustments relating to the recoverability and classification of recorded asset amounts or to the amounts and classification of liabilities that might be necessary should the Scheme not continue as a going concern.



Paula McLuskie  
Partner  
Brisbane

10 March 2009



SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: 13534/16

Amended pursuant to Rule 378 of the Uniform Civil Procedure Rules 1999 (Qld).

Dated: 21 June 2018

Signed: 

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

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;
- ~~(c)(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;
  - ~~(iii)(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;
  - ~~(iv)(iv)~~ the “Scheme” means the FMIF;
  - ~~(v)(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 ~~m~~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

~~16.24.~~ 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.

~~17.25.~~ 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.

~~18.26.~~ 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 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.

(c) 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**

25-40. 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.

31-46 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**").

~~42-47~~ 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 unitholder~~ 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".

~~32-48~~ 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.

~~43-57.~~ 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) ~~(b)~~ acted in the proper performance of its duties to the Feeder Fund in question;

~~(e)(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

~~(e)(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 2820 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 2924 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 7764 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 2345 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 Unitsto LMIM as RE of the CPAIF;
- (b) on about 8 March 2013, \$1,700,317.84 in relation to the WFMIF Unitsto Trilogy as RE of the WFMIF;
- (c) on about 26 February 2013, approximately \$159,799.91 in relation to the ICPAIF Unitsto 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 Unitsto LMIM as RE of the CPAIF;
- (b) \$789,645.73 in relation to the WFMIF Unitsto Trilogy as RE of the WFMIF;
- (c) \$74,228.16 in relation to the ICPAIF Unitsto 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 ~~5644~~ 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 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 ("WFMIF", "WFMIF 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 unit~~holder 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 unit~~holder 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: 

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.

Duplicate

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**

ORDER

Before: Justice Jackson

Date: 13 June 2018

Initiating document: Amended Application filed 18 May 2018 and Commercial List Application filed by email dated 24 April 2018



**ORDER**

Filed on behalf of the Plaintiff  
Form 59, Version 1  
Uniform Civil Procedure Rules 1999  
Rule 661

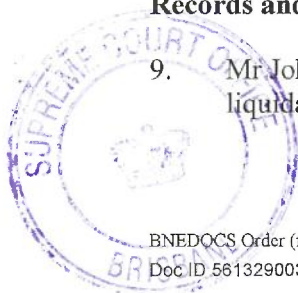
GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
JSO/SZC:201619858

THE ORDER OF THE COURT IS THAT:

1. The proceeding be placed on the Commercial List.
2. Pursuant to section 500(2) of the *Corporations Act* 2001 (Cth), the plaintiff has leave *nunc pro tunc* to commence and proceed with Supreme Court Proceeding numbered 13534 of 2016 against the first defendant, the third defendant and the fourth defendant, being LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461 (**LMIM**) in its capacity as responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875 (**CPAIF**), as responsible entity of the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (**ICPAIF**) and in its own right.
3. Pursuant to section 59 of the *Trusts Act* 1973 (Qld), directions that:
  - a. the interests of LMIM in its capacity as responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 (**FMIF**) as plaintiff have been and continue to be represented in these proceedings by Mr David Whyte, in his capacity as the court appointed receiver of the property of the FMIF and as the person appointed to be responsible for ensuring that the FMIF is wound up pursuant to its constitution by the order of Dalton J made in proceedings numbered 3383/2013 on 21 August 2013;
  - b. the interests of LMIM in its capacity as responsible entity of the CPAIF as first defendant be represented in these proceedings by Mr Said Jahani of Grant Thornton in his capacity as receiver and manager of LMIM in its capacity as responsible entity of the CPAIF;
  - c. the interests of LMIM in its capacity as responsible entity of the ICPAIF as third defendant be represented in these proceedings by Mr Said Jahani of Grant Thornton in his capacity as receiver and manager of LMIM in its capacity as responsible entity of the ICPAIF;
  - d. the interests of LMIM in its own capacity as fourth defendant be represented in these proceedings by the liquidator of LMIM, Mr John Park.
4. 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 (**WFMI**) is joined to the proceeding, as the fifth defendant.
5. The Plaintiff has leave to file and serve the Further Amended Claim, in the form exhibited to the affidavit of Jamie O'Regan sworn 28 May 2018, the amendments to take effect from the date of this order.
6. The Amended Application filed 18 May 2018 is otherwise dismissed.
7. The parties' costs of the Application filed 30 October 2017 and of the Amended Application filed 18 May 2018 are each party's costs in the proceeding.
8. The parties' costs of the plaintiff's Commercial List Application are each party's costs in the proceeding.

**Records and documents relating to the CPAIF and the ICPAIF**

9. Mr John Park, as the representative of the Fourth Defendant in these proceedings and the liquidator of LMIM, provide to Mr Said Jahani, as the representative of the First and Third



Defendants, and to Mr David Whyte, as the representative of the Plaintiff, the following documents and records by Friday, 22 June 2018:

- a. a complete and up to date copy of the registers of members maintained for the CPAIF, including all contact and other details for every current member recorded therein;
- b. a complete and up to date copy of the registers of members maintained for the ICPAIF, including all contact and other details for every current member recorded therein,

and the Plaintiff will pay Mr Park's reasonable costs of providing the documents and records referred to above.

10. The Plaintiff will provide to Mr Said Jahani, as the representative of the First and Third Defendants, the following further documents and records by Friday, 29 June 2018:

- a. a statement listing all transactions on the register of members maintained for the CPAIF between 11 May 2009 and 31 January 2013, including any redemptions;
- b. copies of all available bank account statements of the CPAIF for the period 11 May 2009 to 31 January 2013;
- c. copies of the ledger or ledgers of the CPAIF recording the payment of any redemptions to the members of the CPAIF for the period 11 May 2009 to 31 January 2013;
- d. copies of the ledger or ledgers of the CPAIF recording the accounting treatment of redemptions from the FMIF to the CPAIF for the period 11 May 2009 to 31 January 2013;
- e. copies of any audited accounts of the CPAIF relating to the period 11 May 2009 to 31 January 2013 and the last available management accounts for the financial year ended 30 June 2013;
- f. a statement listing all transactions on the register of members maintained for the ICPAIF between 11 May 2009 and 31 January 2013, including any redemptions;
- g. copies of all available bank account statements of the ICPAIF for the period 11 May 2009 to 31 January 2013;
- h. copies of the ledger or ledgers of the ICPAIF recording the payment of any redemptions to the members of the ICPAIF for the period 11 May 2009 to 31 January 2013;
- i. copies of the ledger or ledgers of the ICPAIF recording the accounting treatment of redemptions from the FMIF to the ICPAIF for the period 11 May 2009 to 31 January 2013; and
- j. copies of any audited accounts of the ICPAIF relating to the period 11 May 2009 to 31 January 2013 and the last available management accounts for the financial year ended 30 June 2013.

11. The Plaintiff will provide to the Second Defendant the following further documents and records by Friday, 29 June 2018:

- a. a statement listing all transactions on the register of members maintained for the WFMIF between 11 May 2009 and 31 January 2013, including any redemptions;
- b. copies of all available bank account statements of the WFMIF for the period 11 May 2009 to 31 January 2013;





- c. copies of the ledger or ledgers of the WFMIF recording the payment of any redemptions to the members of the WFMIF for the period 11 May 2009 to 31 January 2013;
- d. copies of the ledger or ledgers of the WFMIF recording the accounting treatment of redemptions from the FMIF to the WFMIF for the period 11 May 2009 to 31 January 2013;
- e. copies of any audited accounts of the WFMIF relating to the period 11 May 2009 to 31 January 2013 and the last available management accounts for the financial year ended 30 June 2013.

#### **Notification of the members of the CPAIF and the ICPAIF**

- 12. The Plaintiff is to give notice to the members of the CPAIF and ICPAIF of this proceeding, the ordered mediation, the Further Amended Claim, the Second Further Amended Statement of Claim and this order, by the Plaintiff:-
  - a. causing, on or before Monday, 25 June 2018, each of the documents mentioned above and a copy of the notice in the form of Annexure A to this order (“the Notice”) to be posted in a prominent place on the website [www.lmfimif.com](http://www.lmfimif.com); and
  - b. sending, on or before 29 June 2018, a copy of the Notice to all members of the CPAIF and the ICPAIF by each member’s preferred method of receipt or distribution of notices as recorded in the CPAIF and the ICPAIF register of members.
- 13. Mr John Park, as the representative of the Fourth Defendant in these proceedings and the liquidator of LMIM, give notice to the members of the CPAIF and the ICPAIF of this proceeding by causing, on or before 25 June 2018, the Notice and a link to the place on the website referred to in paragraph 12(a) above (to be advised by Mr Whyte on or before Monday, 25 June 2018) to be posted in a prominent place on the website [www.lminvestmentadministration.com/cpaif\\_icpaif](http://www.lminvestmentadministration.com/cpaif_icpaif), and the Plaintiff will pay Mr Park’s reasonable costs of giving notice in accordance with this paragraph.
- 14. Notice will be deemed to have been given to the members of the CPAIF and the ICPAIF of the documents mentioned in paragraph 12 above, ten days after the posting of those documents to the website in accordance with paragraph 12 above.
- 15. Notice is to be given to members of the CPAIF and the ICPAIF of further documents filed in these proceedings by the Plaintiff causing such documents to be posted to the website [www.lmfimif.com](http://www.lmfimif.com).

#### **Mediation**

- 16. The parties, except for the fourth and fifth defendants, are directed to attend, participate in, and act reasonably and genuinely in, a mediation on a date to be agreed by the participating parties and the mediator, to be completed by 28 September 2018.
- 17. The mediator is to be selected by the parties by Friday, 22 June 2018.
- 18. Copies of the following documents are to be provided to the mediator:
  - a. The most recent originating process and pleadings filed by the plaintiff;
  - b. The affidavits of David Whyte sworn 31 October 2017 and 21 May 2018;
  - c. The affidavit of Jamie O’Regan sworn 28 May 2018;
  - d. The affidavit of Said Jahani sworn 24 November 2017;

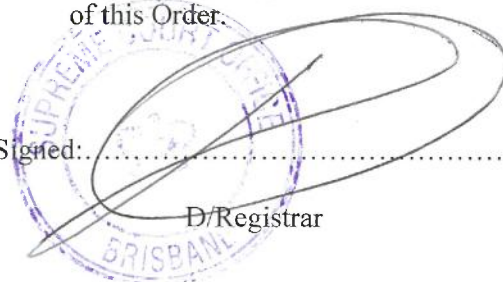


- e. The position papers prepared by the parties, to be provided as follows:
    - i. The Plaintiff, on or before 21 days before the commencement of the mediation;
    - ii. The first, second and third defendants, on or before 7 days before the commencement of the mediation.
  - f. Any further document that any party to the mediation desires to provide to the mediator.
19. 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.
  20. The parties are to negotiate a fee with the mediator.
  21. The parties are to pay the following percentages of costs of the mediator:
    - a. The Plaintiff – 50%
    - b. The First Defendant– 16.6%
    - c. The Third Defendant– 16.6%
    - d. The Second Defendant – 16.6%
  22. The parties must pay their respective percentages of the fee negotiated by the parties with the mediator to the mediator in accordance with the mediator's terms.
  23. The mediator is to be informed of the appointment by the plaintiff.
  24. The parties each have liberty to apply.

AND THE FURTHER ORDER OF THE COURT, NOTING THE CONSENT OF MR DAVID CLOUT, LIQUIDATOR OF LM ADMINISTRATION PTY LTD (IN LIQUIDATION) AND MR JARROD VILLANI, OF KORDA MENTHA PTY LTD IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND, IS THAT:

25. For the purposes of the undertaking provided by David Whyte in the Supreme Court Proceedings No. 3383 of 2013 and the undertaking of any servant or agent of BDO signed in accordance with paragraph 3 of the undertaking of Mr Whyte, the Court hereby approves the interrogation, use and disclosure, solely for the purposes of this proceeding, of any Non-Fund information about or concerning the affairs of the CPAIF, the ICPAIF and the WFMIF (save for any privileged Non-Fund information) stored on the server provided to the Plaintiff so as to enable the Plaintiff to provide the information and documents to Mr Said Jahani pursuant to paragraph 10 of this Order and to the Second Defendant pursuant to paragraph 11 of this Order.

Signed: .....



D/Registrar

## Annexure A - Form of Notice

TO THE MEMBERS OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 (RECEIVER APPOINTED) (“CPAIF”) AND THE MEMEBERS OF THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868 (RECEIVER APPOINTED) (“ICPAIF”)

TAKE NOTICE that David Whyte, the person appointed pursuant to section 601NF(1) of the *Corporations Act* 2001 (Cth) to take responsibility for ensuring that THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (Receivers and Managers Appointed) (Receiver Appointed) (“FMIF”) is wound up in accordance with its constitution, has applied to the Supreme Court of Queensland including for declarations that:

- (a) would, depending on the amount ultimately available for distribution in the winding up of the FMIF, have the effect of reducing or eliminating any distribution to be paid to the CPAIF and the ICPAIF, to the extent of the value of redemptions that were allowed in favour of the Class B unitholders between 11 May 2009 and 31 January 2013 without power and in breach of trust, as adjusted for any overpayment or underpayment of capital distributions made in February and June 2013;
- (b) would adjust the number of units held by the CPAIF and the ICPAIF in the FMIF to reinstate those units, but also to cancel further units in the FMIF issued to the CPAIF and the ICPAIF between 1 July 2011 and 1 November 2012 without power and in breach of trust.

Following the hearing of an application in the above proceedings on 29 May 2018, certain orders were made including that, pursuant to section 59 of the *Trusts Act 1973 (Qld)*, the interests of LMIM in its capacity as responsible entity of the CPAIF as first defendant and of LMIM in its capacity as responsible entity of the ICPAIF as third defendant be represented in these proceedings by Mr Said Jahani of Grant Thornton in his capacity as receiver and manager of the property of the CPAIF and of the ICPAIF.

In addition, orders were made for the parties to the proceedings to engage in a mediation on a date to be agreed to be completed by 28 September 2018.

Copies of the Further Amended Claim and the Second Further Amended Statement of Claim and the Orders dated 13 June 2018 in respect of this proceeding are available on the website [www.lmfimf.com](http://www.lmfimf.com) and the website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com).

Any member has a right to apply to the Court if they wish to be heard in the proceeding or to be represented in the mediation.

Any member who wishes to know more about the proceedings and the proposed mediation in the proceedings, including if the member wishes to request any material relating to the mediation, should contact the solicitors for the receiver of the CPAIF and the ICPAIF, Messrs. David O'Farrell of HWL Ebsworth, on +61 7 3169 4844.



**Duplicate**

**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**

**ORDER**

Before: Justice Jackson

Date: 4 September 2018

Initiating document: Amended Application filed 18 May 2018 and Commercial List Application filed by email dated 24 April 2018



**ORDER**  
Filed on behalf of the Plaintiff  
Form 59, Version 1  
Uniform Civil Procedure Rules 1999  
Rule 661

BNE DOCS Updated Orders September 2018 (regarding new mediation date)

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



**THE ORDER OF THE COURT IS THAT:**

1. Order 16 of his Honour Justice Jackson's Orders dated 13 June 2018 (**13 June 2018 Orders**) be amended to read:  
  
"The parties, except for the fourth and fifth defendants, are directed to attend, participate in, and act reasonably and genuinely in, a mediation on 5 and 6 November 2018."
2. Notice of this Order be given to members of the CPAIF and the ICPAIF in accordance with Order 15 of the 13 June 2018 Orders.
3. That there be no order as to costs.

Signed: \_\_\_\_\_

Deputy Registrar



LMIM v TRILOGY budget

Rates as at 12 December 2017	Hourly	GST	Total
Senior Counsel	\$ 1,500.00	\$ 150.00	\$ 1,650.00
Junior Senior	\$ 800.00	\$ 80.00	\$ 880.00
Junior Counsel	\$ 450.00	\$ 45.00	\$ 495.00
Partner	\$ 950.00	\$ 95.00	\$ 1,045.00
Of Counsel	\$ 750.00	\$ 75.00	\$ 825.00
Senior Associate	\$ 650.00	\$ 65.00	\$ 715.00
Associate/Law Graduate	\$ 360.00	\$ 36.00	\$ 396.00

STAGE 1: INITIAL RECEIPT OF PROCEEDINGS																			
Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees	
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$			
Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees	
Task 1A																			
Document review		\$ -		\$ -					0	\$ -					0	\$ -	0	\$ -	
Reviewing documents	2	\$ 2,090.00		\$ -					2	\$ 2,090.00					0	\$ -	2	\$ 2,090.00	
Attending teleconference with plaintiff		\$ -		\$ -					0	\$ -					0	\$ -	0	\$ -	
Drafting outline of evidence (assume 2 witnesses)	2	\$ 2,090.00	2	\$ 1,650.00					4	\$ 3,740.00					0	\$ -	4	\$ 3,740.00	
Liasing with counsel	1	\$ 1,045.00	2	\$ 1,650.00					3	\$ 2,695.00					0	\$ -	3	\$ 2,695.00	
Matter management & correspondence with Trilogy	1	\$ 1,045.00	2	\$ 1,650.00					3	\$ 2,695.00					0	\$ -	3	\$ 2,695.00	
									12	\$ 11,220.00					0	\$ -	12	\$ 11,220.00	
1A(a): Defence										\$ -									
Preparing Defence										\$ -									
Drafting and amending defence	7	\$ 7,315.00	12	\$ 9,900.00					19	\$ 17,215.00			10	\$ 16,500.00	10	\$ 16,500.00	29	\$ 33,715.00	
Conferring with counsel and finalising pleading	5	\$ 5,225.00	12	\$ 9,900.00					17	\$ 15,125.00							17	\$ 4,152.50	
Total									36	\$ 25,025.00					10	\$ 16,500.00	46	\$ 37,867.50	
1 TOTAL									48	\$ 36,245.00					10	\$ 16,500.00	58	\$ 49,087.50	

STAGE 2: PARTICULARS, DEFENCE, CROSS CLAIMS

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
2A: Receipt of Particulars																		
Considering request and underlying documents	0.5	\$ 522.50	2	\$ 1,650.00	5	\$ 1,980.00			7.5	\$ 4,152.50	2	\$ 990.00			2	\$ 990.00	10	\$ 5,142.50
Drafting and settling response	0.5	\$ 522.50	2	\$ 1,650.00					2.5	\$ 2,172.50	8	\$ 3,960.00	2	\$ 3,300.00	10	\$ 7,260.00	13	\$ 9,432.50
2A TOTAL									10	\$ 6,325.00					12	\$ 8,250.00	22	\$ 14,575.00

Assumptions  
Straight forward request for further and better particulars

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
Receipt of claim																		
Drafting issues list and case theory		\$ -		\$ -					0	\$ -		\$ -		\$ -	0	\$ -	0	\$ -
Correspondence with Plaintiffs'	3	\$ 3,135.00	2	\$ 1,650.00					5	\$ 4,785.00	2	\$ 990.00		\$ -	2	\$ 990.00	7	\$ 5,775.00
Matter Management & Correspondence with Client		\$ -	12	\$ 9,900.00					12	\$ 9,900.00		\$ -		\$ -	0	\$ -	12	\$ 9,900.00
2B TOTAL									17	\$ 14,685.00					2	\$ 990.00	19	\$ 15,675.00

Assumptions  
No joinder issues

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
2C: Request for Particulars																		
Draft request for particulars	2	\$ 2,090.00	4	\$ 3,300.00		\$ -			6	\$ 5,390.00	1	\$ 495.00		\$ -	1	\$ 495.00	7	\$ 5,885.00
Drafting notice to admit facts		\$ -		\$ -		\$ -			0	\$ -		\$ -		\$ -	0	\$ -	0	\$ -
Matter Management & Correspondence with Client		\$ -	2	\$ 1,650.00		\$ -			2	\$ 1,650.00		\$ -		\$ -	0	\$ -	2	\$ 1,650.00
2C TOTAL									8	\$ 7,040.00					1	\$ 495.00	9	\$ 7,535.00

2 TOTAL									35	\$ 28,050.00					15	\$ 9,735.00	50	\$ 37,785.00
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STAGE 3: EVIDENCE

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
3A: Directions re Evidence																		
Briefing Counsel (receive brief)		\$ -	0.5	\$ 412.50	1	\$ 396.00			1.5	\$ 808.50	1	\$ 495.00		\$ -	1	\$ 495.00	3	\$ 1,303.50
Attending hearing		\$ -	0.5	\$ 412.50		\$ -			0.5	\$ 412.50	1	\$ 495.00		\$ -	1	\$ 495.00	2	\$ 907.50
Matter Management & Correspondence with Client		\$ -	2	\$ 1,650.00		\$ -			2	\$ 1,650.00		\$ -		\$ -	0	\$ -	2	\$ 1,650.00
3A TOTAL									4	\$ 2,871.00					2	\$ 990.00	6	\$ 3,861.00

Assumptions  
Straightforward directions hearing  
No consent orders  
No interlocutory application

LAY EVIDENCE

Assumptions  
First draft 2 days - 1 defence witness

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
3B Plaintiff lay evidence in chief																		
Reviewing affidavits	1.5	\$ 1,567.50	2.5	\$ 2,062.50	2.5	\$ 990.00			6.5	\$ 4,620.00	2.50	\$ 1,237.50	1.50	\$ 2,475.00	4	\$ 3,712.50	11	\$ 8,332.50
Liaising with Counsel re second defendant's evidence	0.1	\$ 104.50	0.5	\$ 412.50	1	\$ 396.00			1.6	\$ 913.00	1.00	\$ 495.00	1.00	\$ 1,650.00	2	\$ 2,145.00	4	\$ 3,058.00
Considering evidence in reply	0.4	\$ 418.00	1	\$ 825.00	3	\$ 1,188.00			4.4	\$ 2,431.00		\$ -		\$ -	0	\$ -	4	\$ 2,431.00
Drafting list of objections to lay evidence	0.4	\$ 418.00	1		7	\$ 2,772.00			8.4	\$ 3,190.00	8.00	\$ 3,960.00		\$ -	8	\$ 3,960.00	16	\$ 7,150.00
Matter management and correspondence with LMIM		\$ -				\$ -				\$ -							0	\$ -
3B TOTAL									20.9	\$ 11,154.00					14	\$ 9,817.50	34.9	\$ 20,971.50

Assumptions  
1 from 3rd Defendant  
1 for 4th Defendant

Each affidavit substantial, circa 40 to 100 pages

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
3C Defendants' lay evidence in response																		
Interviewing deponents for response		\$ -	2.5	\$ 2,062.50	2.00	\$ 792.00			4.5	\$ 2,854.50		\$ -		\$ -	0	\$ -	5	\$ 2,854.50
Preparing witness bundles	0.50	\$ 522.50	1.5	\$ 1,237.50	4.50	\$ 1,782.00			6.5	\$ 3,542.00		\$ -		\$ -	0	\$ -	7	\$ 3,542.00
Drafting responsive affidavit		\$ -	4	\$ 3,300.00	10.00	\$ 3,960.00			14	\$ 7,260.00		\$ -		\$ -	0	\$ -	14	\$ 7,260.00
Settling draft with Counsel		\$ -	1.5	\$ 1,237.50	2.20	\$ 871.20			3.7	\$ 2,108.70		\$ -		\$ -	0	\$ -	4	\$ 2,108.70
Liaising with deponent to finalise		\$ -	0.5	\$ 412.50	2.00	\$ 792.00			2.5	\$ 1,204.50	4.40	\$ 2,178.00		\$ -	4	\$ 2,178.00	7	\$ 3,382.50
Settling final with Counsel	0.50	\$ 522.50	1.5	\$ 1,237.50	1.50	\$ 594.00			3.5	\$ 2,354.00	2.20	\$ 1,089.00	13	\$ 21,450.00	15	\$ 22,539.00	19	\$ 24,893.00
Proofing and cross referencing		\$ -	0.4	\$ 330.00		\$ -			0.4	\$ 330.00		\$ -		\$ -	0	\$ -	0	\$ 330.00
Filing and serving		\$ -	0.5	\$ 412.50	1.00	\$ 396.00			1.5	\$ 808.50		\$ -		\$ -	0	\$ -	2	\$ 808.50
Matter management		\$ -	0.5	\$ 412.50	0.50	\$ 198.00			1	\$ 610.50		\$ -		\$ -	0	\$ -	1	\$ 610.50
3C TOTAL									36.6	\$ 21,072.70					19.6	\$ 24,717.00	57.2	\$ 45,789.70

Assumptions  
1 responsive affidavit  
4 hour interview with deponent for response  
1 day to draft response  
1 day to settle and finalise

EXPERT EVIDENCE

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
3D : Preparing Defendants' expert evidence																		
Considering expert evidence requirement with Counsel	3	\$ 3,135.00	3	\$ 2,475.00		\$ -			6	\$ 5,610.00	6	\$ 2,970.00	4	\$ 6,600.00	10	\$ 9,570.00	16	\$ 15,180.00
Briefing expert	1	\$ 1,045.00	1	\$ 825.00		\$ -			2	\$ 1,870.00	10	\$ 4,950.00		\$ -	10	\$ 4,950.00	12	\$ 6,820.00
Assisting expert with requests	1	\$ 1,045.00	4	\$ 3,300.00		\$ -			5	\$ 4,345.00	6	\$ 2,970.00		\$ -	6	\$ 2,970.00	11	\$ 7,315.00
Settling report with Counsel	2	\$ 2,090.00	40	\$ 33,000.00		\$ -			42	\$ 35,090.00	40	\$ 19,800.00	10	\$ 16,500.00	50	\$ 36,300.00	92	\$ 71,390.00
Proofing and cross referencing			3.4	\$ 2,805.00		\$ -			3.4	\$ 2,805.00								\$ 2,805.00
Filing and serving (with affidavit)			1	\$ 825.00		\$ -			1	\$ 825.00								\$ 825.00
Matter Management & Correspondence with Client			1	\$ 825.00		\$ -			1	\$ 825.00								\$ 825.00
3D TOTAL									60.4	\$ 51,370.00					76	\$ 53,790.00	131	\$ 105,160.00

Assumptions  
Two experts

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
3E: Plaintiff's expert evidence																		
Reviewing expert report	0.5	\$ 522.50	2	\$ 1,650.00		\$ -			2.5	\$ 2,172.50		\$ -		\$ -	0	\$ -	3	\$ 2,172.50
Liaising with Counsel re plaintiff's expert report	0.5	\$ 522.50	1	\$ 825.00		\$ -			1.5	\$ 1,347.50		\$ -		\$ -	0	\$ -	2	\$ 1,347.50
Considering reply evidence	0.5	\$ 522.50	2	\$ 1,650.00	4	\$ 1,584.00			6.5	\$ 3,756.50	2.50	\$ 1,237.50		\$ -	3	\$ 1,237.50	9	\$ 4,994.00
Drafting list of objections to expert evidence	0.5	\$ 522.50	1	\$ 825.00	2	\$ 792.00			3.5	\$ 2,139.50	8	\$ 3,960.00		\$ -	8	\$ 3,960.00	12	\$ 6,099.50
Matter Management & Correspondence with Client	0.5	\$ 522.50	1	\$ 825.00		\$ -			1.5	\$ 1,347.50		\$ -		\$ -	0	\$ -	2	\$ 1,347.50
3E Total									15.5	\$ 10,763.50					10.5	\$ 5,197.50	26	\$ 15,961.00

Assumptions  
One expert  
No expert on behalf of remaining defendants

3 TOTAL	137.4	\$ 97,231.20							122.1	\$ 94,512.00	255.1	\$ 191,743.20
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STAGE 4: HEARING PREPARATION

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
4A: Directions re Hearing Preparation																		
Briefing Counsel (receive brief)		\$ -	0.5	\$ 412.50	0.5	\$ 198.00			1	\$ 610.50	1	\$ 495.00		\$ -	1	\$ 495.00	2	\$ 1,105.50
Attending hearing		\$ -	1	\$ 825.00		\$ -			1	\$ 825.00	2	\$ 990.00		\$ -	2	\$ 990.00	3	\$ 1,815.00
Matter management & correspondence with client Trilogy		\$ -	2	\$ 1,650.00		\$ -			2	\$ 1,650.00		\$ -		\$ -	0	\$ -	2	\$ 1,650.00
4A TOTAL									4	\$ 3,085.50					3	\$ 1,485.00	7	\$ 4,570.50

Assumptions  
Straightforward directions hearing  
No consent orders  
No interlocutory application



Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
<b>4B: Preparing Tender Bundle</b>																		
Preparing Defendants' tender bundle	0.5	\$ 522.50	2	\$ 1,650.00	8	\$ 3,168.00			10.5	\$ 5,340.50		\$ -		\$ -	0	\$ -	11	\$ 5,340.50
Counsel review of defendants' tender bundle	1	\$ 1,045.00	3.5	\$ 2,887.50	0.5	\$ 198.00			5	\$ 4,130.50	7	\$ 3,465.00	3	\$ 4,950.00	10	\$ 8,415.00	15	\$ 12,545.50
Amending and refining defendants' tender bundle after counsel's comments	0.5	\$ 522.50	10	\$ 8,250.00	10	\$ 3,960.00			20.5	\$ 12,732.50		\$ -	3	\$ 4,950.00	3	\$ 4,950.00	24	\$ 17,682.50
Review of final tender bundle (hard copy page turn)		\$ -	1	\$ 825.00	15	\$ 5,940.00			16	\$ 6,765.00	5	\$ 2,475.00	5	\$ 8,250.00	10	\$ 10,725.00	26	\$ 17,490.00
Miscellaneous Correspondence with data service provider re finalising tender bundle		\$ -		\$ -	0.5	\$ 198.00			0.5	\$ 198.00		\$ -		\$ -	0	\$ -	1	\$ 198.00
Reviewing plaintiff's tender bundle list		\$ -	3	\$ 2,475.00	10	\$ 3,960.00			13	\$ 6,435.00		\$ -		\$ -	0	\$ -	13	\$ 6,435.00
Drafting list of objections to Plaintiff's documents	1	\$ 1,045.00	1	\$ 825.00	2	\$ 792.00			4	\$ 2,662.00		\$ -		\$ -	0	\$ -	4	\$ 2,662.00
Matter Management & Correspondence with Client		\$ -	2	\$ 1,650.00		\$ -			2	\$ 1,650.00		\$ -		\$ -	0	\$ -	2	\$ 1,650.00
<b>4B TOTAL</b>									<b>71.5</b>	<b>\$ 39,913.50</b>					<b>23</b>	<b>\$ 24,090.00</b>	<b>95</b>	<b>\$ 64,003.50</b>

Assumptions  
5 volume tender bundle  
Counsel reviews 5 volumes per day

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
<b>4C: Preparing Chronology for Submissions</b>																		
Reviewing discovery chronology	1	\$ 1,045.00	3	\$ 2,475.00	2	\$ 792.00			6	\$ 4,312.00	4.00	\$ 1,980.00	4	\$ 6,600.00	8	\$ 8,580.00	14	\$ 12,892.00
Inserting narrative entries from all evidence		\$ -		\$ -	5	\$ 1,980.00			5	\$ 1,980.00		\$ -		\$ -	0	\$ -	5	\$ 1,980.00
Settling with Counsel	0.5	\$ 522.50	6	\$ 4,950.00	1.5	\$ 594.00			8	\$ 6,066.50		\$ 2,970.00		\$ -	6	\$ 2,970.00	14	\$ 9,036.50
Reviewing chronology	1		1		0.7	\$ 277.20			2.7	\$ 277.20	3.50		3					\$ 277.20
Matter Management & Correspondence with Client			2		2	\$ 792.00			4	\$ 792.00								\$ 792.00
<b>4C TOTAL</b>									<b>25.7</b>	<b>\$ 13,427.70</b>					<b>14</b>	<b>\$ 11,550.00</b>	<b>33</b>	<b>\$ 24,977.70</b>

Assumptions  
40 page chronology  
Plaintiff's evidence- affidavits in chief and 2 in reply  
Defendants' evidence -2 affidavits

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
<b>4D Preparing Court Book</b>																		
Agreeing Court Book index	0.5	\$ 522.50	0.5	\$ 412.50	2.5	\$ 990.00			3.5	\$ 1,925.00	2	\$ 990.00		\$ -	2	\$ 990.00	6	\$ 2,915.00
Collating (including tabs and pagination) Court Book	1	\$ 1,045.00	2	\$ 1,650.00	4	\$ 1,584.00			7	\$ 4,279.00		\$ -		\$ -	0	\$ -	7	\$ 4,279.00
Miscellaneous Correspondence with data service provider re finalising court book	0	\$ -	1	\$ 825.00	1	\$ 396.00			2	\$ 1,221.00		\$ -		\$ -	0	\$ -	2	\$ 1,221.00
Miscellaneous Correspondence with Plaintiff re Court Book	0	\$ -	0.5	\$ 412.50	2	\$ 792.00			2.5	\$ 1,204.50		\$ -		\$ -	0	\$ -	3	\$ 1,204.50
Matter management & correspondence with client Trilogy	0.5	\$ 522.50	1	\$ 825.00	1	\$ 396.00			2.5	\$ 1,743.50		\$ -		\$ -	0	\$ -	3	\$ 1,743.50
<b>4D TOTAL</b>									<b>17.5</b>	<b>\$ 10,373.00</b>					<b>2</b>	<b>\$ 990.00</b>	<b>19.5</b>	<b>\$ 11,363.00</b>

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
<b>4E: Preparing Witnesses for Cross Examination</b>																		
Subpoenas		\$ -	0.5	\$ 412.50		\$ -			0.5	\$ 412.50		\$ -		\$ -	0	\$ -	1	\$ 412.50
Preparing cross bundles	1	\$ 1,045.00	4	\$ 3,300.00	10	\$ 3,960.00			15	\$ 8,305.00	15	\$ 7,425.00		\$ -	15	\$ 7,425.00	30	\$ 15,730.00
Attending cross preparation		\$ -	8	\$ 6,600.00		\$ -			8	\$ 6,600.00	8	\$ 3,960.00	8	\$ 13,200.00	16	\$ 17,160.00	24	\$ 23,760.00
Matter Management & Correspondence with Client		\$ -	42	\$ 34,650.00	2	\$ 792.00			44	\$ 35,442.00		\$ -		\$ -	0	\$ -	44	\$ 35,442.00
<b>4E TOTAL</b>									<b>67.5</b>	<b>\$ 50,759.50</b>					<b>31</b>	<b>\$ 24,585.00</b>	<b>99</b>	<b>\$ 75,344.50</b>

Assumptions  
1 day of cross prep per witnes (2 witnesses)

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
<b>4F: Senior Counsel Reading Time</b>																		
Counsel reading		\$ -		\$ -		\$ -			0	\$ -	20	\$ 9,900.00	20	\$ 33,000.00	40	\$ 42,900.00	40	\$ 42,900.00
Attending to Counsel requests		\$ -	4	\$ 3,300.00	3.5	\$ 1,386.00			7.5	\$ 4,686.00		\$ -		\$ -	0	\$ -	8	\$ 4,686.00
<b>4F TOTAL</b>									<b>7.5</b>	<b>\$ 4,686.00</b>					<b>40</b>	<b>\$ 42,900.00</b>	<b>47.5</b>	<b>\$ 47,586.00</b>

Assumptions  
Junior and Senior read together

<b>4 TOTAL</b>									<b>193.7</b>	<b>\$ 122,245.20</b>					<b>113</b>	<b>\$ 105,600.00</b>	<b>300</b>	<b>\$ 227,845.20</b>
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<b>STAGE 5: HEARING</b>																		
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Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
<b>5A: Directions re Hearing</b>																		
Briefing Counsel (receive brief)	0.5	\$ 522.50	0.5	\$ 412.50	0.5	\$ 198.00			1.5	\$ 1,133.00	0.50	\$ 247.50		\$ -	1	\$ 247.50	2	\$ 1,380.50
Attending hearing		\$ -		\$ -	1	\$ 396.00			1	\$ 396.00	2.00	\$ 990.00		\$ -	2	\$ 990.00	3	\$ 1,386.00
Miscellaneous with Respondents	0.5	\$ 522.50	0.5	\$ 412.50	0.5	\$ 198.00			1.5	\$ 1,133.00		\$ -		\$ -	0	\$ -	2	\$ 1,133.00
Matter Management & Correspondence with Client	0.5	\$ 522.50	0.5	\$ 412.50	0.5	\$ 198.00			1.5	\$ 1,133.00		\$ -		\$ -	0	\$ -	2	\$ 1,133.00
<b>5A TOTAL</b>									<b>5.5</b>	<b>\$ 3,795.00</b>					<b>2.5</b>	<b>\$ 1,237.50</b>	<b>8</b>	<b>\$ 5,032.50</b>

Assumptions

Straightforward directions hearing  
No consent orders  
No interlocutory application

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
5B: Defendants' opening submissions																		
Research for opening submissions	1	\$ 1,045.00	2	\$ 1,650.00	8	\$ 3,168.00			11	\$ 5,863.00	15	\$ 7,425.00		\$ -	15	\$ 7,425.00	26	\$ 13,288.00
Drafting opening submissions	2	\$ 2,090.00	4	\$ 3,300.00	8	\$ 3,168.00			14	\$ 8,558.00	16	\$ 7,920.00	8	\$ 13,200.00	24	\$ 21,120.00	38	\$ 29,678.00
Proofing and cross referencing		\$ -	1	\$ 825.00	8	\$ 3,168.00			9	\$ 3,993.00	2	\$ 990.00		\$ -	2	\$ 990.00	11	\$ 4,983.00
Matter Management & Correspondence with Client		\$ -	2	\$ 1,650.00		\$ -			2	\$ 1,650.00		\$ -		\$ -	0	\$ -	2	\$ 1,650.00
5B TOTAL									36	\$ 20,064.00					41	\$ 29,535.00	77	\$ 49,599.00

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
5C: Plaintiff's opening submissions and reply																		
Considering Plaintiff's and other parties' opening submsmissions and reply submissions	2	\$ 2,090.00	8	\$ 6,600.00		\$ -			10	\$ 8,690.00	10	\$ 4,950.00	5	\$ 8,250.00	15	\$ 13,200.00	25	\$ 21,890.00
Liaising with Counsel re reply	1	\$ 1,045.00	1	\$ 825.00	4	\$ 2,860.00			6	\$ 4,730.00		\$ -	3	\$ 4,950.00	3	\$ 4,950.00	9	\$ 9,680.00
Matter management & correspondence with client		\$ -		\$ -		\$ -			0	\$ -		\$ -		\$ -	0	\$ -	0	\$ -
5C TOTAL									16	\$ 13,420.00					18	\$ 18,150.00	34	\$ 31,570.00

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
5D: Attendance at and during Hearing																		
Attendance at hearing	35	\$ 36,575.00	35	\$ 28,875.00		\$ -			70	\$ 65,450.00	35	\$ 17,325.00	35	\$ 57,750.00	70	\$ 75,075.00	140	\$ 140,525.00
Reviewing transcript and miscellaneous after hours on court days	10	\$ 10,450.00	21	\$ 17,325.00	30	\$ 11,880.00			61	\$ 39,655.00	21	\$ 10,395.00	10	\$ 16,500.00	31	\$ 26,895.00	92	\$ 66,550.00
Matter management & correspondence with client Trilogy	1	\$ 1,045.00	7	\$ 5,775.00		\$ -			8	\$ 6,820.00		\$ -		\$ -	0	\$ -	8	\$ 6,820.00
5D TOTAL									139	\$ 111,925.00					101	\$ 101,970.00	240	\$ 213,895.00

Assumptions  
7 day hearing

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
5E: Plaintiff's closing submissions																		
Considering plaintiff's closing submissions		\$ -	1	\$ 825.00	7	\$ 2,772.00			8	\$ 3,597.00	7.00	\$ 3,465.00	3.50	\$ 5,775.00	11	\$ 9,240.00	19	\$ 12,837.00
Liasing with counsel re reply	0.5	\$ 522.50	1	\$ 825.00	4	\$ 1,584.00			5.5	\$ 2,931.50		\$ -		\$ -	0	\$ -	6	\$ 2,931.50
Assisting counsel with reply		\$ -		\$ -		\$ -			0	\$ -		\$ -		\$ -	0	\$ -	0	\$ -
5E:Total									13.5	\$ 6,528.50					10.5	\$ 9,240.00	24	\$ 15,768.50

Assumptions

Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
5F: Defendants' closing submissions																		
Research for closing submissions		\$ -	2	\$ -		\$ -			2	\$ -	7	\$ 3,465.00		\$ -	7	\$ 3,465.00	9	\$ 3,465.00
Evidence summaries for closing submissions		\$ -	5	\$ 4,125.00	10	\$ 3,960.00			15	\$ 8,085.00	10	\$ 4,950.00		\$ -	10	\$ 4,950.00	25	\$ 13,035.00
Drafting closing submissions	0.5	\$ 522.50	5	\$ 4,125.00	5	\$ 1,980.00			10.5	\$ 6,627.50	6	\$ 2,970.00	4	\$ 6,600.00	10	\$ 9,570.00	21	\$ 16,197.50
Proofing and cross referencing and settling	0.5	\$ 522.50	1	\$ 825.00	7	\$ 2,772.00			8.5	\$ 4,119.50	2	\$ 990.00		\$ -	2	\$ 990.00	11	\$ 5,109.50
Matter management & correspondence with client Trilogy	0.5	\$ 522.50	2	\$ 1,650.00		\$ -			2.5	\$ 2,172.50		\$ -		\$ -	0	\$ -	3	\$ 2,172.50
5F TOTAL									38.5	\$ 21,004.50					29	\$ 18,975.00	67.5	\$ 39,979.50
5 TOTAL									248.5	\$ 176,737.00					202	\$ 179,107.50	450.5	\$ 355,844.50

6: First, Third and Fourth Defendants'																	
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Tasks	Partner		Of Counsel		Associate		Lawyer		TOTAL SOLICITOR		Junior Counsel		Senior Counsel		TOTAL COUNSEL		Total Prof Hrs	Total Prof Fees
	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
TASK 6 - ADDITIONAL COSTS THAT MAY BE REQUIRED																		
Considering lay evidence of 1st, 3rd and 4th Defendants'	1	\$ 1,045.00	4	\$ 3,300.00		\$ -			5	\$ 4,345.00	2	\$ 990.00	1	\$ 1,650.00	3	\$ 2,640.00	8	\$ 6,985.00
Considering expert evidence of 1st, 3rd and 4th Defendants'	1	\$ 1,045.00	4	\$ 3,300.00		\$ -			5	\$ 4,345.00	2	\$ 990.00	1	\$ 1,650.00	3	\$ 2,640.00	8	\$ 6,985.00
Preparing reply and settling with counsel	1	\$ 1,045.00	10	\$ 8,250.00		\$ -			11	\$ 9,295.00	2	\$ 990.00	2	\$ 3,300.00				
1st, 3rd and 4th Defendant opening submissions	1	\$ 1,045.00	4	\$ 3,300.00		\$ -			5	\$ 4,345.00	2	\$ 990.00	1	\$ 1,650.00	3	\$ 2,640.00	8	\$ 6,985.00
response to 1st, 3rd and 4th Defendants	1	\$ 1,045.00	4	\$ 3,300.00					5	\$ 4,345.00	2	\$ 990.00	1	\$ 1,650.00				
1st, 3rd and 4th Defendant closing submissions	1	\$ 1,045.00	4	\$ 3,300.00		\$ -			5	\$ 4,345.00	2	\$ 990.00	1	\$ 1,650.00	3	\$ 2,640.00	8	\$ 6,985.00
Preparing and consulting with counsel re response	1	\$ 1,045.00	4	\$ 3,300.00					5	\$ 4,345.00	2	\$ 990.00	1	\$ 1,650.00	3	\$ 2,640.00	8	\$ 6,985.00
Total									41	\$ 35,365.00					15	\$ 13,200.00	40	\$ 34,925.00
6 TOTAL									41	\$ 35,365.00					15	\$ 13,200.00	40	\$ 34,925.00
Total Fees									703.6	\$ 336,732.00					477.1	\$ 418,654.50	1153.6	\$ 897,230.40

Total anticipated professional fees (inc GST)		\$	986,953.44
DISBURSEMENTS			
Document management services (\$5000 per month hosting fees (currently 2 years))			
	\$	120,000.00	
Directions hearing transcripts (3 directions hearings at \$1000 a transcript)			
	\$	3,000.00	
Printing tender bundle (5 copies of a 20 volume tender bundle - 3 for Counsel, 2 for Internal)			
	\$	10,000.00	
Printing court book (5 copies of a 2 volume Court Book - 3 for Counsel, 2 for Internal)			
	\$	2,000.00	
Hearing transcripts (7 transcripts at \$2,600 a transcript)			
	\$	18,200.00	
Lay witness expenses (2 attendances - prep and trial - from 1 witness at \$1,500 per attendance per witness for travel and accomodation)			
	\$	2,500.00	
Expert report in chief (assumes 2 expert)			
	\$	200,000.00	
Expert report in reply			
	\$	60,000.00	
Joint expert report and conclave			
	\$	25,000.00	
Expert witness expenses			
	\$	6,000.00	
Miscellaneous printing expense			
	\$	10,000.00	
Miscellaneous expense (10% of disbursement total)			
	\$	45,670.00	
Total anticipated disbursements		\$	502,370.00
SUMMARY OF ANTICIPATED COST ITEMS			
Professional Fees			
Task 1A			
	\$	11,220.00	
1A(a): Defence			
	\$	37,867.50	
2A: Receipt of Particulars			
	\$	14,575.00	
2B: Receipt of Defence			
	\$	15,675.00	
2C: Request for Particulars			
	\$	7,535.00	
3A: Directions re Evidence			
	\$	3,861.00	
3B: Plaintiff's lay evidence in chief			
	\$	20,971.50	
3C: Preparing Plaintiff's lay evidence in reply			
	\$	45,789.70	
3D: Preparing Defendant's expert evidence			
	\$	105,160.00	
3E: Plaintiff's expert evidence			
	\$	15,961.00	
4A: Directions re Hearing Preparation			
	\$	4,570.50	
4B: Preparing Tender Bundle			
	\$	64,003.50	
4C: Preparing Chronology for Submissions			
	\$	24,977.70	
4D: Preparing Court Book			
	\$	11,363.00	
4E Preparing Witnesses for Cross Examination			
	\$	75,344.50	
4F: Senior Counsel Reading Time			
	\$	47,586.00	
5A: Directions re Hearing			
	\$	5,032.50	
5B: Plaintiff's opening submissions			
	\$	49,599.00	
5C: Defendant's opening submission and reply			
	\$	31,570.00	
5D: Attendance AT and DURING Hearing			
	\$	213,895.00	
5E: Plaintiffs' Closing Submissions			
	\$	15,768.50	
5F: Defendants' Closing Submissions and Reply			
	\$	39,979.50	
6 Additional Costs which May be Required			
	\$	34,925.00	
Disbursements			
	\$	502,370.00	
TOTAL COST ESTIMATE TO COMPLETION OF FIRST INSTANCE TRIAL (EX GST)			
	\$	1,399,600.40	