

SUPREME COURT OF QUEENSLAND

**Registry: Brisbane
Number: BS3383/2013**

Applicant: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

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

AND

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

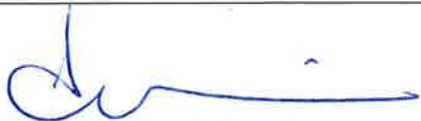
AFFIDAVIT

ANNE ELIZABETH GUBBINS of Level 20, 240 Queen Street, Brisbane, in the State of Queensland, Solicitor, solemnly and sincerely affirms and declares:

1. I hold the position of Senior Lawyer with the Australian Securities and Investments Commission (ASIC).
2. I am authorised to make this affidavit on behalf of ASIC. I do so from my own knowledge, except where otherwise indicated.
3. On 24 April 2013 I sent an email to Mr Russell attaching a draft enforceable undertaking I had prepared. In particular, the draft enforceable undertaking proposed the following undertakings:

“(a) The Administrators will convene a meeting of the unitholders of each of the LM Funds to be held on or before [insert date].”

Page 1



Deponent:



Witness:

AFFIDAVIT

Filed on behalf of the Australian Securities
and Investments Commission
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Australian Securities and Investments
Commission
Level 20, 240 Queen Street
BRISBANE, QLD, 4000
Phone No: (07) 3867 4700
Fax No: (07) 3867 4790
Ref: 13-40003

- (b) *The meeting of unitholders of FMIF is to be held at least seven days after the holding of the meetings of unitholders of all the other LM Funds.*
- (c) *At the meetings referred to in subparagraphs (a) and (b) above, the resolutions put to the unitholders for determination will include resolutions for:*
- (i) *the appointment of a responsible entity over each of the funds; and*
- (ii) *whether the fund should be wound-up and, if so, by whom."*
4. Exhibited hereto and marked "AEG-2" is a copy of this email and its attached draft enforceable undertaking.
5. On 25 April 2013 I was copied in on an email exchange between Mr Russell and Hugh Copley, ASIC's litigation counsel, in which Mr Russell inquired whether we were in a position to discuss the draft enforceable undertaking that day (as it was a public holiday). Mr Copley responded stating that we were not but that Mr Russell could forward us any changes to the draft for discussion purposes.
6. On the morning of 26 April 2013 I received a telephone call from Mr Russell. He rang seeking to discuss some of the issues raised in the draft enforceable undertaking. Mr Russell said words to the effect that:
- (a) the administrators were concerned about signing an enforceable undertaking due to the negative connotations however they were happy to sign a public undertaking in some other form;
- (b) after considering the matter further, the administrators did not think it appropriate to seek a resolution whether to wind-up the FMIF at this time although they may consider doing it after the outcome of any unit holders vote on the replacement of the responsible entity; and
- (c) the administrators were not currently comfortable signing an undertaking including the other LM funds as they needed further time to consider whether it was appropriate to hold a meeting for those funds.
7. I said words to the effect that I could not comment on those issues but if Mr Russell could forward a proposed amended draft undertaking, we could review it and get back to him. Mr Russell said words to the effect that he should have something for us by lunchtime.
8. During the above conversation, Mr Russell did not mention the issuing of a notice by his clients in the absence of an undertaking entered into with ASIC.
9. Later that morning on 26 April 2013 I received a telephone call from Ms Muller. She informed me that it was the administrators' intention to issue a notice of meeting for the



Deponent:



Witness:

FMIF that evening. Ms Muller stated that such notice would either be in accordance with the terms of the enforceable undertaking, if such had been agreed to by that time or, if not, on their own initiative. Ms Muller explained that she was letting me know as she did not wish to take ASIC by surprise. I thanked her for letting me know.

10. I did not receive a draft undertaking from Mr Russell that day. An amended draft enforceable undertaking was finally received from Ms Copley from Russells on 21 May 2013.

Section 912C Notice

11. On 30 April 2013, I sent an email to the Administrators attaching a notice issued pursuant to section 912C of the *Australian Securities and Investments Act 2001* (Cth) (**the s912C Notice**). Exhibited hereto and marked “**AEG-3**” is a copy of the s912C Notice.
12. On 1 May 2013 I received an email from Mr Russell attaching a letter responding to the s912C Notice. The letter relevantly stated:

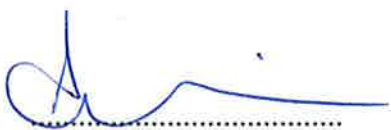
“In light of time constraints, this response is confined to the FMI Fund. LMIM proposes to respond to the notice in relation to the other Funds by 4.00pm, Friday, 3 May, 2013 and, to the extent necessary, seeks an extension of time from ASIC pursuant to subsection 912C(3) of the Act, for that purpose”.
13. Exhibited hereto and marked “**AEG-4**” is a copy of this letter.
14. On 14 May 2013 I sent an email to Mr Russell attaching a letter which noticed that ASIC had not received the further response anticipated in his correspondence dated 1 May 2013 and requesting it be provided. Exhibited hereto and marked “**AEG-5**” is a copy of this letter.
15. On 23 May 2013 I received an email from Ms Copley from Russells attaching a letter with the Administrators’ further response to the s912C Notice. Exhibited hereto and marked “**AEG-6**” is a copy of this letter.
16. All the facts and circumstances deposed to in this affidavit are within my own knowledge save and except those deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

AFFIRMED by ANNE ELIZABETH GUBBINS

on 12 July 2013

at Brisbane

in the presence of:

A blue ink signature, appearing to be 'A. Gubbins', written over a dotted line.

Deponent

A blue ink signature, appearing to be 'M. Russell', written over a dotted line.

Legal Practitioner

SUPREME COURT OF QUEENSLAND

Registry: Brisbane

Number: BS3383/2013

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

AND

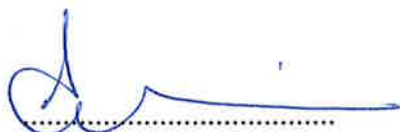
First Respondent: **LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED), ACN 077 208 461, IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND**

AND

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

Bound and marked "AEG-2" to "AEG-6" are the exhibits to the affidavit of ANNE ELIZABETH GUBBINS affirmed 12 July 2013.

Exhibit	Description	Pages
AEG-2	Email from ASIC to Russells dated 24 April 2013	1 – 6
AEG-3	Letter from ASIC to the Administrators dated 30 April 2013	7 – 14
AEG-4	Letter from Russells to ASIC dated 1 May 2013	15 – 32
AEG-5	Letter from ASIC to Russells dated 14 May 2013	33
AEG-6	Letter from Russells to ASIC dated 23 May 2013	34 – 35



Deponent



Witness

CERTIFICATE OF EXHIBIT

Filed on behalf of the Australian Securities
and Investments Commission
Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

Australian Securities and Investments
Commission
Level 20, 240 Queen Street
BRISBANE, QLD, 4000
Phone No: (07) 3867 4700
Fax No: (07) 3867 4790
Ref: 13-40003



LM Investment Management Limited (Administrators Appointed)
[SEC=UNCLASSIFIED]

Anne Gubbins to: Stephen Russell
Cc: Hugh Copley, Georgina Hayden

24/04/2013 05:51 PM

Dear Stephen,

Attached is a draft Enforceable Undertaking we've prepared for discussion purposes. Please let me know your clients' comments and proposed amendments. It may be that we think of some additional amendments from our end as well as we consider it further over the public holiday.

Regards,

Anne Gubbins | Senior Lawyer | Financial Services Enforcement | ASIC | ☎ +61 7 3867 4871 |
☎ +61 7 3867 4800 | ✉ Anne.Gubbins@asic.gov.au



Enforceable Undertaking s93A.doc

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93A

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

*Ginette Muller and John Park as Administrators of
LM Investment Management Limited (Administrators Appointed)
ACN 077 208 461
C/-FTI Consulting (Australia) Pty Limited
22 Market Street, BRISBANE QLD 4000*

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

Administrators means Ginette Muller and John Park of FTI Consulting (Australia) Pty Ltd as administrators of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 and LM Administration Pty Ltd (Administrators Appointed) ACN 055 691 426

AFSL means Australian Financial Services Licence

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

Corporations Act means the *Corporations Act 2001* (Cth)

FMIF means the LM First Mortgage Income Fund ARSN 089 343 288

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

LM Funds means the following registered managed investment schemes collectively:

- (a) The LM First Mortgage Income Fund;
- (a) The LM Currency Protected Australian Income Fund;
- (b) The LM Institutional Currency Protected Australian Income Fund;
- (c) The LM Cash Performance Fund;
- (d) The Australian Retirement Living Fund,
- (e) The LM Australian Income Fund; and

(f) The LM Australian Structured Products Fund.

LMIM means LM Investment Management Limited (Administrators Appointed) ACN 077 208 461

LMIM's AFSL means AFSL number 220281

2. ASIC's role

2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

3. Background

The LM Funds

3.1 LMIM is the responsible entity for the LM Funds.

3.2 LMIM had also previously been the responsible entity of the LM Wholesale First Mortgage Income Fund. LMIM was replaced as the responsible entity on 16 November 2012 by Trilogy Funds Management Limited.

The LM Companies

3.3 On 19 March 2013, the Administrators were appointed as voluntary administrators of:

(a) LMIM; and

(b) LMA,

by resolution of the board of directors of each of those companies, pursuant to section 436A(1) of the Corporations Act.

The AFSL

3.4 LMIM's AFSL authorised it to, among other things, operate managed investment schemes and provide financial and life insurance products.

3.5 On 9 April 2013, ASIC suspended LMIM's AFSL for two years.

3.6 Pursuant to section 915H of the Corporations Act, ASIC permitted the LMIM's AFSL to continue on specific terms so as to allow the Administrators to provide limited financial services such as transfer to a new responsible entity, investigating or preserving the assets or winding up the registered funds managed by LMIM.

3.7 Annexed and marked "A" is a copy of the Notice of Suspension of AFSL for LMIM's AFSL dated 9 April 2013.

- 3.8 ASIC holds the power to vary or revoke LMIM's AFSL should circumstances change.

The Application

- 3.9 On 15 April 2013, an Originating Application was filed by two unitholders of the FMIF (Queensland Supreme Court proceeding number 3383 of 2013). This application is currently scheduled to be heard on 29 April 2013. The primary orders sought are:

- (a) An order pursuant to sections 601FN and 601FP of the Corporations Act, that Trilogy Funds Management Limited (or such other company as the court determines appropriate) is appointed temporary responsible entity of the FMIF.
- (b) Further or in the alternative, an order pursuant to regulation 5C.2.02 of the Corporations Regulations 2001 (Cth) that Trilogy Funds Management Limited (or such other company as the court determines appropriate) is appointed temporary responsible entity of the FMIF.
- (c) In the alternative, an order pursuant to section 80 of the Trusts Act 1973 (Qld), that Trilogy Funds Management Limited (or such other company as the court determines appropriate) be appointed responsible entity/trustee of the FMIF until further order of the court or an extraordinary resolution of the FMIF's members providing for an alternative appointment.

- 3.10 If the applicants are successful in the pending application, Trilogy Funds Management Limited (or such other company as the court determines appropriate) will be appointed as a temporary responsible entity. The entity so appointed will then be obliged to call a meeting of unitholders of FMIF to determine the future of the FMIF.

4. ASIC's Concerns

- 4.1 ASIC is concerned about ensuring clarity and certainty for unitholders in relation to the future of the LM Funds.
- 4.2 Consistent with their obligations as administrators of LMIM and the suspension terms of LMIM's AFSL, the Administrators have offered to cause LMIM to convene meetings of unitholders of all of the LM Funds in a timely manner. This is to provide unitholders with the opportunity to determine the future of the LM Funds quickly, efficiently and with the minimum of expense to the LM Funds.

5. Undertakings

- 5.1 Under section 93A of the ASIC Act, the Administrators have offered, and ASIC has agreed to accept the following undertakings.

- (a) The Administrators will convene a meeting of the unitholders of each of the LM Funds to be held on or before **[insert date]**.
- (b) The meeting of unitholders of FMIF is to be held at least seven days after the holding of the meetings of unitholders of all the other LM Funds.
- (c) At the meetings referred to in subparagraphs (a) and (b) above, the resolutions put to the unitholders for determination will include resolutions for:
 - (1) the appointment of a responsible entity over each of the funds; and
 - (2) whether the fund should be wound-up and, if so, by whom.

6. Acknowledgements

6.1 The parties acknowledge that:

- (a) the parties may, by mutual agreement, vary this undertaking in the future should the need arise;
- (b) either party may issue a media release on execution of this undertaking referring to its terms;
- (c) either party may from time to time publicly refer to this undertaking; and
- (d) ASIC will make this undertaking available for public inspection.

EXECUTED by LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 in accordance with section 437A of the *Corporations Act 2001*

..... Administrator

..... Administrator

Accepted by the Australian Securities and Investments Commission under section 93A of the ASIC Act by its duly authorised delegate:

.....
<<INSERT Name of Delegate>>

Delegate of Australian Securities and Investments Commission

<<INSERT Date>>



ASIC

Australian Securities & Investments Commission

Our Ref: 13-40003

30 April 2013

Commonwealth Bank Building
240 Queen Street, Brisbane
GPO Box 9827 Brisbane QLD 4001
DX 322 Brisbane

Telephone: (07) 3867 4700
Facsimile: (07) 3867 4725

LM Investment Management Limited (Administrators Appointed)
c/- Ginette Muller and John Park
FTI Consulting (Australia) Pty Ltd
22 Market Street
Brisbane Qld 4000
Email: ginette.muller@fticonsulting.com & john.park@fticonsulting.com

Dear Ms Muller and Mr Park

Notice of Direction under s912C(1) of the *Corporations Act 2001*

I **enclose** a Notice of Direction (**Direction**) under section 912C(1) of the *Corporations Act 2001* (**the Act**).

You should read the Direction carefully. You will see that it requires LM Investment Management Limited (Administrators Appointed) (**the Licensee**) to give to the Australian Securities & Investments Commission (**ASIC**) a written statement containing certain information by 11:00am on 1 May 2013. Details are set out in the Direction.

The Licensee may comply with the Direction by emailing the written statement to anne.gubbins@asic.gov.au.

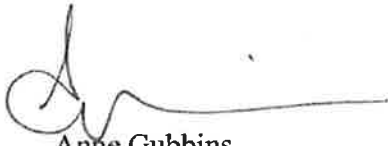
The Licensee is entitled to consult with its legal adviser in relation to its obligations under the Direction.

I draw your attention to the note enclosed with the Direction which contains information relevant to the Direction, including some definitions of expressions which may be used, and some of the offence and penalty provisions relating to non-compliance with the Direction. It also deals with the application of legal professional privilege to the Direction.

The Direction should not be construed as an indication by ASIC that a contravention of the law has occurred, nor should it be considered a reflection upon any person or entity.

If you have any questions about the Direction, please contact me on (07) 3867 4871.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a long, horizontal, wavy line that extends to the right.

Anne Gubbins
Senior Lawyer



B00691059

ASIC

Australian Securities & Investments Commission

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
SUBSECTION 912C(1) OF THE *CORPORATIONS ACT 2001***

NOTICE OF DIRECTION TO GIVE A WRITTEN STATEMENT

To: LM Investment Management Limited (Administrators Appointed)
c/- Ginette Muller and John Park
FTI Consulting (Australia) Pty Ltd
22 Market Street
Brisbane Qld 4000

Australian financial services licence number: 220281

You are notified under section 912C(1) of the *Corporations Act 2001* (**the Act**) that you are directed to give:

to: Australian Securities & Investments Commission
at: Level 20, 240 Queen Street, Brisbane, Queensland
by: 1 May 2013
on: 11:00am

a written statement containing the information about the financial services provided by you or your representatives specified in the Schedule to this Direction.

Date: 30 April 2013

Signed:

Anne Gubbins
a delegate of the Australian Securities & Investments Commission.

SCHEDULE

This is the Schedule referred to in the section 912C Direction to LM Investment Management Limited (Administrators Appointed) dated 30 April 2013.

For the purpose of this Schedule:

“Administrators” means Ginette Muller and John Park of FTI Consulting (Australia) Pty Ltd as administrators of LM Investment Management Limited (Administrators Appointed)

“FMIF” means the LM First Mortgage Income Fund

“LM Funds” means the following registered managed investment schemes collectively:

- (a) The LM First Mortgage Income Fund;
- (b) The LM Currency Protected Australian Income Fund;
- (c) The LM Institutional Currency Protected Australian Income Fund;
- (d) The LM Cash Performance Fund;
- (e) The Australian Retirement Living Fund,
- (f) The LM Australian Income Fund; and
- (g) The LM Australian Structured Products Fund.

“LMIM” means LM Investment Management Limited (Administrators Appointed) ACN 077 208 461

LMIM is required to provide a written statement containing the following information about the financial services provided by it or its representatives:

1. In relation to each of the LM Funds:
 - a. Does LMIM consider that the purpose of the fund cannot be accomplished and/or should otherwise be wound up?
 - b. If LMIM cannot currently answer the question in subparagraph (a) above, provide an estimate as to when it will be in a position to make such a determination.
 - c. Does LMIM believe that a new, permanent, responsible entity (independent of the Administrators and LMIM) should be appointed to the fund?
 - d. If the answer to subparagraph (c) is yes, when does LMIM consider this should occur and explain the bases for this view?

- e. If the answer to subparagraph (c) is no, explain why not. Please also explain how this will not result in conflicts of interest between the responsible entity and the fund.
- 2. On 23 April 2013, at a meeting with ASIC representatives, Ms Muller advised that she considered she would be in a position to make a determination on whether the LM Funds should be wound up within two weeks of that date.
 - a. Has this position changed?
 - b. If so, please explain what has changed and why this has affected LMIM's ability to make such a determination?
 - 3. Explain the basis for calling the meeting of unit holders of the FMIF scheduled to be held on 20 May 2013.
 - 4. Explain why LMIM considers it to be in the best interests of unit holders of the FMIF not to include an alternate resolution for the winding up of the FMIF in the meeting of unit holders of the FMIF scheduled to be held on 20 May 2013.

INFORMATION ABOUT THE NOTICE OF DIRECTION

Relevant Statutory Provisions

[All section references are to the *Corporations Act 2001* (the Act) unless otherwise indicated]

Subsection 912C(1) provides that the Australian Securities & Investments Commission (ASIC) may, by giving written notice to a financial services licensee, direct the licensee to give to ASIC a written statement containing the specified information about:

- (a) the financial services provided by the licensee or its representatives; or
- (b) the financial services business carried on by the licensee.

Under s912C(3), the licensee must comply with a direction given under s912C:

- (a) within the time specified in the direction if that is a reasonable time; or
- (b) in any other case, within a reasonable time.

ASIC may extend the time within which the licensee must comply with the direction by giving written notice to the licensee: s912C(3).

ASIC may suspend or cancel a licence under s915C(1)(a) of the Act if the licensee has not complied with its obligations under s912A. Among the list of obligations under s912A, is the obligation to comply with the financial services laws: s912A(1)(c).

Non-compliance with a direction that ASIC gives under s912C(1), within the time set out in s912C(3), may constitute a failure to comply with a financial services law.

ASIC may only suspend or cancel a licence if it first gives the licensee an opportunity:

- (a) to appear or be represented at a hearing before ASIC. The hearing is conducted in private: s915C(4); and
- (b) to make submissions to ASIC on the matter: s915C(4).

Legal Professional Privilege

For the purposes of your obligations arising from the Direction, legal professional privilege is a reasonable excuse for not providing information pursuant to the Direction. Accordingly, you are not obliged to provide under the Direction information that is covered by a valid claim of legal professional privilege.

A person who claims legal professional privilege must establish that the privilege exists. If you claim that any information that you are required to provide is subject to legal professional privilege, you must provide ASIC with sufficient information to allow its officers to make an informed decision about whether the claim for privilege can be supported.

For that purpose, if the information over which you claim legal professional privilege was or is currently, comprised in the whole or part of a document, you should prepare a list, in writing, which specifies for each document or part thereof you claim is privileged:

- (a) the time, date, type, author, recipient and subject matter of that document or part thereof, and whether it is an original or copy;
- (b) if the original or a copy of the document or part thereof has been provided to any person who is not the privilege holder or a legal representative of the privilege holder, the identity of the persons to whom the original or a copy of the document or part thereof has been provided and the basis on which it was provided to those persons;
- (c) the grounds on which legal professional privilege is claimed;
- (d) the facts that are relied upon as giving rise to the claim of legal professional privilege. Those facts should include (but not be limited to) details of the dominant and any other purpose for which the information was brought into existence.

You will be requested to specify whether an in-house legal counsel was involved in the preparation of that document or part thereof and to provide sufficient details about that person's independence and the capacity in which they acted in relation to the preparation of that document or part thereof; and

- (e) the identity of the person in whose name the claim of legal professional privilege is made.

If the information over which you claim legal professional privilege was the subject of an oral communication, you should prepare a list, in writing, which specifies for each oral communication you claim is privileged:

- (i) the grounds on which legal professional privilege is claimed;
- (ii) the facts that are relied upon as giving rise to the claim of legal professional privilege. Those facts should include (but not be limited to) details of the dominant and any other purpose for which the communication was made.

You will be requested to specify whether an in-house legal counsel was involved in the communication and to provide sufficient details about that person's independence and the capacity in which they acted in relation to the communication;

- (iii) the identity of the person in whose name the claim of legal professional privilege is made;
- (iv) the date and time of, and parties to, the communication; and
- (v) the subject matter of, location at, and means by which, the communication took place.

Unless ASIC otherwise agrees, you should provide the list(s) relating to your privilege claims to ASIC on or before the due date of the Direction.

Definitions

"financial service" has the meaning given by Division 4 of Part 7.1: s761A. A person provides a financial service if they:

- (a) provide financial product advice (see section 766B); or
- (b) deal in a financial product (see section 766C); or
- (c) make a market for a financial product (see section 766D); or
- (d) operate a registered scheme; or
- (e) provide a custodial or depository service (see section 766E); or
- (f) engage in conduct of a kind prescribed by regulations made for the purpose of this paragraph.

[s766A(1)]

"financial services business" means a business providing financial services: s761A.

Note: The meaning of "carry on a financial services business" is affected by s761C of the Act.

"financial services licensee" means a person who holds an Australian financial services licence: s761A.

"representative" has the meaning given by s910A of the Act and includes:

- an authorised representative of the Licensee; or
- an employee or director of the Licensee; or
- an employee or director of a related body corporate of the Licensee; or
- any other person acting on behalf of the Licensee.

"financial services law" means:

- (a) a provision of Chapter 7 or of Chapter 5C, 6, 6A, 6B, 6C or 6D of the Corporations Act; or
- (b) a provision of Chapter 9 of the Corporations Act as it applies in relation to a provision referred to in paragraph (a); or
- (c) a provision of Division 2 of Part 2 of the ASIC Act; or
- (d) any other Commonwealth, State or Territory legislation that covers conduct relating to the provision of financial services (whether or not it also covers other conduct), but only in so far as it covers conduct relating to the provision of financial services.

[s761A]

Offences

A person who, in a document required by or for the purposes of the Corporations Act or lodged with or submitted to ASIC, makes or authorises the making of a statement that to the person's knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in a material respect, is guilty of an offence: s1308(2).

A person who, in a document required by or for the purposes of the Corporations Act or lodged:

- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
- (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence: s1308(4).

A person must not, without lawful excuse, obstruct or hinder ASIC, or any other person, in the performance or exercise of a function or power under the Corporations Act: s1310.

RUSSELLS

1 May, 2013

Our Ref: Mr Russell
Your Ref: Ms Gubbins

Ms Anne Gubbins
Senior Lawyer, Financial Services Enforcement
Australian Securities & Investments Commission
Commonwealth Bank Building
240 Queen Street
BRISBANE QLD 4000

Dear Ms Gubbins

**LM Investment Management Limited (Administrators Appointed) ("LMIM")
as Responsible Entity for the LM First Mortgage Income Fund ("the FMI
Fund")**

We are the solicitors for LMIM. Our client acknowledges receipt, yesterday evening, of a notice issued pursuant to section 912C of the *Corporations Act 2001* ("the Act").

LMIM responds to that notice by this letter.

In the light of time constraints, this response is confined to the FMI Fund. LMIM proposes to respond to the notice in relation to the other Funds by 4.00pm, Friday, 3 May, 2013 and, to the extent necessary, seeks an extension of time from ASIC pursuant to subsection 912C(3) of the Act, for that purpose.

Preliminary

Firstly, section 912C of the Act empowers ASIC to direct licensees to give a written statement containing the specified information about the matters set out in subsection (1). The notice at hand requires LMIM to provide a written statement about its opinions and beliefs. The Administrators do not consider that section 912C obliges LMIM to express such opinions.

Nonetheless, the Administrators are concerned to continue to co-operate with ASIC in every aspect of the administration of the affairs of LMIM and the LM Funds the subject of your notice. Hence, they are happy to respond.

Secondly, the information provided below is current as of today. The affairs of LMIM and of the LM Funds are fluid and circumstances are changing rapidly on a daily basis – mainly because of litigation. The Administrators will also continue to monitor all of these matters and to respond appropriately to changing circumstances. The Administrators will continue to liaise with ASIC in

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 21, 300 Queen Street, Brisbane QLD 4000

Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

RussellsLaw.com.au

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relation to the affairs of LMIM and each of the LM Funds and inform you, when and if there is any substantial change to their views and opinions recorded below.

Thirdly, the Administrators are conscious of issues concerning the external administration of responsible entities and registered managed investment schemes in general. Our clients are, in particular, conscious of the issues canvassed in a CAMAC Discussion Paper for Managed Investment Schemes issues in June, 2011, and of ASIC's Submission to CAMAC made in September, 2011, particularly as those submissions relate to enterprise schemes. The Administrators are aware that each of the LM Funds are enterprise schemes, in the sense used by ASIC in its Submission to CAMAC.

The Administrators are, in particular, aware of and dealing with the following factors in relation to the FMI Fund and all LM Funds:-

1. The need to examine related party arrangements;
2. The need to examine and, if appropriate, modify the fee structures that subsist in relation to the LM Funds;
3. LMIM's Australian Financial Services Licence has been (appropriately) modified by ASIC to meet the circumstances that arose from the appointment of Administrators to LMIM. The Administrators understand that ASIC expects that the financial services that LMIM will provide will be limited to preserving the assets of the LM Funds, and making necessary investigations, ultimately for the purpose of either appointing a new Responsible Entity, or winding up the LM Funds. The Administrators believe that the conditions of the ASFL are appropriate to the circumstances of LMIM and the LM Funds.
4. There can be tensions between various aspects of the external administrations of a Responsible Entity and the ongoing administration of an enterprise scheme. The Administrators are conscious of the need to manage those tensions and the need to react appropriately to them.
5. There can be tensions between the interests of secured creditors (often represented by receivers and managers appointed by such creditor) and those broader interests of other stakeholders in an external administration. No such appointments have been made to date in relation to any of the LM Funds and, as currently advised, none are expected.
6. One feature of the industry that has grown up around registered managed investment schemes is that, when Responsible Entities enter into external administration, various interested parties propose the substitution of either temporary or permanent Responsible Entities to replace the Responsible Entity under external administration. Because Scheme members are the beneficial owners of the underlying assets, and because both the constitutions and the Act provide for mechanisms for members to be consulted about the replacement of a Responsible Entity to manage their assets, the Administrators are of the view that, save in exceptional circumstances – which do not obtain here – it should be the members who decide whether a new Responsible Entity should be appointed and, if so, who that should be.

-
7. In deciding whether a new Responsible Entity should be appointed, one of the factors that is of considerable importance is that the candidate replacement Responsible Entity should hold an appropriate AFSL.

Specified Information in relation to the FMI Fund

LMIM responds to your notice, in relation to the FMI Fund, adopting the paragraph numbering in the Notice, as follows:-

1. In relation to the FMI Fund:-

- (a) LMIM has not yet been able to form a view as to whether the purpose of the FMI Fund can be accomplished, or whether it should otherwise be wound up.
- (b) It is difficult for LMIM to say exactly when the Administrators will be able to decide those matters. A number of factors are relevant.

When the Administrators were appointed, the auditors of the FMI Fund, Ernst & Young, had not completed their analysis of the impairment of the FMI Fund, in the process of auditing the Fund's financial statements for the year ended 30 June, 2012. On their appointment, the Administrators understood that the indicative value of the underlying assets of the FMI Fund was 55c per unit (on a subscription price of \$1.00 per unit).

Attached to this letter is a document entitled "Briefing: FMIF Summary", which contains a reasonably accurate summary of the underlying assets in the FMI Fund. As appears from the summary, the assets in the FMI Fund are dominated by real estate projects, to the owners of which the FMI Fund has advanced loan funds predominantly on first mortgage security. Some assets are completed and generating income while, at the other end of the spectrum, there are other projects in respect of which construction is yet to commence.

Each of these underlying projects must be analysed and understood. Fortunately, LMIM has the benefit of a service agreement with LM Administration Pty Ltd, in respect of which the Administrators have also been appointed. That company employs staff who have had ongoing dealings with and are at least reasonably familiar with the details of the various projects.

Not only had Ernst & Young not completed their assessment of the impairment of the assets in the FMI Fund, but the underlying assets are not the subject of current valuations.

The Administrators understand that LMIM provided a schedule of valuations to ASIC in May, 2012 – attached.

Since then, valuations of properties have been undertaken on an *ad hoc* basis, when needed.

We also refer to the Briefing Summary which comprises a schedule that sets out indicative impairments, prepared by staff of LM Administration Pty Ltd. It seems to be a reasonable working document.

The Administrators have not had an opportunity to commission any valuations of the underlying assets of the FMI Fund. The Administrators do not believe it is necessary that all such underlying assets need to be valued before LMIM can decide whether the purposes of the FMI Fund can be achieved or whether it should otherwise be wound up. However, they anticipate that valuations may be necessary before such a decision can responsibly be made – irrespective of who is the Responsible Entity.

Further, as ASIC is aware, two members of the FMI Fund have made an application to the Supreme Court for an order that Trilogy Funds Management Limited should replace LMIM, albeit only as temporary Responsible Entity. The Administrators took legal advice and consulted with ASIC, immediately that application was made. The Administrators decided, particularly in the light of the mechanisms in the constitutions and the Act, that it was appropriate that members be given an opportunity to consider whether they wish to have Trilogy has a permanent Responsible Entity, and accordingly, LMIM has convened a meeting of the members, to take place on 30 May, 2013, to consider and, if thought fit, to pass resolutions replacing LMIM with Trilogy as the Responsible Entity for the FMI Fund.

The Administrators hope and expect that they will be in a position to form a view as to whether the purposes of the Fund can be achieved, or whether it should otherwise be wound up prior to that meeting, although this is not certain. The Administrators appreciate that this is a topic on which reasonable minds might differ and, as presently advised, the Administrators do not propose to implement a decision to wind up the Fund, prior to the meeting of members on 30 May, 2013. If it is the view of the requisite body of members that Trilogy should be the Responsible Entity of the FMI Fund, then the responsibility will pass to it.

- (c) **LMIM has not yet decided whether, and so does not presently believe, that a new, permanent Responsible Entity, independent of the Administrators and LMIM, should be appointed to the Fund.**

The Administrators are presently of the view that there are two matters which will inform a decision that it is in the best interests of members that a new, permanent, Responsible Entity, independent of the Administrators and LMIM should be appointed to the Fund.

The first is whether the Fund is viable and should continue in operation, and not be wound up. The second is whether the Administrators or LMIM are subject to any conflicts of interest which render it undesirable, either that they or LMIM should continue in office as Administrators and Responsible Entity, respectively.

As you may be aware, various persons have made assertions to the effect that the appointment of the Administrators to LMIM has created conflicts of interest; and, inferentially, that such conflicts of interest are so acute that LMIM should not continue as Responsible Entity of the FMI Fund. However, we have not seen any evidence to support such assertions.

Our clients regard it as significant that de Jersey CJ removed LMIM as trustee of the LM Managed Performance Fund on 12 April, 2013. Accordingly, there is now no basis to suggest that there is any conflict of interest in relation to LMIM's status as Responsible Entity of the FMI Fund, in respect of its former status as trustee of the LM Managed Performance Fund.

It has also been suggested that some conflict exists by reason of transactions with LM Administration Pty Ltd. The Administrators are also Administrators of that company. On our instructions, that company has never held any substantial assets. It is and has always been a service company. Its only creditors are employees, the ATO, and their various superannuation funds to whom superannuation is remitted. None of these are overdue.

The Administrators understand that some management fees that LMIM derived were passed through LM Administration Pty Ltd and that there are reasons to investigate those transactions. That investigation is underway. Assuming the investigation reveals either that LMIM or LM Administration Pty Ltd has a good claim to recover those funds or to take other action in respect of those transactions, then there is no reason why either LMIM or LM Administration Pty Ltd could not do so.

Naturally, if circumstances emerge which give rise to either a potential or actual conflict of interest, the Administrators will take appropriate action in respect of such circumstances.

The Administrators also note that any new permanent responsible entity will need to be appropriately licensed to deal in derivatives and foreign exchange contracts (as set out in LMIM's AFSL number 220281, clause 1(b)(ii)). We note that Trilogy's AFSL does not contain any provision.

- (d) **Although it is not necessary to answer this question, if LMIM decides that a new permanent Responsible Entity, other than LMIM, should be appointed, the Administrators will ensure that they immediately give notice to that effect to ASIC, and that appropriate action is taken to convene a meeting of members to the FMI Fund to consider a replacement.**
- (e) **Nor is it strictly necessary to answer this question, because our clients have not formed the view as to whether a new permanent Responsible Entity should be appointed to the FMI Fund.**

The Administrators are conscious of the potential for a conflict to arise consequent upon their appointment as external Administrators of LMIM. If LMIM is unviable as a stand-alone entity, it will either be wound up, or enter into a Deed of Company Arrangement ("DOCA"). No DOCA has been proposed and no person has suggested that a DOCA might be proposed. It is most unlikely that the Administration will end by LMIM being handed back to the directors.

There is a potential for a conflict to arise between the interest of creditors in a winding up (or perhaps a DOCA) and the interest of members of the FMI Fund. However, in the present circumstances, our clients are not aware of any actual conflict, and they will remain astute to look for those circumstances.

Conversely, it is at least hypothetically possible that a winding up might be in the interests of the members of the Fund. Although the matter is not free from doubt, it is at least possible that some of the claw back provisions in division 2 of Part 5.7 of the Act might be engaged for the benefit not only of the creditors of LMIM, but for the members of the FMI Fund.

For example, we can see no reason why an unreasonable director-related transaction could not be the subject of an action by LMIM (in liquidation) to

recover from directors or associates of directors, the benefits of an unreasonable director-related transaction. We note that the property of LMIM is defined in section 9 of the Act as including any legal or equitable estate of interest in any property. So, *prima facie* property held by LMIM on trust would be caught by, for example, paragraph 588FDA(1)(a)(ii) of the Act.

Assuming – as our clients presently do – that there will be no proposal for a DOCA, it is likely that LMIM will be the subject of a creditors voluntary winding up. Again, if circumstances do give rise in the future to a conflict of interest, that may result in our clients forming the view that a new permanent Responsible Entity should be appointed and, when and if they do form that view, our clients will take appropriate action to consult the members.

2. **In our respectful view, Ms Muller did not make such an unqualified statement. We think you will agree that the discussion to which you refer had in the context of ASIC's proposal to seek from LMIM, through its Administrators, an Enforcement Undertaking, and that we were discussing minimum period the time within which the Administrators could respond to a requirement imposed by such an Enforceable Undertaking.**

At that time, the proceedings brought by Piper Alderman and Trilogy, through Mr and Mrs Bruce, had only recently been served. In particular, our clients had not, on 23 April, 2013, then decided the appropriate action to take in response to Trilogy's attempt have itself appointed temporary Responsible Entity of the FMI Fund.

As you know, our clients have now decided that it is in the best interests of members to have an opportunity to consider that proposal in a meeting, and our clients have convened such a meeting.

That decision followed two days of intensive consultation by our clients with their solicitors (our firm and Norton Rose) and other expert advisors.

Our clients are presently of the view that no action should be taken to wind up the Fund, until the meeting of members to consider replacing LMIM with Trilogy has been held.

Our clients also take the view that they should decide which, if any of the assets in the FMI Fund should be subject to a formal valuation or feasibility study, before they can decide, as Administrators, whether the FMI Fund should be wound up. Our clients presently expect to be able to form that view, and to obtain such valuations and undertake such feasibility studies, prior to 30 May, 2013 – the date of the meeting of members.

If our clients form the view, that the FMI Fund should be wound up, prior to the meeting on 30 May, 2013, they will inform ASIC. Our clients present intention is that they will not, however, take any action in that regard, pending the outcome of the meeting, since our clients do not wish to pre-empt the wishes of members in relation to whether Trilogy should be appointed as Responsible Entity in place of LMIM.

If Trilogy does not replace LMIM as Responsible Entity of the FMI Fund at the meeting of members on 30 May, 2013, and if our clients have decided that the FMI Fund should be wound up, our clients will promptly take steps either to convene a meeting, or to allow others to convene a meeting to consider and approve that decision.

3. Our clients decided that LMIM should convene a meeting of the members of the FMI Fund for a number of reasons:-

- (a) Our clients do not believe that the court's power to appoint a temporary Responsible Entity under section 601FN has been engaged. That is, our clients do not believe that LMIM does not meet the requirements of Section 601 FA of the Act;
- (b) There are well understood provisions, both in the Constitution of the FMI Fund and in the Act for members of the Fund to control who is their Responsible Entity;
- (c) ASIC decided, on 9 April, 2013, in effect to modify LMIM's AFSL, to put in place a process by which members would soon be consulted about the fate of their Fund. The Administrators believe that ASIC acted appropriately in that regard.
- (d) Only two members of the Fund (obviously hand-picked by Trilogy and its lawyers) have made the application to the Court.
- (e) Trilogy is a member of the FMI Fund. Accordingly, it will have an opportunity to attend the meeting;
- (f) The Administrators have convened the meeting on a date which also gives Trilogy an opportunity to send to members such material as it regards appropriate, to advance its case for election, by vote of members to the office of Responsible Entity;
- (g) The Administrators also decided to provide an up to date copy of the Register of Members to Trilogy for that purpose, and they did so on 30 April, 2013;
- (h) In all of these circumstances, the Administrators have formed the view that it was appropriate to convene this meeting to give members an opportunity to consider, discuss Trilogy's proposal, and vote on it; that it is appropriate that this should occur prior to the court's consideration of the application by Mr and Mrs Bruce; and indeed that the meeting will assist the Court in deciding their application.

4. The reasons why LMIM did not include an alternative resolution that the LMIM Fund be wound up are:-

- (a) When LMIM convened the meeting, the Administrators had not decided that it was in the best interests of unit holders that the FMI Fund be wound up and they have still not made any such decision.
- (b) In deference to the possibility that Trilogy might be elected as Responsible Entity, the Administrators thought it inappropriate to pre-empt its decision as to whether or not

the Fund should be wound up, in case the members decide to elect it as Responsible Entity.

- (c) It also remains possible (depending on how events transpire) that if LMIM decides that the FMI Fund should be wound up, that that might be accomplished without a meeting. Trilogy may decide to proceed in that way. The Administrators do not presently intend to proceed in that way, should they decide that the FMI Fund should be wound up.

We trust that this letter answers your inquiries. If, however, there is any aspect of these matters which you wish to discuss, or if you require any further information, as always, please do not hesitate to contact us or the Administrators direct.

Yours faithfully



Stephen Russell
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LM FIRST MORTGAGE INVESTMENT FUND

Borrower	Security ranking	Loan type/class/ activity	Description / Comments	Location of asset	Loan balance 31/12/12	Provision	Impaired Loan Balance	Loan Default	Valuation Amount	Is LMM in Possession, Controller or Acting as POA
Northshore Bayview St Pty Ltd	1st Mortgage	originally development/ residential, now residential in sell down	"Harmony Apartments" progressive sell down of a completed 119 unit development. As FMIF was unable to complete the construction, agreement was reached with CBA to fund the cost to complete the project up to a maximum debt of \$19.1M. Following completion, presales were able to settle, thereby discharging CBA and allowing FMIF to recover proceeds from sales going forward. LM as Controller manages the sales/marketing.	20 Bayview Street, Ruraway Bay 4216	\$44,802,404	\$ 23,383,361	\$ 21,469,012.56		Yes	
Belpac Pty Ltd	Charge over entities and PGs		Operating coal mine and future development lands. Litigation finalised in 2011 against mine operator Gujarat (which had failed to perform on previous sale) for failure to remediate land, surrender mining leases and vacate the property in 2007. Recovery of outstanding debt being pursued against guarantors and bonds with full recovery anticipated following legal proceedings funded by second mortgagee	Princess Highway, Russell Vale NSW (original security)	\$4,679,749		\$ 4,679,749.00			
Redland Bay Leisure Life	1st Mortgage	development/ retirement	Partially completed retirement village & residual land. Infill mixed residential development with DA for 460 dwellings. Currently constructed 39 apartments along with residual land for balance 123 further supported living aged care units & courtyard homes, substantially completed civil works for 110 small lots (~500 sqm) site and residual land for balance site. The overall DA for the site provides for the development of residential dwellings for over 55s. The overall zoning of the land is for residential purposes and the recovery strategy being undertaken has seen the opening of 1 tall trees Supported Living Aged Care neighbourhood with first 39 units which will deliver approximately 162 Supported Living retirement units. Planning approvals submitted to council regarding the development and realisation of balance of site for residential purposes and also negotiations advancing with council regarding delivery of community aquatic and healthcare facility.	Cir Government, Missarewa, Weirhem & Salisbury Streets, Redland Bay Old 4165	\$65,303,102	\$ 15,368,382	\$ 49,934,720.06		No assets only litigation. Need open PI cover at least	
Redland Bay Leisure Life Development Manager Pty Ltd		as above	as above	as above	refer above				Yes	
St Crispin's Property Pty Ltd	1st Mortgage	development/resid ential, now completed residential	remaining 57 residential apartments of a completed 72 unit resort complex. Experienced operators appointed to manage the resort to maximise return to owners. Agreed strategy is that the St Crispins property will not be placed on the current market and will be held until the property is five years old and sold under the going concern provisions thus eliminating liability for GST.	19-37 St Crispin's Avenue, Port Douglas QLD	\$39,289,771	\$ 14,759,366	\$ 24,530,405.00		Yes	

<u>Borrower</u>	<u>Security ranking</u>	<u>Loan type/ class/ activity</u>	<u>Description / Comments</u>	<u>Location of asset</u>	<u>Loan balance</u> 31/12/17	<u>Provision</u>	<u>Impaired Loan Balance</u>	<u>Loan Default</u>	<u>Valuation Amount</u>	<u>Is LHM in Possession, Controller or Acting as POA</u>
Eden Apartments Pty Ltd	1st Mortgage	Development/residential now residential in sell down	Last remaining luxury residential strata units of a 32 unit development. LMPYAL is Controller acting.	73 Mill Point Road, South Perth, WA	\$12,860,582.55	\$ 10,724,953	\$ 1,876,000.00			
Young Land Corporation Pty Ltd	1st Mortgage	Development/residential	A residential land subdivision at Yeppoon wherein approximately 130 lots have been sold and approximately 450 lots remain to be developed (subject to staged approvals). There are approximately 20 completed lots and 80 lots having operational works approval to be constructed. Remainder of site is englobe residual land.	Keppel Bay Estate, Tanby Rd, Taroomball, Yeppoon QLD	\$36,866,468	\$ 10,485,354	\$ 26,481,114.00			No last unit sold in March
Brambleton Pty Ltd	1st Mortgage	Commercial	90 strata titled hotel rooms operating under the brand of the Holiday Inn Management Rights are undertaken by Outigger Resorts. There are approximately 400 rooms in the whole hotel. Rooms are in the rental pool generating income. LMPYAL is Controller acting. Strategy is that the property will not be marketed for sale in the current market. Monthly room rental income is being distributed to the Controller.	22 View Avenue, Surfers Paradise Qld 4217	\$27,474,006	\$ 10,874,006	\$ 16,500,000.00			Yes. Contollership includes build out operations
Lot 111 Pty Ltd	1st Mortgage	development/ commercial now completed commercial actively being marketed for sale or lease	approximately 60 remaining units of 83 completed commercial units. The borrower is targetting lease up of lots and sale as a going concern.	23 Narabang Way, Belrose, NSW	\$21,104,681	\$ 5,371,562	\$ 15,733,129.25			Yes
OVST P/L	1st Mortgage	development/retirement now completed commercial	Completed operating retirement village (supported living) of 83 units at Banora Point, NSW under sell down of Stage 2 units. LMPYAL is controller of this asset and has appointed an expert operator (Tall Trees) to manage the day to day runnings of the village.	Ocean View Banora Point, 2-4 Terrenora Road, Banora Point, NSW	\$26,246,288	\$ 4,259,240	\$ 21,987,048.27			Not in possession
Greystanes Projects Pty Ltd	1st Mortgage	Development/ industrial	A partly completed industrial and retail strata titled precinct with additional child care centre. Site being prepared for upcoming sales campaign	Gir Reconciliation & Plurite Roads, Greystanes, NSW 2145	\$27,013,092	\$ 21,013,093	\$ 5,999,999.08			Yes
										Yes

Borrower	Security ranking	Loan type/class/ activity	Description / Comments	Location of asset	Loan balance 31/12/12	Provision	Impaired Loan Balance	Loan Default	Valuation Amount	Is LMM in Possession, Controller or Acting as POA
Glendenning Developments P/L	1st Mortgage	Development/ industrial now completed in sell down	final remaining unit of 31 mixed bulky storage/ industrial units at Glendenning NSW. LM overseeing borrower's management of sales and marketing.	Cnr Owen and Power Streets, Glendenning, NSW	\$4,931,972	\$ 4,137,972	\$ 800,000.00			
Carrington Management P/L (Caboolture South)	1st Mortgage	development/ retirement now completed (and stage 2 residual land)	Operating supported living retirement village currently comprising 64 units and associated community facilities operating under 1st Trees model and brand. Construction of stage 2 being prepared	15 Adelaide Drive, Morayfield QLD 4506	\$28,775,799	\$ 298,984	\$ 26,476,815.75			Yes
Bridgewater Lake Estate Ltd	1st Mortgage	development/retirement	An operating independent living retirement village with a number of completed and occupied dwellings and all infrastructure completed to allow development of remaining dwellings. Strategy for realisation of security is by development and sale over approx 4.5 year period. Construction of 6 display units in 2012 and commencement of marketing campaign. LMP/LM as controller has appointed a professional retirement village operator to manage the day to day runnings of the village.	Pauline Lane, Roxburgh Park Vic. 3084	\$29,629,116	\$ 2,017,911	\$ 27,611,305.00			Yes
Townsville Commercial Pty Ltd IOR		Commercial	An operating hotel in Townsville QLD currently managed by the Accor Group under the Ibis Hotel brand. Contains 118 rooms, cafe and 2 meeting rooms. Debtors appointed as receivers in April 2011, due to complex ownership structure with adjacent premises and separate mortgages. Unsuccessful sales campaign in Q3 2011 with receiver now retired and PTAL/LM acting as Controller. Strategy to improve on performance which declined during receivership and bring to market again late 2012/early 2013	12-14 Palmer Street, Townsville QLD 4810				Paid out Q3 2012		Yes. Controlling also includes some development works
Green Square Property Developments Pty Ltd	1st Mortgage	Development/ Showroom/office now completed and in sell down	leasing 4-5 residual of 42 units in completed office/showroom building. LM oversees borrower's management of sales and marketing. Borrower focuses on lease up and then sale to investors. Sale contracts are on leased units with no GST payable by the vendor	112-122 Mc Evoy St, Alexandria, NSW	\$2,507,836	\$ 615,313	\$ 1,892,525.04			
Source Student Lodge Pty Ltd		Commercial/ student accommodation	Operating student accommodation facility. 76 individually titled strata accommodation units (typically with each accommodating 3 students). On site managers look after the day to day running of the asset and such managers report to LMP/LM as controller. It is envisaged that the property will be held with a view to maximising returns from operations prior to marketing either in one line or by sale of individual strata in early 2013. Property now operating at 100% occupancy during semester	10 - 24 Faculty Close, Cairns Qld 4870				Paid out Q3 2012		Not in possession
Source Developments No 1 (Coomera)	1st Mortgage	Development/residential	Partially completed residential lowhouse development. 14 dwellings now completed with 12 sold and settled. Construction of remaining 27 townhouses commenced January 2012. LMP/LM is Controller acting.	Brygon Creek Road & Sunrise Crescent, Coomera Qld 4210	\$14,168,326	\$ 10,263,825	\$ 3,904,500.00			
										Yes. Developments being completed in controlling

Borrower	Security ranking	Loan type/class/ activity	Description / Comments	Location of asset	Loan balance 31/12/12	Provision	Impaired Loan Balance	Loan Delinquent	Valuation Amount	Is LMIF in Possession, Controller or Acting as POA
Coulter Developments P/L & Rocola P/L	1st Mortgage	Development/ residential now completed and in sell down	12 Completed luxury residential units in progressive sell down. 7 sold and settled, 1 under contract, 5 on market	Treviso Mews, Mandurah WA	\$9,051,015	\$ 5,385,026	\$ 3,665,988.56			Yes
Tall Trees Tanah Merah	2nd Mortgage Priority subsequent to CBA with current debt c.\$10M and asset valuations December 2012 \$42.3M	development/ retirement	Staged supported living development together with all community and administration facilities. As FMIF was unable to meet funding commitments on more recent stages, agreement was reached with CBA for it to complete funding on a cost to complete basis. CBA holds first mortgage and FMIF cedes priority. Additional collateral security held for Rochedale village (aggregate valuation \$42.3M Dec 2012)	3745-3748 Pacific Highway, Sacks Creek, Qld 4127	\$14,529,162		\$ 14,529,161.96			Yes
Australian International Investment Services Pty Ltd (AIIS)	1st Mortgage	Development/ residential	Residential development site with DA approval for 278 residential units with a 67 place child care centre. Off the plan marketing well under way with a steady sales rate being achieved. Loan expected to be refinanced by borrower prior to construction	7 Irving Street, Philip ACT 2606	\$8,317,511		\$ 8,317,511.24			Yes
Kingopen P/L	1st Mortgage	Development / retirement/ residential	3 residual development lots - Parcel 1, DA for 90 residential homes in place Parcel 2, Approval for 66 residential homes Parcel 3, DA being sought for 132 retirement/supported living dwellings	Cnr Chester Pass, Mercer & Calalina Roads, Albany WA 6330	\$11,460,740	\$ 542,801	\$ 10,917,939.00			Yes
Carneo Estates Lifestyle	1st Mortgage	development/retire ment now completed	partly completed retirement Village in Launceston, Tasmania. Existing Community Centre with 21 ILU's completed. A further 22 ILU's are to be developed to maximise the Estate. An external manager with retirement expertise has been appointed to look after the day to day operations of the village and the village has just undergone sale campaign.	30 Janefield St, Mowbray, Launceston, TAS	\$6,026,537	\$ 1,402,537	\$ 4,625,000.00			Yes
Madrers Properties (Resort Corp)	1st Mortgage	existing residential/commer cial	2 remaining retail units	32-34 Marine Pk, Kingscliff, NSW	\$3,026,263	\$ 2,172,017	\$ 854,288.16			Yes
U-Own Storage (Southbank) Pty Ltd	1st Mortgage	development/ storage facility now completed	Storage facility -strata titled - Port Melbourne Vc.	310-314 Lorimer St, South Melbourne Vc	\$ 4,186,985.98	\$ 2,971,386	\$ 1,227,600.00			Yes
LMIF atf LM Managed Performance Fund	1st Mortgage	land/ future development	residential future development site with DA for 15 dwellings.	Lots 2 and 20 Livstonia Close, Bushland Beach, Qld 4318	\$ 1,169,106.81		\$ 1,169,106.81			Yes
										To take possession will need insurance

[illegible]



ASIC

Australian Securities & Investments Commission

Commonwealth Bank Building
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Our Reference: 13-40003

14 May 2013

Russells
Level 21, 300 Queen Street
Brisbane QLD 4000
Attention: Stephen Russell
Email: SRussell@RussellsLaw.com.au

Dear Mr Russell

LM Investment Management Limited (Administrators Appointed)

I refer to ASIC's Notice of Direction (**Direction**) issued under section 912C(1) of the *Corporations Act* 2001 to your clients dated 30 April 2013.

By letter dated 1 May 2013 your office provided a partial response to this Direction on behalf of your clients. Your letter stated that your clients would respond to the Direction in relation to the other funds by 4:00pm, 3 May 2013.

I note that we are yet to receive this response. Please forward your clients' full response to the Direction by 4:00pm, 16 May 2013.

Yours sincerely,

Anne Gubbins
Senior Lawyer

RUSSELLS

23 May, 2013

Our Ref: Mr Russell/Ms Copley
Your Ref: Mr Copley

Mr Hugh Copley
Litigation Counsel, QLD
Chief Legal Office
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240 Queen Street
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Dear Mr Copley

**Bruce and Anor v LM Investment Management Limited
(Administrators Appointed) ACN 077 208 461, in its capacity as
responsible entity of the LM First Mortgage Income Fund and Anor**

For the reasons already articulated to ASIC (and subject to the qualifications set out in our letter to Ms Gubbins dated 1 May, 2013), LMIM says, in respect of each of the Funds mentioned in the Notice dated 30 April, 2013, apart from the FMI Fund, and adopting the numbering of the Notice:-

1.
 - (a) No.
 - (b) Not applicable.
 - (c) Yes.
 - (d) As soon as practicable, and in any event, the meetings should be held by 31 August, 2013.
 - (e) Not applicable.
2. Answered in our letter dated 1 May, 2013.
3. Answered in our letter dated 1 May, 2013.
4. Answered in our letter dated 1 May, 2013. The suggestion that "LMIM considers it to be in the best interest of unit holders of the FMIF not to include an alternate resolution for the winding up of the FMIF in the meeting of unit holders of the FMIF scheduled to be held on 20 [sic] May, 2013" is incorrect. LMIM and the administrators have never made such a contention and do not hold that view.

Liability limited by a scheme approved under professional standards legislation

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A winding-up initiated by a responsible entity does not involve it convening a meeting. Under section 601NC, it is up to the members to cause a meeting to be convened. The same applies to the procedure in clause 16.3 of the Constitution. The administrators do not believe that LMIM has power to convene a meeting of members to resolve to wind-up the Scheme.

Rather, the correct procedure was to do what the administrators did on 7 May, 2013 – to give the members and ASIC notice under section 601NC, and then see whether the requisite number of members wished to convene a meeting. The administrators support any procedure whereby members are consulted about the future of the Fund. They are willing to consider any proposition from ASIC as to how LMIM can convene such a meeting and are anxious to conform to any procedure that ASIC can suggest whereby the members are consulted. The administrators welcome any explanation from ASIC of any contrary view.

Yours faithfully



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