

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 /2013

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

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

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

AFFIDAVIT

I, **PAUL WOOD** of Level 10, 241 Adelaide Street, Brisbane, Queensland 4000, Lending
Manager, say on oath:

1. I refer to the affidavit I swore in these proceedings on 6 May 2013 (**My earlier affidavit**).
2. I make this affidavit in response to the evidence of the First Respondent in these proceedings, particularly:
 - (a) the affidavit of Ginette Dawn Muller sworn 2 May 2013 (**Muller affidavit**);
 - (b) the affidavit of Ilenna Maria Copley sworn 1 May 2013 (**Copley affidavit**);
 - (c) the affidavit of Bradley Vincent Hellen sworn 1 May 2013 (**Hellen report**);

AFFIDAVIT OF PAUL WOOD

Piper Alderman
Level 23, Governor Macquarie Tower, 1 Farrer Place, SYDNEY
2000

Filed on Behalf of the Applicants

Ref: AB:SB:384396
Phone No: +61 2 9253 9999
Fax No: +61 2 9253 9900

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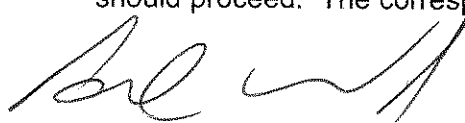
- (d) the affidavit of Kenneth James Dyer sworn 25 June 2013 (**Dyer affidavit**);
 - (e) the affidavit of John Damian Corbett sworn 26 June 2013 (**Corbett affidavit**);
 - (f) the second affidavit of Ginette Dawn Muller sworn 27 June 2013 (**second Muller affidavit**).
3. I also respond to the applications which have been filed by Mr Shotton and ASIC for the appointments of Receivers to LM FMIF.
 4. Throughout this affidavit, I make references to various documents and page numbers. Those documents are contained in a paginated bundle of documents exhibited to this affidavit and marked "PW-3 – PW-55" (the **Exhibit**) and the page numbers to which I refer are the page numbers within the Exhibit.
 5. I make this affidavit based on my own knowledge or from my review of the relevant documents referred to herein, and from my knowledge obtained whilst working at Trilogy as the lending manager.

Muller affidavit

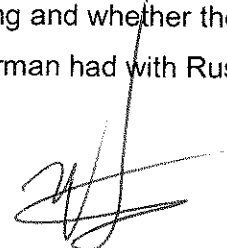
Resolution to convene a meeting of the members of the LMFMIF

6. At paragraph 14 – 18 of the Muller affidavit, Ms Muller describes the decision of LMIM to convene a meeting of the members of the LMFMIF in relation to whether LMIM should be replaced as responsible entity of the LMFMIF, and if so, whether it should be replaced by Trilogy.
7. Trilogy was provided with a USB containing the register of the members of the LM FMIF and Notice of Meeting under cover of a letter from Ms Muller dated 30 April 2013, a copy of which is exhibited and marked "PW-3" (page 1 of the Exhibit).
8. The Notice of Meeting is exhibit GDM1 to the Muller affidavit. That Notice includes an Explanatory Memorandum. Trilogy, through its solicitors, expressed concerns about the validity of the Notice of Meeting and whether the Meeting should proceed. The correspondence Piper Alderman had with Russells and then

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Norton Rose is exhibited and marked "PW-4" and are at pages 2 to 38 of the Exhibit. The correspondence comprises:

- (a) Letter from Piper Alderman to Russells dated 6 May 2013;
- (b) Letter from Norton Rose to Piper Alderman dated 8 May 2013;
- (c) Letter from Piper Alderman to Norton Rose dated 8 May 2013;
- (d) Letter from Norton Rose to Piper Alderman dated 9 May 2013;
- (e) Letter from Piper Alderman to Norton Rose dated 10 May 2013;
- (f) Letter from Norton Rose to Piper Alderman dated 10 May 2013;
- (g) Letter from Norton Rose to Piper Alderman dated 14 May 2013;
- (h) Letter from Piper Alderman to Norton Rose dated 15 May 2013;
- (i) Letter from Norton Rose to Piper Alderman dated 16 May 2013;
- (j) Letter from Piper Alderman to Norton Rose dated 20 May 2013;
- (k) Letter from Norton Rose to Piper Alderman dated 20 May 2013;
- (l) Letter from Piper Alderman to Norton Rose dated 23 May 2013, attaching Trilogy circular dated 23 May 2013;
- (m) Letter from Norton Rose to Piper Alderman dated 27 May 2013;
- (n) Letter from Piper Alderman to Norton Rose dated 3 June 2013;
- (o) Letter from Norton Rose Fulbright to Piper Alderman dated 5 June 2013;
- (p) Letter from Piper Alderman to Norton Rose Fulbright dated 6 June 2013;
- (q) Letter from Norton Rose Fulbright to Piper Alderman dated 12 June 2013.

The matters of fact raised in the correspondence from Piper Alderman are true.

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9. Trilogy also wrote to investors in the Wholesale Fund on 6 May 2013 in relation to the meeting convened by LMIM. A copy of that letter is exhibited and marked "PW-5" and is at pages 39 to 40 of the Exhibit.
10. A copy of the "Questions and Answers" document referred to in Piper Alderman's letter dated 3 June 2013 is exhibited and marked "PW-6" and is at pages 41 to 46 of the Exhibit.
11. I have seen the correspondence between ASIC and Norton Rose Fulbright in relation to the meeting which is exhibited to the affidavit of Hugh Daniel Copley sworn 11 June 2013. Trilogy only became aware of that correspondence when the affidavit of Mr Copley was served.

Trilogy's AFSL

12. I refer to paragraph 33 of the Muller affidavit. The conditions of Trilogy's AFSL were varied effective 19 June 2013. A copy of Trilogy's amended AFSL is exhibited and marked "PW-7" and is at pages 47 to 70 of the Exhibit. Trilogy is now authorised by ASIC to engage in foreign currency trading and derivatives trading.

Financial condition of Trilogy

13. At paragraph 70 of the Muller affidavit, Ms Muller refers to the hearing of a claim against Trilogy by Justice Applegarth, and the notation of a contingent liability in Trilogy's 2012 accounts in relation to that claim.
14. The claim Ms Muller refers to is a claim by Kosho Pty Limited and City Co Pty Limited against Trilogy, being proceedings numbered BS 4728 of 2010 in the Supreme Court of Queensland (**Kosho claim**). Justice Applegarth delivered his decision in the Kosho claim on 29 May 2013. A copy of the judgment is exhibited and marked "PW-8" and is at pages 71 to 141 of the Exhibit. On 26 June 2013, Justice Applegarth made orders that:

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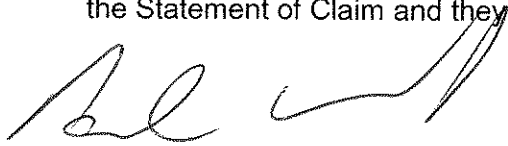


- (a) Judgment be given for the plaintiffs in the amount of \$10.00 for breach of the implied term of the contract pleaded at paragraph 17(a) of the Second Further Amended Statement of Claim filed 7 August 2012.
- (b) The plaintiffs' claim is otherwise dismissed.
- (c) The plaintiffs pay 16 per cent of the defendant's costs of and incidental to the proceedings to be assessed on the standard basis.

A copy of the orders which were filed for sealing by the Court by Trilogy's lawyers is exhibited and marked "PW-9" and is at page 142 of the Exhibit.

- 15. In the Fujino proceedings, being proceedings 10543 of 2010, which were heard with the Kosho claim, Justice Applegarth gave judgment to the plaintiffs, which included Trilogy, on 12 June 2012, as described in his Honour's judgment delivered on 26 June 2013, a copy of which is exhibited and marked "PW-10" and is at pages 143 to 150 of the Exhibit.
- 16. On 27 June 2013, the solicitors for the plaintiffs served a copy of a Notice of Appeal on Trilogy's solicitors, who then provided a copy to Trilogy. A copy of the letter from Tress Cox lawyers to Clayton Utz dated 27 June 2013, enclosing a Notice of Appeal is exhibited and marked "PW-11" and is at pages 151 to 155 of the Exhibit. Trilogy's solicitors are preparing a Notice of Cross Appeal.
- 17. Trilogy has not yet prepared its draft accounts for the financial year ended 30 June 2013. However, as the plaintiffs' claim for damages in the Kosho claim was ultimately based upon the expert evidence referred to in paragraphs 182 – 186 of the judgment of Justice Applegarth, I do not anticipate that any contingent liability in the 2013 accounts will be for the same sum as appeared in the 2012 accounts, as the plaintiffs did not ultimately seek as much by way of damages as originally claimed in the Statement of Claim. I have obtained a copy of the original Statement of Claim in the Kosho claim and it is exhibited and marked "PW-12" and is at pages 156 to 177 of the Exhibit. The allegations relating to the loss and damage said to have been suffered by the plaintiffs are set out in paragraph 59 of the Statement of Claim and they formed the basis for the contingent liability

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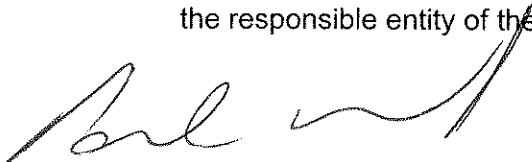
notation in the accounts. That paragraph was amended by the plaintiffs, as can be seen in paragraph 111 of the Second Further Amended Claim which is exhibit GDM12 to the Muller affidavit.

18. I have obtained a copy of the Supplemental Deed between Trilogy and the Pacific First Mortgage Fund dated 19 October 2011. That attaches a Consolidated Constitution for the Pacific First Mortgage Fund. A copy of the Deed is exhibited and marked "PW-13" and is at pages 178 to 256 of the Exhibit. Clause 6.1 contains an indemnity to Trilogy as Manager of the Fund.
19. I have also obtained a copy of a Confirmation of Trilogy's Insurance, which is exhibited and marked "PW-14" and is at pages 257 to 258 of the Exhibit.

Copley affidavit

20. In relation to the charges referred to in the table in paragraph 8(c) of the Copley affidavit:
 - (a) Charge number 201112270109633 is a charge which was granted by Austgrowth Property Syndicates Limited (**Austgrowth**) in its capacity as responsible entity of the Canberra Property Syndicate ARSN 099 015 013 (**Canberra Syndicate**) on 8 February 2006. Trilogy became the responsible entity of the Canberra Syndicate on 25 May 2011 and accordingly replaced Austgrowth as chargor. Clause 37.1 of the charge (page 147 of the Copley affidavit) contains a limitation of liability limiting liability under the charge to the property of the Canberra Syndicate. The facility which was secured by the charge was repaid on 12 October 2012. A copy of a letter Trilogy received from St George Bank dated 15 October 2012 in relation to the payout of the facility is exhibited and marked "PW-15" and is at page 259 of the Exhibit.
 - (b) Charge number 201112270109667 is a charge which was granted by Austgrowth in its capacity as responsible entity of the Brisbane Property Syndicate ARSN 1000 197 546 (**Brisbane Syndicate**). Trilogy became the responsible entity of the Brisbane Syndicate on 25 May 2011. Again,

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clause 37.1 of the charge contains a limitation of liability. The facility which was secured by the charge was repaid on 14 November 2011. A copy of a letter Trilogy received from St George Bank dated 15 November 2011 in relation to the payout of the facility is exhibited and marked "PW-16" and is at page 260 of the Exhibit.

- (c) Charge number 201112270109680 is a charge which was granted by Austgrowth in its capacity as responsible entity of the Austgrowth Property Syndicate Number 18 ARSN 104 390 016 (**Austgrowth Syndicate**). Trilogy became the responsible entity of the Austgrowth Syndicate on 25 May 2011. Again, clause 37.1 of the charge contains a limitation of liability. The balance of the facility secured by the charge is \$5,808,355.96, as indicated in a letter Trilogy received from St George Bank dated 29 October 2012, a copy of which is exhibited and marked "PW-17" and is at page 261 of the Exhibit.
- (d) Charge number 201112211438424 is an equitable mortgage and charge which was granted by City Pacific Limited in its capacity as trustee/responsible entity of the City Pacific Mortgage Trust ASRN 088 139 477, now known as the Pacific First Mortgage Fund (**Pacific Fund**). Trilogy became responsible entity of the Pacific Fund in July 2009. The property charged is described in clause 2.1 of the Equitable Mortgage (page 227 of the Copley affidavit). The charge was superseded by charge number 201112211401870, which I describe below, following a review and renewal of the facility.
- (e) Charge number 201112211401870 was granted by Trilogy in its capacity as responsible entity of the Pacific Fund. Clause 1.7 of the charge (page 259 of the Copley affidavit) contains a limitation of liability. The balance of the facility as indicated in a facsimile from the Commonwealth Bank to Trilogy dated 5 June 2013, a copy of which is exhibited and marked "PW-18" and is at page 262 of the Exhibit, is \$2,900,795.73.

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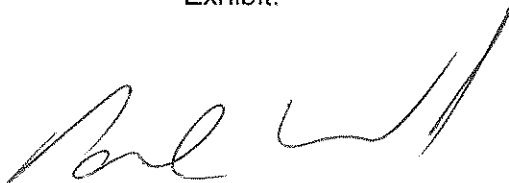


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- (f) Charge number 201112190880137 was granted by Trilogy in its capacity as responsible entity of the Trilogy First Mortgage Income Trust. Clause 4 of the charge (page 317 of the Copley affidavit) contains a limitation of liability. The facility which was secured by the charge was cancelled as is noted at page 19 of the Financial Report for the Trilogy First Mortgage Income Trust for the year ended 30 June 2012, a copy of which is exhibited and marked "PW-19" and is at pages 263 to 294 of the Exhibit.
- (g) Charge number 2011121800022182 was granted by Trilogy in its capacity as responsible entity of the Trilogy HealthCare REIT Trust ARSN 127 026 251. Clause 18.4 of the charge (page 353 of the Copley affidavit) contains a limitation of liability. The facility which was secured by the charge was repaid on 20 February 2013, as indicated on the Statement for Account for the facility, a copy of which is exhibited and marked "PW-20" and is at page 295 of the Exhibit.
- (h) Charge number 201112142094316 was granted by Trilogy in its capacity as manager, trustee and responsible entity of the Trilogy Investor Choice Medilink Property Income Syndicate ARSN 120 943 188. Clause 6 of the charge (page 371 of the Copley affidavit) contains a limitation of liability. The balance of the facility secured by the charge is \$5,206,048.16, as indicated in a letter from Westpac Banking Corporation to Trilogy dated 4 June 2013, a copy of which is exhibited and marked "PW-21" and is at page 296 of the Exhibit.
- (i) Charge number 201112180336963 is a charge granted by Trilogy in its capacity as responsible entity of the Trilogy Investor Choice Melbourne Campus Office Syndicate ARSN 112 377 009. Clause 1.4 of the charge (page 398 of the Copley affidavit) contains a limitation of liability. The balance of the facility secured by the charge is \$9,664,739.09, as indicated in a letter from St George Bank to Trilogy dated 11 June 2013, a copy of which is exhibited and marked "PW-22" and is at page 297 of the Exhibit.

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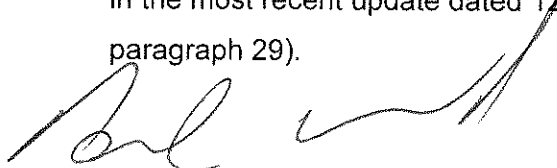


21. In relation to the charges referred to in the table in paragraph 8(d) of the Copley affidavit:
- (a) ASIC Historical Reference number 021374703 is a charge granted by Trilogy in its capacity as responsible entity of the Trilogy Investor Choice Medilink Property Income Syndicate ARSN 120 943 188. Clause 14 of the charge (page 445 of the Copley affidavit) contains a limitation of liability. The facility which was secured by the charge was repaid in January 2007, as referred to in a statement from Investec Bank to Trilogy dated 2 April 2007, a copy of which is exhibited and marked "PW-23" and is at page 298 of the Exhibit.
 - (b) ASIC Historical Reference number 021063755 is a charge granted by Trilogy in its capacity as responsible entity of the Trilogy Investor Choice Melbourne Campus Office Syndicate ARSN 112 377 009. Clause 13.2 of the charge (page 473 of the Copley affidavit) contains a limitation of liability. The facility which was secured by the charge was repaid in September 2005, as is noted on page 1 of the Financial Report for the Trilogy Investor Choice Melbourne Campus Office Syndicate for the year ended 30 June 2006, a copy of which is exhibited and marked "PW-24" and is at pages 299 to 318 of the Exhibit.

Hellen report

22. In relation to paragraphs 7.1.4-7.1.9 of the Hellen report, I repeat paragraphs 13 to 19 above.
23. In relation to paragraphs 7.1.10 to 7.1.12 of the Hellen report, Trilogy remains as responsible entity of the Pacific First Mortgage Fund. It has also become responsible entity of two other property funds previously managed by APGF in 2012 (as noted in paragraph 5 of my earlier affidavit) and that has generated income for Trilogy. Trilogy has met the covenants in the funding facility referred to in paragraph 7.1.12 of the Hellen report and that was confirmed to unitholders in the most recent update dated 12 June 2013 (which I refer to below at paragraph 29).

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24. In relation to paragraph 7.1.13 of the Hellen report, I am aware from reviewing Trilogy's bank statements that the payments referred to in note 19 in Trilogy's financial statements for the year ended 30 June 2012 were made on 28 December 2012. A copy of Trilogy's bank statement for the period 20 December 2012 to 18 January 2013 (with other unrelated transactions redacted) is exhibited and marked "PW-25" and is at pages 319 to 321 of the Exhibit.

Dyer affidavit

25. As I have stated in paragraph 8 above, Trilogy held concerns about the validity of the meeting which had been convened by the First Respondent and instructed its solicitors to raise those matters in correspondence with the solicitors for the First Respondent.
26. Trilogy also encouraged the unit holders of the Wholesale Fund not to participate in the meeting convened by the First Respondent. That was for a number of reasons set out in Piper Alderman's correspondence with Norton Rose Fulbright (and its predecessor firm) and in Trilogy's circulars. In summary, the reasons Trilogy did not participate in the meeting, did not provide its consent to be appointed responsible entity via the meeting, and encouraged unit holders not to participate were because:
- (a) the application by Mr and Mrs Bruce was made nearly two weeks before the meeting was convened by notice dated 26 April 2013. That application raises a number of issues that would not be determined by the meeting, including whether the First Respondent can remain as responsible entity given the restrictions on its AFSL and whether it is meeting the requirements as to capital adequacy required by ASIC of those entities operating as responsible entities of registered managed investment schemes;
 - (b) the First Respondent did not seek Trilogy's consent at any time;
 - (c) Trilogy did not want to circumvent these proceedings; and

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- (d) there was some doubt as to whether the meeting had been validly convened (as set out in the correspondence between the solicitors) and Trilogy did not want to appointed by a mechanism which might be subject to a later challenge.

Corbett affidavit and second Muller affidavit

Report by Responsible Entity

27. I have reviewed the Corbett affidavit and the "Report by Responsible Entity" which is exhibited to the Corbett affidavit (**Report**). I have also read the second Muller affidavit.
28. The work undertaken by the staff of FTI and Ms Muller as described in paragraph 9 of the Corbett affidavit is the type of work which Trilogy and its related companies have undertaken when it has taken over as responsible entity of existing funds, such as the Pacific First Mortgage Fund.
29. Exhibited and marked "PW-26" (pages 322 to 337 of the Exhibit) is a copy of the most recent update to unitholders of the Pacific First Mortgage Fund dated 12 June 2013 which describes the work undertaken in relation to that fund, including negotiations with the fund's financiers, litigation against former directors and officers of the former responsible entity, and realising assets in an orderly way.
30. At paragraph 2.10 of the Report, it is noted that the administrators of the First Respondent are working towards the previously agreed reduction in the Deutsche Bank facility to a required maximum of \$25 million by the end of June 2013. That would be that at the time that the facility is due to be paid out (30 June 2014), a payment of \$25 million plus interest will be required. If the facility remains fully drawn for the 12 months to 30 June 2014, interest would be \$3.75 million at the rate of 15 per cent. I note that the administrators intend to repay the Deutsche Bank facility by June 2014, according to paragraph 61 of the second Muller affidavit. I also note that the administrators anticipate no further external funding, according to paragraph 61 of the second Muller affidavit. That means that the ability to repay the Deutsche Bank facility will depend upon the cash on hand, the

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sale of assets and the costs associated with improving the existing assets and/or the monthly operating expenses of the assets.

Books and Records

31. I refer to paragraphs 8 – 10 of the second Muller affidavit. I am aware of the letters referred to in paragraph 10. Ms Muller has stated in paragraph 64 of the Muller affidavit that there are 2400 archived boxes of records in storage. Trilogy has not accepted the offer to inspect the books and records while these proceedings are still underway as it considers that it should not be expected to undertake or fund investigations into possible claims against LMIM which should properly be undertaken by the responsible entity, especially when undertaking a search of the books and records, given the volume of material, would be a very costly and time intensive exercise. Trilogy asked Piper Alderman to respond to the letters referred to in paragraph 10 of the second Muller affidavit. Exhibited and marked "PW-26A" (pages 337A to 337B of the Exhibit) is a copy of the letter sent by Piper Alderman to Russells dated 8 July 2013.

Possible conflicts/investigations

32. I refer to paragraphs 12 – 22 of the second Muller affidavit.
33. In relation to paragraph 16, Trilogy would investigate not only whether there are potential claims against current or former officers of LMIM but also whether there is a claim against LMIM itself. Ms Muller has not explained how she and Mr Park could, in their position as administrators and therefore in control of LMIM, bring a claim against LMIM.
34. In relation to paragraph 17:
- (a) exhibited and marked "PW-27" (at pages 338 to 385 of the Exhibit) is an entire copy of the LM FMIF Product Disclosure Statement dated 10 April 2008, an extract of which I referred to in paragraph 43(a) and (b) of my earlier affidavit;

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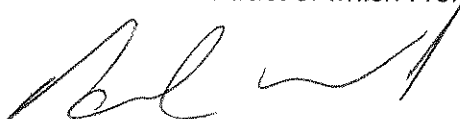


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- (b) exhibited and marked "PW-28" (at pages 386 to 395 of the Exhibit) is a copy of the ASIC Benchmark Disclosure and Update for Investors dated 9 April 2010, an extract of which I referred to in paragraph 43(c) of my earlier affidavit;
- (c) exhibited and marked "PW-29" (at pages 396 to 408 of the Exhibit) is a copy of the ASIC Benchmark Disclosure and Update for Investors dated 2 September 2010, an extract of which I referred to in paragraph 43(d) of my earlier affidavit;
- (d) exhibited and marked "PW-30" (at pages 409 to 420 of the Exhibit) is a copy of the Update for Investors and ASIC Benchmark Disclosure dated 24 August 2011, an extract of which I referred to in paragraph 43(e) of my earlier affidavit;
- (e) exhibited and marked "PW-31" (at pages 421 to 430 of the Exhibit) is a copy of the ASIC Benchmark Disclosure for Investors dated 31 December 2012, an extract of which I referred to in paragraph 43(f) of my earlier affidavit;
- (f) exhibited and marked "PW-32" (at pages 431 to 482 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2008, an extract of which I referred to in paragraphs 44 and 46 of my earlier affidavit;
- (g) exhibited and marked "PW-33" (at pages 483 to 505 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2003, an extract of which I referred to in paragraph 46 of my earlier affidavit;
- (h) exhibited and marked "PW-34" (at pages 506 to 531 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2004, an extract of which I referred to in paragraph 46 of my earlier affidavit;
- (i) exhibited and marked "PW-35" (at pages 532 to 566 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2005, an extract of which I referred to in paragraph 46 of my earlier affidavit;

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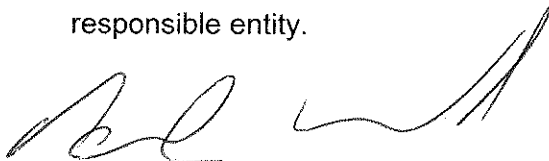


- (j) exhibited and marked "PW-36" (at pages 567 to 608 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2006, an extract of which I referred to in paragraph 46 of my earlier affidavit;
 - (k) exhibited and marked "PW-37" (at pages 609 to 648 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2007, an extract of which I referred to in paragraph 46 of my earlier affidavit;
 - (l) exhibited and marked "PW-38" (at pages 649 to 700 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2009, an extract of which I referred to in paragraph 46 of my earlier affidavit;
 - (m) exhibited and marked "PW-39" (at pages 701 to 755 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2010, an extract of which I referred to in paragraph 46 of my earlier affidavit;
 - (n) exhibited and marked "PW-40" (at pages 756 to 811 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2011, an extract of which I referred to in paragraph 46 of my earlier affidavit;
 - (o) exhibited and marked "PW-41" (at pages 812 to 861 of the Exhibit) is a copy of the Annual Report of LM FMIF for the year ended 30 June 2012, an extract of which I referred to in paragraph 46 of my earlier affidavit.
35. In relation to paragraph 21(a), as I noted in paragraph 49 of my earlier affidavit, Trilogy would investigate all the related party transactions, not just those between LM FMIF and LMIM or LMA relating to prepaid fees.

Deutsche Bank Facility

36. I refer to the Deutsche Bank Facility exhibited to the second Muller affidavit.
37. I am aware that Mr Bacon, the Deputy Chairman of Trilogy, and Mr Barry, a director of Trilogy have introduced themselves to representatives of Deutsche Bank. Trilogy intends to seek the approval of Deutsche Bank to be appointed as responsible entity.

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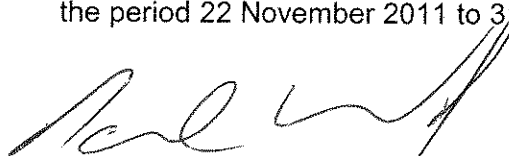
Alleged waste/duplication of work

38. I refer to paragraph 90 of the second Muller affidavit. I do not agree that the work that has been undertaken by FTI will be wasted as Trilogy will be able to use the work which FTI has undertaken. For example, I note that the administrators have obtained a number of third party valuations of assets and have prepared cash flows and detailed analyses of the assets and loans. Trilogy would use that material if it were appointed responsible entity.
39. The fees which Trilogy would charge as responsible entity if it were appointed are capped at 1.5 per cent of the gross assets under management. Until such time as the current value of those assets is ascertained, I cannot say how much that fee would be in dollar value. This fee structure means that the fee paid to Trilogy reduces as asset values reduce. Both Trilogy and the unitholders therefore have an interest in maximising the value of assets.

Applications for the appointment of a receiver

40. At paragraph 3 of the affidavit of David Robert Walter Tucker sworn 29 April 2013, Mr Tucker notes that Mr Shotton is concerned about the appointment of a new responsible entity to the LM FMIF for reasons of cost and independence, and would prefer the appointment of a receiver.
41. I have caused to be obtained from the website of Equititrust Limited information about the fees and charges to the Equititrust Income Fund, which has a responsible entity, a receiver and a liquidator.
42. Exhibited and marked "PW-42" (at pages 862 to 864 of the Exhibit) is a copy of the order of Justice Applegarth made 23 November 2011 appointing Mr David Whyte as receiver of the property of the Equititrust Income Fund and the Equititrust Priority Class Income Fund.
43. Exhibited and marked "PW-43" (at page 865 of the Exhibit) is a copy of the order of Justice Mullins made 25 October 2012 fixing the remuneration of Mr Whyte for the period 22 November 2011 to 31 August 2012.

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44. Exhibited and marked "PW-44" (at pages 866 to 873 of the Exhibit) is a report to investors from the receiver dated 9 November 2012.
45. Exhibited and marked "PW-45" (at pages 874 to 885 of the Exhibit) is a report to investors from the receiver dated 4 January 2013.
46. Exhibited and marked "PW-46" (at pages 886 to 896 of the Exhibit) is a report to investors from the receiver dated 28 February 2013.
47. Exhibited and marked "PW-47" (at pages 897 to 905 of the Exhibit) is a report to investors from the receiver dated 18 April 2013.
48. Exhibited and marked "PW-48" (at page 906 of the Exhibit) is a copy of the orders made by Justice Douglas on 12 June 2013 fixing the remuneration of Mr Whyte for the period 1 September 2012 to 30 April 2013.
49. Exhibited and marked "PW-49" (at pages 907 to 970 of the Exhibit) is a report to creditors by then then administrators dated 12 April 2012. I have only included the annexures to that report which relate to remuneration of the administrators.
50. Exhibited and marked "PW-50" (at pages 971 to 978 of the Exhibit) is a report to investors by the liquidators dated 4 February 2013.
51. Exhibited and marked "PW-51" (at pages 979 to 981 of the Exhibit) is a report to investors by the liquidators dated 28 February 2013.
52. Exhibited and marked "PW-52" (at pages 982 to 984 of the Exhibit) is a report to investors by the liquidators dated 25 March 2013.
53. Exhibited and marked "PW-53" (at pages 985 to 990 of the Exhibit) is a report to investors by the liquidators dated 23 April 2013.
54. Exhibited and marked "PW-54" (at pages 991 to 994 of the Exhibit) is a report to investors by the liquidators dated 28 May 2013.

Signed:



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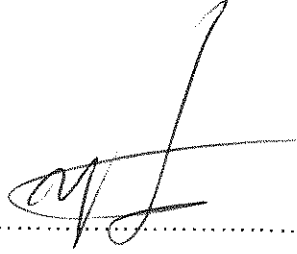


55. Exhibited and marked "PW-55" (at pages 995 to 996 of the Exhibit) is a report to investors by the liquidators dated 12 June 2013.

SWORN by **PAUL WOOD** on 8 July
2013 in Brisbane Queensland in the
Presence of:



Deponent



Witness

Name: *Denis Benthie*

Solicitor/~~Justice of the Peace~~

Signed:



Taken By:



IN THE SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 3383 of 2013

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

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

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

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Filed on behalf of Piper Alderman and Trilogy
Funds Management Limited
Form 9 Rule 31

Piper Alderman
Level 23
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
Tel: +61 2 9253 9999
Fax: +61 2 9253 9900
Ref: AKB.384396

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IN THE SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
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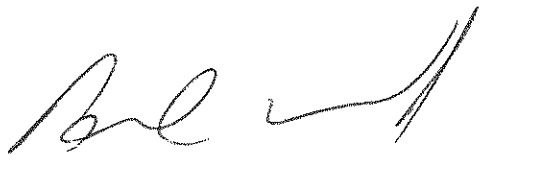
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EXHIBIT CERTIFICATE

Bound and marked "PW-3" to "PW-55" are the exhibits to the affidavit of PAUL WOOD sworn
8 July 2013



Deponent

Solicitor

Note: If the affidavit is taken under Rule 433, the Deponent does not sign.

CERTIFICATE OF EXHIBIT

Filed on behalf of Piper Alderman and Trilogy
Funds Management Limited
Form 47 Rule 435

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