

## **Ilenna Copley**

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**From:** Ilenna Copley  
**Sent:** Tuesday, 21 May 2013 8:17 PM  
**To:** 'hugh.copley@asic.gov.au'; Anne Gubbins  
**Cc:** 'Muller, Ginette'; 'John.Park@fticonsulting.com'; Stephen Russell; 'peter.schmidt@nortonrose.com'; 'john.corbett@pelicapital.com'; Ashley Tiplady  
**Subject:** Documents for Meeting  
**Attachments:** scr\_20130471\_200.pdf; SCR\_20130471\_197.pdf; SCR\_20130471\_198.pdf; SCR\_20130471\_199.pdf

Mr Copley and Ms Gubbins

For the purpose of tomorrow's meeting at 11:30 am at your office, attached are copies of the following documents:

1. Without Prejudice Discussion Paper prepared on behalf of the Administrators, dated 21 May 2013;
2. Executive Summary of the Management and Strategy Report;
3. Marked up version of the draft Enforceable Undertakings; and
4. Clean version of the draft Enforceable Undertakings.

As referred to in paragraph 25 of the Discussion Paper, Mr Corbett will give a presentation regarding the Executive Summary of the Management and Strategy Report.

Mr Corbett will bring his own lap top, but we would be grateful if you arranged for a projector screen and cable to be available in the meeting room.

Kind regards  
Ilenna

## **RUSSELLS**

**Ilenna Copley**  
*Senior Lawyer*

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Mobile 0427 125 512  
[ICopley@RussellsLaw.com.au](mailto:ICopley@RussellsLaw.com.au)

*Liability limited by a scheme approved under professional standards legislation*

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# Executive Summary

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## **LM First Mortgage Income Fund – Investor Update**

John Park and Ginette Muller of FTI Consulting (FTI) the Voluntary Administrators of LM Investment Management Ltd (Administrators Appointed) (LMIM) as the Responsible Entity of the LM First Mortgage Income Fund (Fund) continue to work with LMIM management to prioritise the following:

- progress the orderly sale of all the remaining assets of the Fund and provide a return of investors' investment capital as quickly as possible;
- protecting asset value and ensuring the least possible disruption to investors;

FTI continues to be fully committed to providing investors with a high level of transparency and meaningful information with regards to their investment in the Fund. FTI fully appreciates the impact of the closure and decline in capital value of the Fund to individual investors over the past couple of years, together with the uncertainties created through the Voluntary Administration of LMIM.

We would like to assure investors that FTI are working to maximise the capital return of the fund in a timely manner and trust that this comprehensive fund update will provide further comfort in this regard.

## **Fund Overview**

The LM First Mortgage Income Fund ("Fund" or "FMIF") comprises a portfolio of 27 commercial loans with a historical book value of \$326,102,759 (per the last formal investor update dated 24 January 2013). The majority of these mortgages have defaulted and where this is the case FMIF is acting as mortgagee in possession.

FTI are currently conducting a review of the business and all of the LM funds to provide a comprehensive update to unit holders as a matter of priority.

## **Comprehensive Asset Strategy Review**

An asset review has been conducted to ensure that a thorough approach is being adopted across all assets to identify issues and impediments to maximising value in a timely manner. In addition, it also allows FTI to confidently deliver to the twofold primary objectives of returning investors' investment capital as quickly as commercially feasible, and also to maximise the returns to investors.

As a part of the structured review process undertaken by the FTI and LMIM asset management team, the following key tasks have been performed:

- Verified the current status of all assets to understand issues that may be impacting value or delaying the realisation process in order to directly and swiftly address all asset deterioration issues;
- Validated ownership and lending structures and identified stakeholders,
- Asset valuations were reviewed as part of each asset strategy. In many cases, the asset valuations were outdated (3 or 4 years old) and new valuations are being sought as part of our assessment process.
- Further independent expert input was sought for specific asset issues where required;

- Detailed asset and fund level cash flows were developed by determining future asset related rental income and operating expenses, development costs, sale revenues and selling costs. This information was essential to better understand the impacts of different strategies and allow fully informed decision making.
- Using above analysis and recent market data, all existing assets were reviewed and analysed to develop refined individual asset strategies. A clear and considered focus was maintained on maximising value to investors and expediting capital return.
- Based on the refined strategies, individual asset action plans were established containing clear LMIM accountabilities and timelines; and
- A total Fund level strategic plan and financial plan was developed which consolidated individual asset strategies into a total fund strategy, a repayment schedule for the Deutsche Bank facility and a schedule for the estimated timing of investor returns.

### **Asset Management Team**

A highly experienced asset management team has been overseeing LMIM management and conducting a comprehensive asset strategy review to determine individual asset strategies. Following nine weeks of review and analysis, the review of all 27 assets is now complete. During this process, FTI reviewed all asset data held by LM, conducted formal strategy sessions on the assets, conducted site visits for a number of assets and commenced third party reports as appropriate. This work has highlighted significant asset specific issues as well as portfolio control issues which are being addressed under FTI's guidance.

With the level of financial modelling and forecasting that FTI has developed to manage and monitor FMIF, we will be ensuring that, in making future distributions to FMIF investors, sufficient funds will be reserved to allow full repayment of the Deutsche Bank facility at loan maturity. FTI maintains a close dialogue with Deutsche Bank to ensure they remain fully informed and comfortable with the ongoing operations of this facility.

### **Next Steps**

From the Asset Strategy Review process, FTI has clearly established the next steps in working through the FMIF asset portfolio, including:

- Constant ongoing refinement of asset level strategic plans and financial assessments;
- Take action on the identified Quick Wins; and
- Take action to rezone identified assets in order to improve value.

The overall objectives that FTI are working towards are:

- Maximising the returns to investors from asset divestments;
- Identifying and securing opportunities to minimise costs;
- Providing for the full repayment of the Deutsche Bank facility in June 2014 (facility maturity); and
- Provide distributions of capital to investors as the fund is wound down.

## **Capital Distributions**

We understand the need to balance the needs of all investors through timely capital distributions whilst maximising these available returns and retaining sufficient cash to meet the Deutsche Bank facility expiry at 30 June 2014.

The second capital distribution will be paid as expected from the LM First Mortgage Income Fund by the end of June subject to finalisation of a new bank transfer facility (presently being implemented we expect the payment to be made by the end of June). The total will be \$4,270,690.45. Note the funds have already been fully allocated in the cash flow;

Based on FTI's asset level and fund level cash flow modelling, we continue to work on quantifying a program of regular quarterly capital distributions subject to cashflow availability and will update the investors as soon as this is ready.

## **Deutsche Bank Facility**

The Fund has a fully drawn line of credit with Deutsche Bank of \$26 million. We are working towards the previously agreed progressive reduction in the Deutsche Bank facility from the Fund cash flows to a maximum facility level of \$25 million by the end of June 2013.

FTI believe that the Deutsche Bank facility is an expensive facility; therefore, we investigated a course of action which would prioritise repayment of this facility over any capital returns to investors.

However, after careful review of the terms of the facility, it became apparent that early repayment would incur additional costs resulting in a conclusion that early repayment is not a financially viable or financially responsible option for FMIF. Accordingly the facility repayment is proposed to occur as originally planned in full at the maturity date of 30th June 2014.

## 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

Comment [SCR1]: The Act makes provision for EUs from the RE

### 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

Comment [SCR2]: LMA has nothing to do with this undertaking

**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 (the FMI 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

**Trilogy** means Trilogy Funds Management Limited ACN 080 383 679

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## 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 ~~Trilogy Funds Management Limited~~.

### *The LM Companies*

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

(a) ~~LMIM~~; and

(b) ~~LMA~~;

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

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### *The AFSL*

~~3.43.3~~ LMIM's AFSL authorised it to, among other things, operate managed investment schemes and provide financial and life insurance products.

~~3.53.4~~ On 9 April 2013, ASIC suspended LMIM's AFSL for two years.

~~3.63.5~~ 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.

~~3.73.6~~ Annexed and marked "A" is a copy of the Notice of Suspension of AFSL for LMIM's AFSL dated 9 April 2013.

~~3.83.7~~ ASIC holds the power to vary or revoke LMIM's AFSL should circumstances change.

### ***The Application***

~~3.93.8~~ On 15 April 2013, an Originating Application was filed by two ~~unitholder~~members of the FMIF (Queensland Supreme Court proceeding number 3383 of 2013). This application is currently scheduled to be heard on ~~29 April~~ 15 July, 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.

~~3.9~~ 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 by s. 601FO of the Corporations Act to call a meeting of ~~unitholder~~members of FMIF to choose a new responsible entity~~determine the future of the FMIF.~~

### **The FMI Fund Meeting**

~~3.103.10~~ LMIM has, by Notice of Meeting dated 26 April, 2013, convened a meeting of the members of the FMI Fund on 30 May, 2013 to consider whether to appoint Trilogy as Responsible Entity of the FMI Fund.

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## **4. ASIC's Concerns**

4.1 ASIC is concerned about ensuring clarity and certainty for ~~unitholder~~members 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 ~~unitholdermembers~~ of all of the LM Funds in a timely manner. This is to provide ~~unitholdermembers~~ 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~~ The Administrators have ~~procured LMIM to offer, offered, LMIM has consequently offered, and ASIC has agreed to accept, the following undertakings under section 93A of the Corporations Act.~~

**Comment [SCR3]:** Only the RE can give undertakings under s 93A

- (a) ~~The Administrators~~LMIM will convene a meeting of the ~~unitholdermembers~~ of each of the LM Funds (save for the FMI Fund)

**Comment [SCR4]:** Only the RE can convene the meeting

- (a)(b) to be held on or before ~~insert date~~31 August, 2013.

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- (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.~~

**Comment [SCR5]:** We do not understand ASIC's proposed timing.

- (c) At the meetings referred to in subparagraphs (a) and (b) above, the resolutions put to the ~~unitholdermembers~~ for determination will include resolutions for:

- (1) ~~the appointment of a new responsible entity over each of the funds, and~~

**Comment [SCR6]:** The mechanics need work

- (1) ~~whether the fund should be wound up and, if so, by whom.~~

**Comment [SCR7]:** The Act does not permit this.

- (2)(d) ~~Subject to any necessary variation of any orders or undertakings made or given on 7 May, 2013 in the said proceedings, LMIM will comply with any valid requisition from members of the FMI Fund to convene a meeting of the members of the FMI Fund to consider the proposed winding up of the FMI Fund, as soon as practicable after receipt of such a requisition or requisitions.~~

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## 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>>

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

### Section 93A

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*ACN 077 208 461*

*C/-FTI Consulting (Australia) Pty Limited*

*22 Market Street, BRISBANE QLD 4000*

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**Trilogy** means Trilogy Funds Management Limited ACN 080 383 679

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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.

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### ***The LM Companies***

3.3 On 19 March 2013, the Administrators were appointed as voluntary administrators of LMIM by resolution of the board of directors of LMIM, 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 members of the FMIF (Queensland Supreme Court proceeding number 3383 of 2013). This application is currently scheduled to be heard on 15 July, 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 by s. 601FQ of the Corporations Act to call a meeting of members of FMIF to choose a new responsible entity.

### **4. The FMI Fund Meeting**

4.1 LMIM has, by Notice of Meeting dated 26 April, 2013, convened a meeting of the members of the FMI Fund on 30 May, 2013 to consider whether to appoint Trilogy as Responsible Entity of the FMI Fund.

### **5. ASIC's Concerns**

5.1 ASIC is concerned about ensuring clarity and certainty for members in relation to the future of the LM Funds.

5.2 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 members of all of the LM Funds in a timely manner. This is to provide members with the opportunity to determine the future of the LM Funds quickly, efficiently and with the minimum of expense to the LM Funds.

## **6. Undertakings**

6.1 The Administrators have procured LMIM to offer, LMIM has consequently offered, and ASIC has agreed to accept, the following undertakings under section 93A of the Corporations Act.

- (a) LMIM will convene a meeting of the members of each of the LM Funds (save for the FMI Fund)
- (b) to be held on or before 31 August, 2013.
- (c) At the meetings referred to in subparagraphs (a) and (b) above, the resolutions put to the members for determination will include resolutions for
  - (1) the appointment of a new responsible entity over each of the funds.
- (d) Subject to any necessary variation of any orders or undertakings made or given on 7 May, 2013 in the said proceedings, LMIM will comply with any valid requisition from members of the FMI Fund to convene a meeting of the members of the FMI Fund to consider the proposed winding up of the FMI Fund, as soon as practicable after receipt of such a requisition or requisitions.

## **7. Acknowledgements**

7.1 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.



**ASIC**

Australian Securities & Investments Commission

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

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

Our Reference: 13-40003

22 May 2013

Russells  
Level 21, 300 Queen Street  
Brisbane QLD 4000  
**Attention: Ilenna Copley**  
**Email: ICopley@RussellsLaw.com.au**

Dear Ms Copley

**LM Investment Management Limited (Administrators Appointed)**

I refer to your email dated 21 May 2013, received at 8:17pm (**your email**).

ASIC agreed to meet with Ms Muller, at 11:30am today, on the understanding that the issues to be discussed followed-on from those discussed at our meeting with her on 13 May 2013, namely a proposal by your clients for structuring the administration and/or winding up of the companies and the funds in the LM group.

It is apparent from your email that you and your clients now wish to agitate issues quite beyond that.

ASIC does not wish to discuss any issues pertaining to the merits or otherwise of the current litigation. ASIC has declined to engage with Piper Alderman on these issues as we decline to do so with you and your clients. These issues are the subject of the applications currently before the Supreme Court. As such, ASIC does not intend to comment further on these issues beyond that which has already been expressed in Court.

ASIC also takes issue with some of the statements made in the Discussion Paper regarding interactions with ASIC staff. I have not had an opportunity to review the statements in detail. However, upon doing so, it may be necessary for ASIC to respond more fully.

In addition to the above, I do not have instructions to address the majority of the issues raised in your Discussion Paper. I have only had minimal time in which to

consider your paper and will be unable to obtain instructions in such a short period of time. This morning's meeting is therefore unlikely to be constructive.

ASIC officers informed Ms Muller, on 13 May 2013, that ASIC is open to hearing proposals from all parties regarding the potential structuring of the administration and/or winding up of the LM group such as would avoid unnecessary delay and expense and prioritise return of investment (such as there is) to unit holders. This remains ASIC's position. ASIC is open to discussing these matters with your clients at a future time.

Therefore I invite your clients to reschedule another meeting should they wish to discuss such matters. In this regard, it would be most helpful if your clients could respond to the queries set out in ASIC's section 912C Notice, dated 30 April 2013, in respect of those funds beyond the FMIF, which I note ASIC again sought in its letter of 14 May 2013 and to which no response has been forthcoming.

In the interim, ASIC will review your clients' Discussion Paper and respond as necessary.

Yours sincerely,



Hugh Copley  
Litigation Counsel, Qld

## **Ilenna Copley**

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**From:** Hugh Copley [Hugh.Copley@asic.gov.au]  
**Sent:** Wednesday, 22 May 2013 11:58 AM  
**To:** Ilenna Copley; Muller, Ginette  
**Cc:** Anne Gubbins  
**Subject:** RE: LM - Meeting set down for 11.30 am today with Ms Muller [SEC=UNCLASSIFIED]

**Saved:** -1

Ilenna and Ginette,

Please see paragraph 3 of the response dated 1 May 2013. ASIC remains anxious for a response concerning the other funds. Beyond paragraphs 39 and 40 of the "without prejudice" discussion paper (**the discussion paper**) and paragraph 5.1 of the amended draft EU, ASIC remains none the wiser as to the status of all the LM Funds (including the feeder funds to the FMIF).

Beyond ascertaining how your clients propose to act, once they are appointed liquidators of LM Investment Management Limited (which seems inevitable), both in respect of the FMIF and all other Funds, ASIC is not particularly interested in your clients' strategy in dealing with the assets the subject of the FMIF. This is a matter for consideration when the proceedings resume on 15 July, against the competing relief being sought by the four parties (including ASIC) in those proceedings.

Against this context, and repeating those matters set out in my letter of earlier today, I cannot see any utility in meeting today to discuss the matters contained in your email last night. I apologise for any inconvenience in this regard,

Perhaps, once the 912C Notice has been responded to in respect of all the Funds and once some consideration has been given to how and why your clients should be appointed to both the corporate entities and the FMIF, a meeting would be useful. ASIC remains open to such a meeting.

I should conclude by saying that ASIC's driver, in reducing time and expense to unitholders, also includes (to the extent possible) avoiding the sort of expense associated with the preparation of (at least) the discussion paper which appears more focused on convincing ASIC that your clients are better placed to wind up the FMIF than any competing RE/insolvency practitioner/consultant.

I hope this clarifies ASIC's position.

Hugh

**Hugh Copley** | Litigation Counsel, QLD | Chief Legal Office| **ASIC** | Level 20, 240 Queen Street, Brisbane QLD 4000 | ☎ +61 7 3867 4892 | 📠 +61 7 3867 4790 | ✉ [hugh.copley@asic.gov.au](mailto:hugh.copley@asic.gov.au)

From: Ilenna Copley <icopley@russellslaw.com.au>  
To: Hugh Copley <Hugh.Copley@asic.gov.au>  
Cc: "\"John.Park@ficonconsulting.com\"@asic.gov.au" <"John.Park@ficonconsulting.com\"@asic.gov.au>, Stephen Russell <srussell@russellslaw.com.au>, "\"peter.schmidt@nortonrose.com\"@asic.gov.au" <"peter.schmidt@nortonrose.com\"@asic.gov.au>, "\"john.corbett@pelicapital.com\"@asic.gov.au" <"john.corbett@pelicapital.com\"@asic.gov.au>, Ashley Tiplady <ATiplady@nystlawyers.com.au>, Anne Gubbins <Anne.Gubbins@asic.gov.au>, "Muller, Ginette" <Ginette.Muller@ficonconsulting.com>  
Date: 22/05/2013 11:20 AM  
Subject: RE: LM - Meeting set down for 11.30 am today with Ms Muller [SEC=UNCLASSIFIED]

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Thank you for your letter, Hugh.

For your reference, attached is a copy of the response, dated 1 May 2013, to ASIC's s912 notice, dated 30 April 2013. It may not have yet reached you.

Subsequent to that response being provided, on Monday, 6 May 2013, a notification of commencement or completion of winding up of a registered scheme, was lodged by the administrators. In light of the discussion on 23 April, Ms Muller spoke with Ms Gubbins shortly prior to lodging the notice, to keep her informed of the steps that were being taken.

The notice was issued within the 2 week period discussed with ASIC's representatives on 23 April 2013, being the period within which ASIC wished for a decision to be made regarding the winding up.

We look forward to meeting with you at 11:30 am to provide you with information regarding the administration of the Fund.

Kind regards  
Ilenna

## RUSSELLS

**Ilenna Copley**  
*Senior Lawyer*

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*Liability limited by a scheme approved under professional standards legislation*

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Telephone (07) 3004 8888 / Facsimile (07) 3004 8899 / ABN 38 332 782 534  
[RussellsLaw.com.au](http://RussellsLaw.com.au)

**From:** Hugh Copley [<mailto:Hugh.Copley@asic.gov.au>]  
**Sent:** Wednesday, 22 May 2013 10:13 AM  
**To:** Ilenna Copley  
**Cc:** "John.Park@fticonsulting.com" <"John.Park@fticonsulting.com">@asic.gov.au; Stephen Russell;  
"peter.schmidt@nortonrose.com" <"peter.schmidt@nortonrose.com">@asic.gov.au; "john.corbett@pelicapital.com" <"john.corbett@pelicapital.com">@asic.gov.au; Ashley  
Tiplady; Anne Gubbins; Muller, Ginette  
**Subject:** LM - Meeting set down for 11.30 am today with Ms Muller [SEC=UNCLASSIFIED]

Dear Ilenna,

Please see the letter **attached**.

Sincerely,

**Hugh Copley** | Litigation Counsel, QLD | Chief Legal Office | ASIC | Level 20, 240 Queen Street, Brisbane  
QLD 4000 | ☎ +61 7 3867 4892 | 📠 +61 7 3867 4790 | ✉ [hugh.copley@asic.gov.au](mailto:hugh.copley@asic.gov.au)

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[attachment "FTI Response to ASIC Notice of Directions under s912(c)(i).pdf.pdf" deleted by Hugh Copley/Brisbane/QLD/ASIC]

# RUSSELLS

24 May, 2013

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

Mr Hugh Copley  
Litigation Counsel, QLD  
Chief Legal Office  
Australian Securities & Investments Commission  
Commonwealth Bank Building  
Level 20  
240 Queen Street  
BRISBANE QLD 4000

Email: [Hugh.Copley@asic.gov.au](mailto:Hugh.Copley@asic.gov.au)

---

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**

Subject to the qualifications set out in our letter to Ms Gubbins dated 1 May, 2013, LMIM says, in respect of the LM Australian Structured Products Fund and the LM Australian Income 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.

---

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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](http://RussellsLaw.com.au)

scr\_20130471\_201.docm

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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.

Subject to the qualifications set out in our letter to Ms Gubbins dated 1 May, 2013, LMIM says, in respect of the LM Cash Performance Fund, the LM Currency Protected Australian Income Fund, and the LM Institutional Currency Protected Australian Income Fund, and adopting the numbering of the Notice:-

1.
  - (a) Yes.
  - (b) Not applicable.
  - (c) No.
  - (d) As soon as practicable.
  - (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, and above.

Yours faithfully



**Stephen Russell**  
*Managing Partner*

Direct (07) 3004 8810  
Mobile 0418 392 015  
[SRussell@RussellsLaw.com.au](mailto:SRussell@RussellsLaw.com.au)

Amy Keating

**From:** Amanda Banton <ABanton@piperalderman.com.au>  
**Sent:** Wednesday, 10 April 2013 4:05 PM  
**To:** Rodger Bacon  
**Subject:** RE: Message from "RNP002673294D07"

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Rodger,

The main selling points on this application are:

Conflict between FTI and LM  
Conflict in that you cant be in control of both funds as necessarily will mean that you have go to court etc to get instructions all the time on how to deal with the conflict.  
Conflict between FTI and LM in respect of acting in interest of fund.

If you say the second point isnt a conflict you have less of a basis to say why not FTI. There are real conflicts in being in control of both funds.

Amanda Banton  
Partner | Piper Alderman

t +61 2 9253 9929 | f +61 2 9253 9900  
[abanton@piperalderman.com.au](mailto:abanton@piperalderman.com.au) | [www.piperalderman.com.au](http://www.piperalderman.com.au)

-----Original Message-----

**From:** Rodger Bacon [<mailto:r.bacon@trilogyfunds.com.au>]  
**Sent:** Wednesday, 10 April 2013 3:50 PM  
**To:** Amanda Banton  
**Subject:** FW: Message from "RNP002673294D07"

Attached is scan of consent re Trustee for MPF.  
Originals in post.  
R'gds  
Rodger

Click <https://www.mailcontrol.com/sr/MZbqvYs5QwJvpeaetUwhCQ==> to report this email as spam.

---

\*\*\*\*\*  
WARNING: This e-mail is from Piper Alderman.

**Amy Keating**

---

**From:** Amanda Banton <ABanton@piperalderman.com.au>  
**Sent:** Thursday, 11 April 2013 7:55 AM  
**To:** John Barry; Rodger Bacon; 'intltpartners@gmail.com'  
**Cc:** Shaan Palmer  
**Subject:** Priority

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

John and rodger,

As a matter of urgency this morning and to ensure your appointment is not jeopardized to the main fund you must give us marketing material to email today with the details of contact centre.

Everyone one of the performance fund members have flatly refused overnight to have you in the performance fund. We are presently unable so say any unitholder supports you.

Amanda Banton  
Partner | Piper Alderman  
t +61 2 9253 9929 | f +61 2 9253 9900  
[abanton@piperalderman.com.au](mailto:abanton@piperalderman.com.au) | [www.piperalderman.com.au](http://www.piperalderman.com.au)

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\*\*\*\*\*

WARNING: This e-mail is from Piper Alderman.

The contents are confidential and may be protected by legal professional privilege. If you have received this e-mail in error, please reply to us immediately and delete the document.

\*\*\*\*\*

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26 March 2013

Luke Bona  
Senior Associate  
T +61 7 3244 8066  
M +61 401 732 093  
luke.bona@au.kwm.com

Philip Pan  
Partner

Mr Tim Walker  
Senior Specialist, Investment Managers &  
Superannuation  
Australian Securities & Investments Commission  
GPO Box 9827  
Sydney NSW 2001  
tim.walker@asic.gov.au

Dear Tim

**LM Investment Management Limited (Administrators Appointed) ABN 68 077 208 461 ("LMIM") and  
LM Administration Pty Ltd (Administrators Appointed) ACN 055 691 426 ("LMA")**

As you know, we act for John Park and Ginette Muller, the joint and several administrators appointed to LMIM and LMA on 19 March 2013.

We refer to the meeting on 20 March 2013 with ASIC, the administrators and ourselves. The purpose of this letter is to:

- (a) update the Australian Securities & Investments Commission ("ASIC") regarding the status of the administrations of LMIM and LMA;
- (b) update ASIC regarding the status of the administrators' enquiries into breaches of LMIM's Australian Financial Services Licence no. 220281 ("AFSL") and the Act and potential breaches moving forward; and
- (c) request, on behalf of the administrators, a suspension of the AFSL on such terms as will allow the administrators to carry out their obligations and duties under the Corporations Act 2001 (Cwlth) ("Act") and maintain, care for, preserve or wind up the trusts which LMIM is the trustee / responsible entity for, as each case requires and otherwise preserve and maintain LMIM's business for the benefit of creditors and investors during the administration period.

## 1 Status of administration

By way of update, the administrators confirm:

- (a) pursuant to section 437B of the Act, the administrators act as agents for LMIM and LMA. Whilst the trusts (including the managed investment schemes registered under Chapter 5C of the Act) which LMIM is the trustee / responsible entity for stand outside the administrations of LMIM and LMA, LMIM (together with LMA pursuant to the terms of a services agreement) continues to administer the trusts as trustee / responsible entity in accordance with the constitution for each trust and Chapter 5C of the Act (as applicable). In reliance on the authorities of *Norman, in the matter of Forest Enterprises Australia Limited (Administrators Appointed) (Receivers & Managers Appointed) v FEA Plantations Limited (Administrators Appointed) Receivers Appointed* [2010] FCA 1274, subsequently affirmed in the matter of *RiverCity Motorway Limited (Administrators Appointed) (Receivers & Managers Appointed)* (2012) 201 FCR 360, our clients are not "officers" of LMIM for the purposes of Chapter 5C of the Act;
- (b) that they have made an application to the Supreme Court of Queensland for the appointment of receivers to the LM Managed Performance Fund ("MPF") (and we note your previous advice that ASIC has no objection to this course of action for the reasons previously discussed) and for an extension of the convening period for the second meeting of creditors for each of LMIM and LMA for a period of 3 months. We enclose a copy of the administrators' originating application for your reference (please note that due to counsels' availability, the application will in fact be returnable on 11 April 2013, not 10 April 2013 as presently stated on the originating application). Whilst the administrations of each of LMIM and LMA are still in their infancy, our clients' investigations to date show that the business, property and affairs of LMIM and LMA are extensive, complex and intertwined. Our clients consider that they will require further time to enable them to properly investigate the business, property and affairs of each of LMIM and LMA and report to creditors regarding the same ahead of the second meetings of creditors. Could you please confirm that ASIC has no objection to the orders sought by the administrators in the originating application and that ASIC does not intend to appear at the hearing;
- (c) investments, redemptions and distributions are presently 'frozen' for all trusts with no new investments being accepted;
- (d) presently no insurance or other financial product advice is being given by LMIM under the AFSL;
- (e) the administrators are meeting with you tomorrow at 11.30am to discuss the status of the administration and any ASIC concerns and are willing to provide ongoing regular updates to ASIC as necessary.

## 2 Potential breaches of AFSL and Act

As you will appreciate and as stated above, the administrations of LMIM and LMA are in their infancy at this time and our clients are in the process of investigating the complex, extensive and intertwined affairs of LMIM and LMA. Our clients are, however, aware of one breach of the AFSL conditions / Act by LMIM, namely LMIM in its capacity as responsible entity of LM First Mortgage Income Fund ABN 13 089 343 288 ("MIF"), has failed to lodge the MIF's half-yearly financial report for the half-year ended 31 December 2012 and due 15 March 2013. As we understand it, the MIF's financial report has been audited by Ernst & Young and is waiting to be signed-off by LMIM's directors as it relates to a period prior to our clients' appointment.

Our clients continue to investigate the following requirements on LMIM pursuant to the AFSL and Act and will keep ASIC informed as their investigations continue:

- (a) **(NTA)** whilst the most recent financial data for LMIM suggests it continues to comply with its NTA requirements, our clients are investigating the recording of certain management fee pre-payments of approximately \$13.7M which may alter this position;
- (b) **(Key person requirements)** presently, all key persons continue to perform duties on behalf of LMIM in respect to its financial services business as expressly authorised by the administrators from time to time. This may, however, change moving forward depending on the resourcing requirements of LMIM and LMA. Our clients will endeavour to ensure that LMIM continues to comply with the Act and the conditions of the AFSL so far as it is reasonably able to. Presently, it is only envisaged that Messrs Van Der Hoven and Tickner will be retained during the administration for the purposes of the AFSL;
- (c) **(insurance)** our clients are considering LMIM's insurance position and assessing its adequacy having regard to the nature of the activities to be carried out by LMIM moving forward in caring for, preserving and winding up the trusts (as the case may be).

### 3 Suspension of AFSL

As per our discussions with you at our meeting on 20 March 2013, we understand that ASIC's preference is to suspend the AFSL with the administrators' consent given LMIM's external administration under Part 5.3A of the Act. We confirm our clients' desire to work cooperatively and constructively with ASIC and accordingly our clients are agreeable to consenting to the suspension of the AFSL, provided that the AFSL continues in effect as though the suspension had not happened for such purposes as reasonably necessary for, or incidental to:

- (a) the transfer to a new responsible entity, caring for, maintaining and preserving the assets and affairs of, or winding up, each of the trusts as the case may require;
- (b) maintaining and preserving LMIM's insurance advisory business until such time as the administrators form a view on the viability or otherwise of that business.

As discussed with you, we have previously worked with ASIC and agreed on a similar form of notice of suspension in respect of an AFSL regarding the RiverCity Motorway Group administration. We enclose a copy of the agreed form of notice of suspension in the RiverCity Motorway matter.

We would be pleased if ASIC would provide us with a draft instrument of suspension in respect to the AFSL for our clients' review and comment.

### 4 Financial reporting and other relief

As set out above, we believe that the administrators are not "officers" of LMIM for the purposes of Chapter 5C of the Act. However, if ASIC has any concerns, we are more than happy to consider other arrangements you may wish to propose to formalise any financial reporting or other relief in favour of the administrators during the administration period. We confirm that the administrators have established a dedicated investor website for this matter and will continue to address investor concerns relating to the administrations.

We look forward to hearing from you.

Yours faithfully





**ASIC**

Australian Securities & Investments Commission

9 April 2013

Mr Park and Ms Muller  
FTI Consulting  
Corporate Centre One  
Level 9  
2 Corporate Court  
Bundall QLD 4217

Level 2, 2 Allsop Street, Canberra  
GPO Box 9827 Canberra ACT 2601  
DX 5696 Canberra

Telephone: (02) 6250 3800  
Facsimile: (02) 6250 3811  
ASIC website: [www.asic.gov.au](http://www.asic.gov.au)

Dear Mr Park and Ms Muller

**LM Investment Management Limited ACN 077 208 461**  
**Suspension of Licence**

Having carefully considered all of the material before me I have decided that Australian financial service licence no. 220281 issued to LM Investment Management Limited ACN 077 208 461, that became effective on 15 July 2002, should be suspended under paragraph 915B(3)(b) of the Corporations Act 2001.

The suspension takes effect when the written notice of the suspension is given to you.

I enclose the written notice, my reasons for decision and an information sheet titled "ASIC Decisions; Your Rights".

Yours sincerely

Graeme D. Plath  
Delegate – Australian Securities and Investments Commission

**Australian Securities and Investments Commission  
Corporations Act 2001 section 915B**

**Notice of Suspension of Australian Financial Services Licence**

To: LM Investment Management Limited ACN 077 208 461  
FTI Consulting  
Corporate Centre One  
Level 9  
2 Corporate Court  
BUNDALL QLD 4217

TAKE NOTICE that under s915B(3)(b) of the Corporations Act 2001 (Act), the Australian Securities and Investments Commission (ASIC) hereby suspends Australian financial services licence number 220281 held by LM Investment Management Limited ACN 077 208 461 (Licensee) until 9 April 2015.

Under s915H of the Act, ASIC specifies that the licence continues in effect as though the suspension had not happened for the purposes of the provisions of the Act specified in Schedule B regarding the matters specified in Schedule A.

**Schedule A**


The provision by the Licensee of financial services which are reasonably necessary for, or incidental, to the transfer to a new responsible entity, investigating or preserving the assets and affairs of, or winding up of,:

1. LM Cash Performance Fund ARSN 087 304 032;
2. LM First Mortgage Income Fund ARSN 089 343 288;
3. LM Currency Protected Australian Income Fund ARSN 110 247 875;
4. LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868;
5. LM Australian Income Fund ARSN 133 497 917;
6. LM Australian Structured Products Fund ARSN 149 875 669;
7. The Australian Retirement Living Fund ARSN 162 406 162.

**Schedule B**

- (a) The provisions of Chapter 5C;
- (b) The provisions of Chapter 7, other than the provisions in Parts 7.2, 7.3, 7.4 and 7.5.

Dated this 9<sup>th</sup> day of April 2013

Signed 

Graeme Darcy Plath, a delegate of the Australian Securities and Investments Commission

## AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

**In the matter of s915B of the  
Corporations Act 2001 and  
LM Investment Management  
Limited ACN 077 208 461**

**Date of decision: 9 April 2013**

### **Decision**

**That Australian financial services licence number 220281 held by LM Investment Management Limited ACN 077 208 461 be suspended under s915B(3)(b) of the *Corporations Act 2001* until 9 April 2015**

### **STATEMENT OF REASONS**

#### **Legislative frame-work**

1. Under s915B(3)(b) of the *Corporations Act 2001* (Act) the Australian Securities and Investments Commission (ASIC) may suspend or cancel an Australian financial services licence (AFS licence) held by a body corporate, by giving written notice to the body, if the body becomes an externally-administered body corporate.
2. Under s9 of the Act an “*externally-administered body corporate*” includes a body corporate that is under administration.
3. Under s915H of the Act:  
  
*"In the written notice of suspension or cancellation that ASIC gives to the licensee, ASIC may specify that the licence continues in effect as though the suspension or cancellation had not happened for the purposes of specified provisions of this Act, in relation to specified matters, a specified period or both."*
4. I am a delegate of ASIC for the purpose of making a decision under s915B of the Act.

#### **Section 915B of the Act applies to LM Investment Management Limited**

5. Under s913B of the Act, on 15 July 2002, ASIC licensed LM Investment Management Limited ACN 077 208 461 (LMIM) as an Australian financial services licensee. ASIC issued LMIM with AFS licence no. 220281. This AFS licence (Licence) was varied on several occasions and was last varied on 7 September 2012. The Licence authorises LMIM to carry on a financial services business to:
  - (a) Provide financial product advice regarding certain classes of financial products;
  - (b) Deal in a financial product by engaging in certain activities regarding certain classes of financial products;

- (c) Operate specified registered manage investment schemes;
  - (d) Provide specified custodial or depository services.
6. Document no. 7E5097309 lodged with ASIC shows that on 19 March 2013 Mr Park and Ms Muller (**Administrators**) were appointed by LMIM as joint and several administrators of LMIM.
  7. Accordingly, on 19 March 2013, LMIM became a body corporate to which s915B(3)(b) of the Act applied.

**Appropriate to exercise discretion under s915B of the Act**

8. Under s915B(3)(b) of the Act ASIC has a discretion as to whether to suspend or cancel the Licence.
9. In *Sovereign Capital Ltd v Australian Securities and Investments Commission*<sup>1</sup> the Administrative Appeals Tribunal stated that the power to suspend or cancel an Australian financial services licence “*must be exercised having regard to the purposes of the regulatory regime*”. The Tribunal identified s760A of the Act<sup>2</sup> and s1(2) of the Australian Securities and Investments Commission Act 2001 (**ASIC Act**)<sup>3</sup> as relevant regulatory provisions. That decision dealt with ASIC’s power under s915C of the Act to suspend or cancel an AFS licence. It is appropriate to apply a similar approach to a decision under s915B of the Act.
10. In considering the regulatory regime and the objects of the legislative scheme, it is noted that s915B of the Act provides for ASIC to suspend or cancel an AFS licence where the licensee is under administration.<sup>4</sup> Parliament has decided that, as a matter of public policy, a licensee under administration is liable to have their AFS licence suspended or cancelled – nothing more is required. It is further noted that the power can be exercised without affording the licensee a hearing.
11. Although ASIC’s Regulatory Guide 98 titled “*Licensing: Administrative action against financial services providers*” (**RG 98**) does not deal specifically with factors that ASIC will take into account in making a decision whether to suspend or cancel an AFS licence under s915B, section C sets out ASIC’s general approach as to when it will take administrative action.

<sup>1</sup> [2008] AATA 901 at [81]

<sup>2</sup> Section 760A relevantly provides that Chapter 7 – “Financial Services and Markets”, is intended to promote:

(a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and

(b) fairness, honesty and professionalism by those who provide financial services; ...

<sup>3</sup> Subsection 1(2) relevantly provides that ASIC must seek to:

(a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

(b) promote the confident and informed participation of investors and consumers in the financial system; ...

<sup>4</sup> See subs (1)(b), (2)(b), (3)(b), (4)(b)(i)

12. The appointment of the Administrators occurred under s436A of the Act which operates on a company resolving that:

*"(a) in the opinion of the directors voting for the resolution, the company is insolvent, or is likely to become insolvent at some future time; and  
(b) an administrator of the company should be appointed".*

13. It is not appropriate that an entity that is insolvent, or likely to become insolvent, be licensed, under s 913B of the Act, to carry on a financial services business given that the entity's:

- (a) Failure to efficiently manage its own affairs causes concern about its ability to provide financial services efficiently;
- (b) Financial situation causes concern about its ability to finance the provision of financial services so as they are provided efficiently.

14. The basis for the concern is supported by a letter dated 26 March 2013 from "King & Wood, Mallesons", addressed to ASIC, which advised that "King & Wood, Mallesons" acted for the Administrators and, relevantly, stated:

*"LMIM in its capacity as responsible entity of LM First Mortgage Income Fund ABN 13 089 343 288 ("MIF") has failed to lodge the MIF's half-yearly financial report for the half-year ended 31 December 2012 and due 15 March 2013".*

15. Under s320(1) of the Act LMIM was required to lodge this report by 15 March 2013.

16. In these circumstances it is appropriate that the discretion be exercised and that the Licence be either suspended or cancelled.

#### **Suspension rather than cancellation**

17. In *Sovereign Capital Ltd v Australian Securities and Investments Commission*<sup>5</sup> the Administrative Appeals Tribunal said a "licence should only be suspended or cancelled if it is necessary to do so in order to accomplish the objects of the legislative scheme. A suspension will ordinarily be preferable if there is a reasonable prospect that the licence-holder can remedy the defects which prompted the concern. If there is no reasonable prospect of the issues being resolved, cancellation may be the appropriate course. The power to suspend or cancel should not be used merely to punish the licence-holder for transgressions".

18. In *Story v National Companies and Securities Commission*<sup>6</sup> Young J said in a matter concerning a dealer's licence "On the matter as to whether revocation should follow an opinion of inefficiency, various matters have to be weighed. One of these is the public interest that people should be permitted to follow a trade or profession which they are qualified to follow. Another is that the public expect those who fall short of minimum standards to be removed from the profession, at least until such time as the regulatory body can be assured that they are able to

<sup>5</sup> [2008] AATA 901 at [84]

<sup>6</sup> (1988) 13 NSWLR 661 at 686

*perform their functions efficiently. A third consideration is that the step of revocation is purely for the public benefit and is not punitive".*

19. It is possible that LMIM may cease to be an externally-administered body corporate and operate as it did prior to the appointment of the Administrators. It may at that time be appropriate that LMIM hold the Licence. In these circumstances I will, under s915B(3)(b) of the Act, prepare a written notice suspending the Licence for a period of two years.

#### **Making a specification under s915H of the Act**

20. Under s1(2) of the ASIC Act ASIC must seek to *"promote the confident and informed participation of investors and consumers in the financial system"*. It is appropriate that ASIC facilitate any decision by the Administrators of LMIM to engage in conduct that involves the:
- (a) Preservation of a registered managed investment scheme operated by LMIM;
  - (b) Transfer of the responsible entity functions concerning such a scheme to an entity that is not externally-administered; and
  - (c) The winding up of such a scheme.
21. It is appropriate that the suspension of the Licence be subject to a specification under s915H of the Act that the Licence continues in effect as though the suspension had not happened regarding:

*"The provision by LMIM of financial services that are reasonably necessary for, or incidental to the transfer to a new responsible entity, investigating or preserving the assets and affairs of, or the winding up of, [the registered managed investment schemes operated by LMIM]"*.

#### **Conclusion**

22. I will prepare a written notice under s915B of the Act suspending the Licence until 9 April 2015, subject to the specification described above.



Graeme Darcy Plath

Delegate of the Australian Securities and Investments Commission

**ASIC**

Australian Securities &amp; Investments Commission

**About ASIC > Dealing with ASIC > ASIC decisions - your rights**

## ASIC decisions - your rights

ASIC makes many decisions about corporations, securities and financial products and services that might affect you. If we have made a decision that directly affects you, you may have rights connected with the decision. This information sheet sets out an overview of your rights and how to exercise them. You may have other rights in addition to those discussed here.

**Note:** Under certain circumstances ASIC can waive late lodgement fees. If your inquiry is about withdrawing a late lodgement fee, you can find more details in the information sheet, **Fee waivers** (INFO 87).

### What can you find out from us?

#### Talk to us about the decision

**ASIC decision maker**—If you need to clarify anything relating to the decision, you may find it helpful to discuss it with the ASIC staff member who made the decision.

**Administrative Law Coordinator**—You can contact the Administrative Law Coordinator in the ASIC office you have been dealing with.

Senior Manager, Chief Legal Office  
Australian Securities & Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001

The coordinator can explain how to exercise the rights set out in this information sheet. It would be best to do this promptly because there is a 28-day time limit on some applications.

#### Get our reasons in writing

If we have not told you why we made the decision when we notified you about it, you may be entitled to ask for a written statement of reasons.

##### How to apply

You must write to the person who made the decision within 28 days of being told about the decision.

#### Ask for access to other documents

You may seek access to documents about the decision under the *Freedom of Information Act 1982*.

##### How to apply

You must apply to ASIC in writing stating clearly which documents you want to obtain. Send your application by email to **[FOIrequest@asic.gov.au](mailto:FOIrequest@asic.gov.au)** or by mail to:

Senior Manager, Administrative Law Team  
Australian Securities & Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001

Charges may be imposed for the time spent in searching for and retrieving relevant documents, decision-making time, photocopying and postage.

For more information contact the Administrative Law Team at  
[FOIrequest@asic.gov.au](mailto:FOIrequest@asic.gov.au).

### Can you get an independent review?

You may have a right to seek review of the decision by the Administrative Appeals Tribunal (AAT). The AAT is an independent body which can review some of ASIC's decisions. The AAT can, among other things:

- confirm our decision;
- vary our decision; or
- set our decision aside and replace it with its own decision.

### How to apply to the AAT

- In writing** You must apply to the AAT for review in writing. The AAT has a form for this purpose which you can use if you prefer.
- In time** You must apply for the review within 28 days of being told why the decision was made.
- Pay the fee** You must enclose the \$816.00 application fee with your application.
- If you want to apply for the application fee to be reduced or waived you can obtain the application form from the AAT.

We have also published Regulatory Guide 57 *Notification of rights of review (RG 57)* which gives more detail about your rights of review. You can also contact the Administrative Law Team to obtain a copy.

If you have any questions about the AAT's procedures and requirements, see [www.aat.gov.au](http://www.aat.gov.au), call the AAT on 1300 366 700 or write to the AAT at GPO Box 9955 in your capital city.

### If you are unhappy with how we handled your matter

- Talk to us** If you have a complaint about the way we have handled a matter, you may wish to bring your concerns to the attention of a more senior ASIC staff member than the officer with whom you have been dealing.
- Take it further** You may also have the right to complain to the Commonwealth Ombudsman. However, the Ombudsman usually prefers that you discuss your complaint with ASIC first. There is an office of the Commonwealth Ombudsman in each capital city: see your local *White Pages*. For further information call 1300 362 072 or visit [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

### Applying for compensation under the CDDA scheme

If you are not able to seek a remedy through administrative appeal, litigation or another legal mechanism, you may also wish to consider an application under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme). The CDDA scheme is an administrative scheme that allows Australian Government agencies to provide compensation when there is a moral rather than a legal obligation to do so.

For guidance on how the CDDA scheme operates, the criteria to be applied and the calculation of payments, see the Department of Finance and Deregulation website and the Commonwealth Ombudsman.

### Where can I get more information?

- ASIC on 1300 300 630
- Administrative Appeals Tribunal website at [www.aat.gov.au](http://www.aat.gov.au)
- Commonwealth Ombudsman website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au)
- Office of the Australian Information Commissioner website at [www.oaic.gov.au](http://www.oaic.gov.au)
- Department of Finance and Deregulation website at [www.finance.gov.au](http://www.finance.gov.au)

This is Information Sheet 9 (INFO 9). Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

ASIC Website: Printed 09/04/2013

Currency Protected Australian Income Fund				
Name	Position	Hours	Charge Out Rate	Charge
John Corbett	Managing Director	22.5	\$ 550.00	\$ 12,375.00
Glenn O'Kearney	Director 2	0.2	\$ 545.00	\$ 109.00
Renee Lobb	Manager 2	0.8	\$ 395.00	\$ 316.00
Aline Teixeira	Manager 1	1.1	\$ 345.00	\$ 379.50
Eloa Zuadi	Senior Accountant 2	0.3	\$ 325.00	\$ 97.50
Stuart Clancy	Senior Accountant	0.1	\$ 325.00	\$ 32.50
Benjamin Robson	Accountant	1.2	\$ 235.00	\$ 282.00
Brittany Newman	Administration	0.1	\$ 130.00	\$ 13.00
		3.8		\$ 13,604.50
First Mortgage Income Fund				
Name	Position	Hours	Charge Out Rate	Charge
Ginette Muller	Senior Managing Director	126.0	\$ 575.00	\$ 72,450.00
Ian Francis	Senior Managing Director	20.5	\$ 575.00	\$ 11,787.50
Joanne Dunn	Senior Managing Director	100.9	\$ 575.00	\$ 58,017.50
Kelly-Anne Trenfield	Senior Managing Director	24.8	\$ 575.00	\$ 14,260.00
Lachlan McIntosh	Senior Managing Director	4.0	\$ 575.00	\$ 2,300.00
Damian Bender	Managing Director	14.8	\$ 550.00	\$ 8,140.00
John Corbett	Managing Director	395.8	\$ 550.00	\$ 217,662.50
David Tommey	Managing Director	44.0	\$ 550.00	\$ 24,200.00
James Taplin	Managing Director	76.8	\$ 550.00	\$ 41,484.00
Sally McBryde	Managing Director	3.6	\$ 550.00	\$ 1,980.00
Andrew Weatherley	Director 2	17.5	\$ 545.00	\$ 9,537.50
Damien Lau	Director 2	1.9	\$ 545.00	\$ 1,035.50
Glenn O'Kearney	Director 2	20.5	\$ 545.00	\$ 11,172.50
Oliver Schweizer	Director 2	8.2	\$ 545.00	\$ 4,469.00
Lauren Morcom	Director 1	405.9	\$ 485.00	\$ 196,861.50
Christine Alterator	Director 1	0.3	\$ 485.00	\$ 145.50
James Court	Director 1	15.8	\$ 485.00	\$ 7,663.00
Ryan Zоргdrager	Director 1	196.4	\$ 485.00	\$ 95,254.00
Renee Lobb	Manager 2	113.5	\$ 395.00	\$ 44,832.50
Aline Teixeira	Manager 1	265.8	\$ 345.00	\$ 91,701.00
Eloa Zuadi	Senior Accountant 2	0.4	\$ 325.00	\$ 130.00
Mohamed Almulla	Senior Accountant 2	5.0	\$ 325.00	\$ 1,625.00
Stuart Clancy	Senior Accountant	0.1	\$ 325.00	\$ 32.50
Hanane Aitoumerri	Senior Accountant 1	75.2	\$ 285.00	\$ 21,432.00
Benjamin Robson	Accountant	28.5	\$ 235.00	\$ 6,697.50
Brittany Newman	Administration	5.2	\$ 130.00	\$ 676.00
Carly Drew	Adminstration	3.7	\$ 130.00	\$ 481.00
Jessica Downs	Adminstration	0.2	\$ 130.00	\$ 26.00
Julie Ross	Administrative	0.4	\$ 130.00	\$ 52.00
Faye Robinson	Administrative	0.3	\$ 43.00	\$ 12.90
		1976.0		\$ 946,118.40

Institutional Currency Protected Australian Income Fund				
Name	Position	Hours	Charge Out Rate	Charge
Glenn O'Kearney	Director 2	0.2	\$ 545.00	\$ 109.00
Ryan Zorgdrager	Director 1	0.4	\$ 485.00	\$ 194.00
Renee Lobb	Manager 2	0.6	\$ 395.00	\$ 237.00
Aline Teixeira	Manager 1	0.2	\$ 345.00	\$ 69.00
Stuart Clancy	Senior Accountant	0.1	\$ 325.00	\$ 32.50
Eloa Zuardi	Senior Accountant 2	0.3	\$ 325.00	\$ 97.50
Benjamin Robson	Accountant	1.2	\$ 235.00	\$ 282.00
Brittany Newman	Administration	0.1	\$ 130.00	\$ 13.00
		3.1		\$ 1,034.00

LM Investment Management Limited				
Name	Position	Hours	Charge Out Rate	Charge
Lachlan McIntosh	Senior Managing Director	4.0	\$ 575.00	\$ 2,300.00
Kelly-Anne Trenfield	Senior Managing Director	62.2	\$ 575.00	\$ 35,765.00
John Park	Senior Managing Director	91.0	\$ 575.00	\$ 52,325.00
Joanne Dunn	Senior Managing Director	146.3	\$ 575.00	\$ 84,122.50
Ian Francis	Senior Managing Director	25.0	\$ 575.00	\$ 14,375.00
Ginette Muller	Senior Managing Director	130.8	\$ 575.00	\$ 75,210.00
Anthony Quach	Senior Managing Director	21.0	\$ 566.67	\$ 11,900.07
Damian Bender	Managing Director	33.8	\$ 550.00	\$ 18,590.00
Sally McBryde	Managing Director	116.4	\$ 550.00	\$ 64,020.00
James Rogers	Managing Director	6.1	\$ 550.00	\$ 3,355.00
James Taplin	Managing Director	9.1	\$ 550.00	\$ 5,005.00
Oliver Schweizer	Director 2	39.5	\$ 545.00	\$ 21,527.50
Glenn O'Kearney	Director 2	238.4	\$ 545.00	\$ 129,928.00
Chris Baskerville	Director 2	4.9	\$ 545.00	\$ 2,670.50
Brendan Nixon	Director 2	15.8	\$ 545.00	\$ 8,611.00
Andrew Weatherley	Director 2	121.4	\$ 545.00	\$ 66,163.00
Justin Clark	Managing Director	114.4	\$ 500.00	\$ 57,200.00
David Wildman	Managing Director	24.1	\$ 490.00	\$ 11,809.00
Ryan Zorgdrager	Director 1	74.4	\$ 485.00	\$ 36,084.00
Matthew Glennon	Director 1	71.4	\$ 485.00	\$ 34,629.00
Lisa Cherry	Director 1	27.0	\$ 485.00	\$ 13,095.00
James Court	Director 1	49.0	\$ 485.00	\$ 23,765.00
Clare Birnie	Director 1	5.3	\$ 485.00	\$ 2,570.50
Christine Alterator	Director 1	43.8	\$ 485.00	\$ 21,243.00
Brett Cottam	Director 1	22.9	\$ 485.00	\$ 11,106.50
Benedict Pasco	Managing Director	108.5	\$ 466.67	\$ 50,633.33
Andrew Stokes	Director	62.7	\$ 400.00	\$ 25,080.00
Renee Lobb	Manager 2	277.2	\$ 395.00	\$ 109,494.00
Andrea Antonino-Balce	Director	55.5	\$ 380.95	\$ 21,142.73
Ben Yeung	Director	12.0	\$ 380.00	\$ 4,560.00
Patrick Ma	Director	11.3	\$ 350.00	\$ 3,955.00
Aline Teixeira	Manager 1	19.5	\$ 345.00	\$ 6,727.50
Stuart Clancy	Senior Accountant	126.8	\$ 325.00	\$ 41,210.00
Mohamed Almulla	Senior Accountant 1	53.4	\$ 325.00	\$ 17,355.00
Eloa Zuardi	Senior Accountant 2	52.2	\$ 325.00	\$ 16,965.00
Amy Williams	Senior Accountant 2	0.3	\$ 325.00	\$ 97.50

Daniel Billings	Senior Consultant	66.3	\$ 300.00	\$ 19,895.86
Matthew Wilson	Accountant	0.3	\$ 285.00	\$ 85.50
Jessica Jedynak	Senior Accountant 1	9.8	\$ 285.00	\$ 2,793.00
Hanane Aitoumerri	Senior Accountant 1	0.2	\$ 285.00	\$ 57.00
Jenny Jin	Senior Consultant	40.0	\$ 270.00	\$ 10,800.00
Ganesh Himai	Consultant	19.2	\$ 238.75	\$ 4,584.00
Lisa Ringuet	Accountant	0.8	\$ 235.00	\$ 188.00
Joel Hutchinson	Accountant	0.2	\$ 235.00	\$ 47.00
Benjamin Robson	Accountant	41.1	\$ 235.00	\$ 9,658.50
Amanda Flett	Accountant	0.8	\$ 235.00	\$ 188.00
Carlos Yu	Associate	17.0	\$ 152.38	\$ 2,590.46
Tracey Rumbold	Administration	2.6	\$ 130.00	\$ 338.00
Tayla Connolly	Administration	1.8	\$ 130.00	\$ 234.00
Sharon Campione	Administration	14.5	\$ 130.00	\$ 1,885.00
Priscilla Williams	Administration	5.6	\$ 130.00	\$ 728.00
Nicholas Remmelt	Administration	1.0	\$ 130.00	\$ 130.00
Marushka Flynn	Administration	11.8	\$ 130.00	\$ 1,534.00
Ljiljana Lemaic	Administration	0.3	\$ 130.00	\$ 39.00
Kate Mahoney	Administration	0.3	\$ 130.00	\$ 39.00
Justin Flint	Administration	0.2	\$ 130.00	\$ 26.00
Julie Ross	Administration	15.7	\$ 130.00	\$ 2,041.00
Joan Springate	Administration	15.1	\$ 130.00	\$ 1,963.00
Jessica Downs	Administration	1.6	\$ 130.00	\$ 208.00
Daniel Midgley	Administration	4.4	\$ 130.00	\$ 572.00
Claire Rees	Administration	0.7	\$ 130.00	\$ 91.00
Caroline Halcoop	Administration	2.0	\$ 130.00	\$ 260.00
Carly Drew	Administration	31.3	\$ 130.00	\$ 4,069.00
Brittany Newman	Administration	27.1	\$ 130.00	\$ 3,523.00
Ashleigh Ubank	Administration	5.5	\$ 130.00	\$ 715.00
Faye Robinson	Administration	1.6	\$ 43.00	\$ 68.80
		<b>2616.2</b>		<b>\$ 1,173,940.75</b>

**Private and Confidential**

## **LM First Mortgage Income Fund**

### **Draft Strategy Paper for the LM Loan Portfolio**

**July 2012**

The strategies contained in this paper are preliminary only and are subject to a full review of the loan portfolio before the strategy can be formalised. This information is strictly private and confidential and is not to be distributed beyond the Professional Investment Services.

## Overview

Our preliminary review of the LM First Mortgage Income Fund ('the Fund') assets (refer below) indicates that the Fund has a diverse range of assets. We understand that the status of the majority of the loans relating to those assets range from being significantly in arrears, mortgagee in possession, through to having receivers appointed.

There are a number of legal issues surrounding mortgages and the rights of first mortgagees to take control over assets. Through our experience in the Pacific First Mortgage Fund we have gained considerable experience in this area.

## Underlying Assets

### *Lifestyle Assets*

These are assets (usually luxury or hotel units) located in areas such as the Gold Coast and Far North Queensland.

### *Retirement Living Assets*

These are assets that are either completed or still to be completed and that are aged care, assisted living or larger retirement villages.

### *Subdivisions and Landbanks*

These are land subdivisions that are either in the early stages of development or have not yet commenced construction.

### *Commercial/Other*

This will predominantly include completed industrial, commercial and retail properties. These different types of assets all require different types of expertise.

## Proposed Management of the Fund and its Assets

Investors:	Philip Ryan, Justin Smart, Gary Connolly
Strategy Committee:	Philip Ryan, Peter Arnold, Paul Wood, Rohan Butcher, David Hogan
Sales Co-ordination:	Paul Wood

**Commercial Leasing:** Peter Arnold

**Property Management:** Peter Arnold

**Receivers:** Philip Ryan

▪ **Investor Relations**

While Philip Ryan will have overall co-ordination, Justin Smart (Chief Operations Officer) and Gary Connolly (Manager Client Services) will attend to all investor communications. Keeping investors up to date with the current status of the Fund, the Fund assets, and the future strategy is an important role and as such will be a high priority for Trilogy.

▪ **Strategy Committee**

The Strategy Committee will review each asset of the Fund and provide a written report that outlines the current situation and how we intend to deal with each asset. The Strategy Committee will make decisions involving leasing and sales strategies, required property improvements, and any repositioning of the property (for example bringing in a new operator for a retirement village).

Our preliminary investigations indicate that some assets would not be suitable for sale at the moment given the market and condition of the assets. Some assets will need to be improved prior to placing them on the market in order to make them more readily saleable.

▪ **Sales Co-ordination**

Given the large number and varied types of assets held by the Fund, it will be necessary for a dedicated individual to oversee the sales strategy to ensure an orderly sale process.

The assets of the Fund that are located in Port Douglas will attract a different buyer to the assets of the Fund that are located in Caboolture. As such, each asset will require a different sales agent and a different sales and marketing strategy. Paul Wood will oversee and work with sales agents to ensure that the best marketing campaign is implemented to maximise the return to investors.

Individual sales and marketing campaigns will need to be developed and implemented for each asset. Some of the issues that need to be addressed are:

- o Auctions vs. tenders  
What method of sale will generate the most interest?
- o Local agent vs. a marketing group
- o Local campaign vs. a national campaign  
Will a national campaign, while being more expensive, produce a better sale price? A local campaign may be better in some instances.
- o Types of advertising to be used  
Newspapers, web, marketers, etc - spending more money on marketing does not necessarily yield a better result.

While a full sales and marketing analysis will be undertaken on each project, we propose residual stock should not be offered for sale in one line. An "in one line sale" may achieve a quick result, but the ultimate sale price achieved may be significantly less than that achieved by selling stock individually.

▪ **Commercial Development, Property & Project Management**

Peter Arnold will oversee all leasing co-ordination and undertake property and project management where necessary on certain projects. Peter has more than 30 years' experience in commercial, industrial and retail property markets and more than 20 years' of funds management experience gained with one of Australia's leading unlisted REITs. A licensed real estate agent, Peter has expertise across all elements of the property value chain including leasing, development, management and distressed property work outs. Peter co-founded Austgrowth Property Syndicates Limited, the responsible entity for over \$230 million of syndicated commercial, industrial and retail property funds.

▪ **Legal/Receivership Co-ordination**

Philip Ryan will oversee all legal and receivership matters. Philip has been a solicitor for more than 25 years and was a partner in a Brisbane law firm for 20 years. He has significant experience predominantly in the areas of commercial and corporate law. In addition to qualifications in law, he is a Fellow of Finsia and has qualifications in mortgage lending and financial services (through Finsia). Philip deals with receivers and lawyers in his capacity as in house counsel of Trilogy in its capacity as Responsible Entity of the Pacific First Mortgage Fund (formerly City Pacific).

**Trilogy Funds Management Limited**

A significant portion of the co-ordinating role will be in investigating potential actions against officers of the incumbent responsible entity, their advisors and services providers of the Fund.

Trilogy will seek to engage outside parties to advise on and undertake certain activities for the Fund and these may include marketing, sales, leasing and development of assets where required together with legal work as specified above. Cyre Trilogy may also offer its resources to the Fund and be engaged as an outside party to facilitate these activities.

### **Preliminary Review of the Loan Portfolio**

Information publicly available on the loan book of the Fund is scant, however, we have been able to obtain some information as at April 2012. All comments in *italics* are provided by LM and are then followed by Trilogy comments and recommendations. We also note that on very few loans are comments made about the possibility of recovery of full loan amount and all outstanding interest.

LM has divided the properties between those that need to be managed out (hold - a three year timeframe) and those able to be put up for sale immediately (sell). We note that the strategies outlined by LM for some of the "hold" properties will take many years to "restore value" to the Fund.

### ***Queensland***

#### ***Residential Land Development - Yeppoon (Hold)***

*This is a multi-staged residential land development in Yeppoon. Approximately 120 lots have already been developed and sold. Twenty lots are currently completed, with builders engaged to deliver house and land packages. A Development Application is being lodged for Operational Works Approval to allow the commencement of works to deliver the next 80 lots in the project. Residual land for remaining stages makes up the balance of security held.*

#### **Trilogy's Comments:**

The developer and borrower was/is Young Land Corporation (Young). Trilogy's investigations indicate that the site is approximately 76 hectares in size and will be home to 700 houses with a small shopping precinct when completed. Given the demand in the area is low and there is a large supply of residual lots, these lots will take a number of years to be absorbed.

The property located across the road was recently taken to market by the mortgagee and sold for approximately \$5M. That same property sold a few years earlier for approximately \$35M.

We note that the borrower Young was also involved in a joint venture project located at Coomera (northern Gold Coast) called Arrowtown. This project has since been taken over by LM which was previously the joint venture partner of Young. LM is now undertaking the Arrowtown project in its own right while Young has apparently "opted out" of the Arrowtown project to concentrate on the Keppel Bay Estate.

Trilogy's Recommendation:

Further investigation is required. The project may require a joint venture partner to help develop some of the remaining stock and to give the project some momentum or alternatively sell "as is where is" (which will likely result in a significant loss).

***Mixed Use (Residential, Aged Care, Retail) - Redland Bay (Hold)***

*Redland Bay is an outer bayside suburb to the south-east of Brisbane, located on the Moreton Bay shoreline. The Fund acquired control of the large site under development when the borrower went into administration due to the credit crisis in 2009.*

*The asset is a prime site overlooking Moreton Bay. LM has adapted the main apartment block of 39 completed retirement units to form the hub of a supported-living aged care facility. Now operated by a leading aged care provider, plans are to continue to develop the facility to a 162 unit, fully serviced neighbourhood. Since commencement of operations in November 2011, commitments have been received from retirees for more than 17 units, with many of those already residing in the premises.*

*The entire site has approval for the creation of a total of 453 homes plus commercial and retail space. The balance of the allocation is intended to provide differing residential living options, along with components of retail and commercial offerings. In addition, negotiations with Local Council and State Government are underway to establish a Public Private Partnership, structured to deliver a community health and wellbeing hub on a portion of the site. The first phase of the residential component is proposed to deliver up to 109 small lot dwellings, and benefits from most required civil infrastructure already existing below and on ground. Marketing is expected to commence in mid-2012.*

Trilogy's Comments:

LM has taken over the project and engaged Tall Trees (a retirement village operator and also a borrower of the Fund) as manager of the retirement village.

A title search reveals that the previous borrower is still listed as the owner of the property. LM is stated as the first mortgagee on the title search. Valad (Valad was in a JV relationship with the previous owner/developer) and other parties also have mortgages which rank behind LM.

This asset, if taken to the market "as is where is", could require significant discounting to achieve a sale. This type of asset is extremely capital intensive due to the fact that banks are not willing to lend on these particular assets. Any purchaser would be aware of these factors and would likely offer a low price in the circumstances.

Trilogy's Recommendation:

The project requires additional investigation in order to form a view to either sell or to manage into the near future.

***Aged Care - Morayfield (Sell)***

*The security property is an established staged supported-living retirement village located at Morayfield, approximately a one hour drive north of Brisbane. Stage 1 of the village is completed, comprising 64 apartments and the community facilities. Apartments are being marketed for long term lease, with 12 apartments now occupied. Approval is in place for construction of a further 76 apartments on the site. Development of the site to its full potential is expected to produce a viable operating framework, with ultimate sale potential as a going concern supporting return of capital and income to the Fund.*

*LM has engaged the services of experienced operators within the supported-living aged care models to manage the operation.*

Trilogy's Comments:

LM has taken over the project and engaged Tall Trees (a retirement village operator and borrower of the Fund) as the manager of the retirement village.

Trilogy's Recommendation:

Trilogy's recommendation is to undertake a new marketing campaign with the aim of leasing/selling all existing unsold stock. The sale proceeds would be used to pay down the Deutsche Bank debt. It may also be necessary to engage a new operator. While the facility presents well, very few sales have been achieved to date and it may need a fresh start.

***Aged Care - Tanah Merah (Hold)***

*The security property is an established staged supported-living retirement village located on the southern outskirts of Brisbane, and on the main corridor between Brisbane and the Gold Coast. The village is owned and operated by the borrower. Stage 2 of the village has recently been completed. The current facilities comprise the community centre and 62 apartments, with 36 apartments occupied under long term lease. On completion, the village will comprise 168 apartments. LM continues to support the borrower in development of the village. Development of the site to its full potential is expected to produce a viable operating framework with substantial business value. Income will be generated for the Fund throughout the staged development.*

Trilogy's Comments:

A title search of the property shows a mortgage in favour of LM and mortgages in favour of the Commonwealth Bank and PWFC Tanah Merah Pty Ltd. While the mortgage in favour of LM is ahead of the Commonwealth Bank and the PWFC mortgage on the title search, further investigations will be required to determine if a deed of priority is in place.

Trilogy's Recommendation:

Assuming that further investigations show that the LM mortgage ranks ahead of the others mortgages, it is proposed that the borrower be closely managed until the loan facility has expired.

**NEW SOUTH WALES**

***Aged Care - Banora Point (Hold)***

*The security property is a completed supported-living retirement village located at Banora Point (South Tweed Heads) in northern New South Wales. The village comprises the community facilities and 83 apartments. On behalf of the Fund, LM has taken possession of the property and engaged an experienced operator of supported aged care living as consultant to manage the operations, and to lease the remaining 39 vacant units. It is expected that the full leasing of the individual apartments and ultimate sale of the village will see recovery of loan principal with some generation of income to the Fund.*

Trilogy's Comments:

LM has taken over the project and engaged Tall Trees (a retirement village operator and borrower of the Fund) as the manager of the retirement village.

Trilogy's Recommendation:

Trilogy's recommendation is to undertake a new marketing campaign with the aim of leasing/selling all existing unsold stock. Very few sales have been achieved to date and it may need a new marketing campaign and/or new operator.

**VICTORIA**

***Independent Retirement Living - Roxburgh Park (Hold)***

*This loan is secured by an established staged retirement village located in the Melbourne suburb of Roxburgh Park. The village focuses on providing a community for younger and more active retirees who are able to enjoy a fully independent lifestyle. The community*

*facilities are completed, with 51 dwellings currently constructed and occupied. Civil infrastructure has been completed for the remaining 144 dwellings that are to be constructed. An operational, sales and marketing agreement is in place with a national branded, specialist retirement village operator. On-site works for construction of the balance of dwellings is to commence in Q1 2012. With the current anticipated sales rates, a three year development time frame is envisaged. The asset is expected to become cash flow positive after expenditure of approximately A\$1.5 million to A\$2 million. It has been structured for a progressive reduction of debt during the ongoing development phase, with the ultimate sale of business upon completion securing recovery of outstanding debt and future entitlements to income.*

**Trilogy's Comment :**

Trilogy has very limited information about this property, however, we assume that the borrower has defaulted and LM has taken over the asset.

**Trilogy's Recommendation:**

The project requires additional investigation in order to form a view whether to sell or to manage it into the near future.

**TASMANIA**

***Independent Retirement Living - Launceston (Hold)***

*The Fund has a loan secured by an established staged retirement village in a suburb of Launceston. There are 21 completed and occupied dwellings along with associated community facilities. Residual land is also held as part of the security, to provide for development of a further 22 to 30 independent living units. With the anticipated sales rates, a two year development time frame is envisaged, with the asset expected to become cash flow positive with expenditure of around A\$700,000. This asset has been structured for a progressive reduction of debt during the ongoing development phase, with the ultimate sale of business upon completion securing the recovery of outstanding debt and future entitlements of income.*

**Trilogy's Comments:**

Trilogy has very limited information about this property, however, we assume that the borrower has defaulted and LM has taken over the asset.

Trilogy's Recommendation:

The project requires additional investigation in order to form a view whether to sell or to manage into the near future.

**ACT**

***Apartments - Woden (Hold)***

*The Fund holds a smaller loan over this residential development of 281 units in Aalto Apartments in Woden. A "soft launch" marketing campaign strictly to the local market commenced in December 2012, and yielded more than 20 pre-sale commitments. The full marketing campaign and promotional launch will take place in Q1 2012, and construction is expected to be able to commence on site in Q3/4 2012. This loan has interest serviced on a monthly basis. It is anticipated that the Fund loan will be refinanced at commencement of construction.*

Trilogy's Comments:

LM is listed on the development's web site as part of the "Aalto Team".

Trilogy's Recommendation:

LM states above that "The Fund holds a smaller loan over this residential development of 281 units in Aalto Apartments in Woden". As such, it is proposed that the borrower be closely managed until the loan facility has expired and no further loan extension be granted. This asset would be considered a sell rather than hold by Trilogy.

**WESTERN AUSTRALIA**

***Residential/Aged Care - Albany (Hold)***

*The Fund has a smaller loan secured by three adjacent parcels of land in Albany. The sites form part of the "Catalina Central Plan". Works have commenced on the first 12 residential land lots on the first parcel of land, which has development approval to provide for the delivery of a total of 96 lots. Works are expected to commence on the second parcel in Q2 2012, to provide a staged delivery of 86 grouped housing dwellings, all priced affordably at under A\$300,000.*

*The third component of the site is approved under the Catalina Central Plan for use as aged care residences. A development application is being prepared which, when approved, will allow delivery of a 150 unit supported living aged care neighbourhood. The*

*intention for this component is to negotiate a joint venture with the operation group currently providing services at similar neighbourhoods controlled by the Fund in Queensland and New South Wales. The loan will be reduced by proceeds of sales of completed lots and homes.*

**Trilogy's Comments:**

Trilogy has very limited information about this property, however, the strategy proposed by LM will take a considerably longer time to achieve.

**Trilogy's Recommendation:**

The project requires additional investigation in order to form a view whether to sell or to manage it into the near future.

### **Sale Assets**

*The Manager (LM) considers the following assets are suited to sell:*

#### **QUEENSLAND**

##### **Residential Apartments - Northern Gold Coast (Sell)**

*This asset is a high quality 119 unit development on the northern Gold Coast. It is adjacent to the Gold Coast Broadwater, with a number of units enjoying expansive Broadwater views. Forty units have been sold, with total occupancy currently in excess of 60% and 31 units producing rental income directly to the Fund. LM took direct management control of this development, removing it from the market in late 2011 to improve the presentation of the property, enhance the common facilities and employ new site management. With a market launch taking place from January 2012 viewings have increased with 7 under contract. This asset has been identified as a sale asset to generate liquidity in the Fund.*

##### **Trilogy's Comments:**

The builder took a loss on the project and in settling the final account, ended up doing a deal and owning a unit, which they currently have on the market. It is a two bedroom unit facing the bay worth around \$500,000 down from the \$650,000 original selling prices.

##### **Trilogy's Recommendation:**

The marketing of the units needs to be readdressed. At this stage, it seems that LM is taking a soft marketing strategy and is only using the web to sell the units. The low sales rate currently being achieved is reflective of the soft marketing campaign being used. We would propose implementing a more aggressive marketing strategy with the aim of selling the remaining units and applying the sale proceeds towards paying down the Deutsche Bank debt.

##### **Luxury Penthouse Apartment - Surfers Paradise (Sell)**

*The asset is a completed luxury 900sqm penthouse apartment over three (3) levels enjoying an absolute beachfront location within a Surfers Paradise premier apartment complex. Five other units which formed part of the original security have been sold over the last 12 months. The penthouse was retained to be presented under its own campaign, commencing March 2012. It is scheduled for auction end April 2012.*

Trilogy's Comments:

Trilogy believes that this asset has since sold and settled. As such, no further action is required.

***Residential Apartments - Port Douglas (Sell)***

*This asset comprises 57 x two and three bedroom residential apartments in Port Douglas. Sales activity in this location has been exceptionally slow since the onset of worldwide financial crisis, but local agents are reporting increased levels of enquiry from Q4 2011. The asset has been managed and operated as a resort, as it benefits from a high level of amenity and facilities. This allows the property to cover holding costs and deliver a return to the Fund. A marketing and sales campaign is proposed to commence to take advantage of the high season of June to November this year.*

Trilogy's Comments:

The Port Douglas real estate market has been badly affected and a few similar projects have recently been taken to the market as "Mortgagee in Possession". A fully completed property close to the subject asset is currently on the market and the 43 units are being sold "in one line".

Trilogy's Recommendation:

LM has had the asset on their books for some time and they seem to have implanted a soft marketing strategy to sell the units. We propose implementing a more aggressive marketing strategy with the aim of selling the remaining units and applying the sale proceeds towards paying down the Deutsche Bank debt.

***Residential Development Site - Townsville (Sell)***

*This is a smaller loan secured by a residential development site located at the beachside Townsville suburb of Bushlands Beach. The current Development Approval provides for delivery of 17 residential allotments in a gated community. Interest is serviced on the loan, which is intended to be refinanced prior to commencement of construction.*

Trilogy's Comments:

Trilogy has very limited information about this property, however, it is unclear if the "refinance" of the asset will clear the debt in full.

**Trilogy's Recommendation:**

This project requires additional investigation in order to form a view whether to sell or to manage it into the near future.

***Residential Townhouses - Coomera (Sell)***

*This is a mid-size development of three and four bedroom townhouses targeted at the first and second home buyer. It is located on a hillside overlooking the greater Gold Coast in the rapidly growing community of Coomera. The site benefits from an excellent location close to existing retail and educational infrastructure, and is close to the major motorway connecting the Gold Coast to the Queensland state capital of Brisbane. National marketing agent, LJ Hooker has been appointed to manage on-site sales. A full marketing launch commenced in January 2012. Activity has increased with noted interest from buyers entitled to the Queensland State Government Grant of A\$7,000 for first home buyers.*

**Trilogy's Comments:**

Trilogy has very limited information about this property, however, it is unclear if the sale of the assets will clear the debt in full.

**Trilogy's Recommendation:**

This project requires additional investigation. For the benefit of the Fund, this type of asset is the one currently achieving the most sales in the South East Queensland area.

***Student Accommodation - Cairns (Sell)***

*This asset comprises on-campus accommodation for more than 220 students at James Cook University in Cairns. There are 76 x three bedroom units with shared kitchenettes, bathrooms and common area. Current committed bookings for Semester One 2012 support 100% occupancy, providing income return to the Fund. The current strategy is to commence a campaign to sell in Q1/Q2 2013, as it will have demonstrated a stable investment return to potential purchasers.*

**Trilogy's Comments:**

Trilogy has very limited information about this property, however, it is unclear if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

This project requires additional investigation.

***Holiday Units - Surfers Paradise (Sell)***

*The Fund controls 90 hotel rooms at a 400 room, four star hotel. Operated by a leading international hotel chain, it occupies a prime location in Surfers Paradise. Each room within the hotel is individually strata titled. Occupancy rates remain high throughout the year (reporting close to full occupancy in January 2012). The operator is well-known and has an excellent reputation for such accommodation across Australia and the broader Asia Pacific region. Sales activity is slow, due to the credit liquidity constraints of the major banks for this type of property. It is the intention of LM to hold this asset whilst receiving positive income returns, until banking credit liquidity returns to this sector.*

Trilogy's Comments:

LM state that this is a "sale" asset, however, they go on to state that they intend to hold the asset "until banking credit liquidity returns to this sector", which may not occur for a long time. LM does not state if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

Although this type of asset is generally difficult to sell, a more aggressive sales strategy could result in more sales.

***Hotel - Townsville (Sell)***

*The asset is a 118 room hotel in Townsville, operated by the third largest global hotel chain under their three to four star brand. The asset formed part of a sales campaign in late 2011, with the buyer withdrawing during the latter stages of the campaign due to the Eurozone crisis. It was decided by LM to hold the asset for the short to medium term, as the Fund can benefit from the income generated by the strong net operating profit of the asset. The trading figures from the hotel illustrate solid occupancy levels and room revenues over the last two years. Occupancy forecasts by the operator for 2012/13 are positive.*

Trilogy's Comments:

LM state that this is a "sale" asset, however, they go on to state that they intend to hold the asset "for the short to medium term". This asset should be checked to see if it is

strata titled in order to sell individually. LM does not state if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

Potentially may be best put to sale now.

**NEW SOUTH WALES**

***Retail and Residential Units - Kingscliff (Sell)***

*The Fund holds security for a small loan over three completed retail units and one remaining residential apartment in Kingscliff. The retail units are available for sale or lease, and the residential units marketed for sale to allow progressive realisation of this debt during 2012.*

Trilogy's Comments:

It should not take long to finalise the sale of the remaining three completed retail units and one remaining residential apartment. LM does not state if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

Trilogy would look to undertake a marketing campaign to clear the remaining stock.

***Retail/Office - Alexandria (Sell)***

*The asset comprises 40 retail/office showroom units sized from 75sqm. It is situated halfway between the Sydney Central Business District and the airport. The development is 90% occupied, with 60% sold. The strategy of LM is to continue to lease units, which are producing yields of approximately 8% per annum, and then sell to occupiers or to investors. An auction campaign is currently underway on a number of the units.*

Trilogy's Comments:

It should not take long to finalise the sale of the remaining units. LM does not state if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

Trilogy would look to undertake a marketing campaign to lease and/or sell the remaining stock.

***Office - Belrose (Sell)***

*A commercial "green" office building, the asset is located in the suburb of Belrose which is a 30 minute drive from the Sydney Central Business District. The proposed anchor tenant, a US Tech company, withdrew from the lease in 2008. The building consists of up to 80 titles over three levels. It is currently 35% occupied, with half of the occupied units sold. Negotiations have been entered into for the sale of 18 of the individually titled areas to an owner-operator.*

**Trilogy's Comments:**

LM does not state if the sale of the assets will clear the debt in full.

**Trilogy's Recommendation:**

Trilogy would look to undertake a marketing campaign to lease and/or sell the remaining stock.

***Industrial 1 - West Sydney (Sell)***

*A completed development of 34 industrial warehouse/distribution units offering a range of floor plans across the site, from 100sqm to 2,000sqm internally, with mezzanine office space. Within 500 metres of the M7 Motorway junction in Western Sydney, the asset is located in the established and expanding industrial precinct of Glendenning. Construction was completed in 2009, with 25 of the 34 units sold. Sales for the remaining units continue.*

**Trilogy's Comments:**

LM do not state if the sale of the assets will clear the debt in full.

**Trilogy's Recommendation:**

Trilogy would look to undertake a marketing campaign to lease and/or sell the remaining stock.

***Industrial 2 - West Sydney (Sell)***

*The security is across a partially developed mixed use industrial/retail precinct in Greystanes. The location is less than 500 metres from the major arterial M4 Motorway junction, and forms the gateway property to the broader Wetherill Park estate. With subdued market conditions following the global financial crisis, works on site were*

*suspended. However, improvements in market conditions now support completion of the project on a staged basis during 2012. Marketing, to obtain sales/lease commitments to the first stage, is scheduled to commence simultaneously with the recommencement of on-site works.*

*The location and the product mix proposed in the Industrial Park would indicate that the project will see good demand from the market upon its completion.*

**Trilogy's Comments:**

LM state that this is a "sale" asset, however, they go on to state that they intend to recommence the project on a staged basis.

**Trilogy's Recommendation:**

This project requires additional investigation to determine whether further development of the site would be in the best interests of investors in the Fund.

**VICTORIA**

***Self-Storage Facility - Port Melbourne (Sell)***

*The Fund holds a small loan secured over the remaining 61 self-storage units of this purpose built facility completed in 2007. The Fund benefits from the income generated by leased units and will continue to progressively sell units to either investors or new owners.*

**Trilogy's Comments:**

LM does not state if the sale of the assets will clear the debt in full.

**Trilogy's Recommendation:**

Trilogy would look to undertake a marketing campaign to sell the remaining stock.

**WESTERN AUSTRALIA**

***Residential Apartments - South Perth (Sell)***

*This asset comprises the eight remaining three bedroom units of a 32 unit development in the prestigious suburb of South Perth. The apartments have been progressively brought to the market during 2010 and 2011. A new marketing campaign launched in early 2012, with the expectation of realising the sale of remaining units by late 2012.*

Trilogy's Comments:

LM does not state if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

Trilogy would look to undertake a marketing campaign to sell the remaining stock.

***Residential Apartments - Mandurah (Sell)***

*The LM First Mortgage Income Fund loan is secured by 12 completed luxury waterfront apartments in Mandurah, approximately a one hour drive south of Perth. The sales campaign is scheduled to commence Q2 2012, with anticipation that progressive sales will repay loan facility over a 12 to 15 month period.*

Trilogy's Comments:

LM does not state if the sale of the assets will clear the debt in full.

Trilogy's Recommendation:

Trilogy would look to undertake a marketing campaign to sell the remaining stock.

#### **Repayment of Deutsche Bank Debt**

LM has stated that the balance owing on the Deutsche Bank debt as at the 22<sup>nd</sup> of June 2012 is approximately \$41.5M. The interest rate of 15% being charged by Deutsche Bank is having a significant adverse affect on the value of the Fund. Full repayment of this debt as soon as possible is required to maximise the return to investors.

Repayment of this debt can be achieved through the sale of some of the Fund assets which have been completed. The sale of these assets, albeit at a reduced price given that the assets are in over supplied areas with limited demand, will repay the Deutsche Bank debt and greatly reduce the interest costs being incurred by the Fund.

#### **Further Investigation on some Relationships with Borrowers**

Preliminary investigations indicate that some properties/loans within the LM portfolio have different operators or developers from the original borrowers. It will be necessary to investigate the existing position of the loans and ensure that LM is still the first mortgagee on all loans.

If LM has subordinated their loan to any other financier, this may greatly affect the value of the asset as well as affect how the assets can be dealt with.