

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

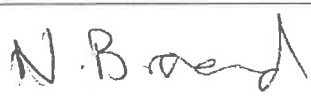
Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

AFFIDAVIT

JARROD VILLANI of Level 14, 12 Creek Street, Brisbane in the State of Queensland,
chartered accountant, states on oath:

Introduction

1. I am a partner and authorised officer of KordaMentha, the accounting firm representing KordaMentha Pty Ltd ("**Trustee**") the trustee of the LM Managed Performance Fund ("**MPF**").
2. I am duly authorised by Messrs Korda and Mentha, the directors of the Trustee, to swear this affidavit on its behalf.
3. Except where otherwise indicated, the matters deposed to in this affidavit are deposed to from my own personal knowledge of the facts and circumstances. Where I depose to matters from information and belief, I believe those matters to be true.
4. This affidavit is sworn in support of:
 - (a) an originating application ("**S 96 Application**") by the Trustee for directions pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**") as to

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Signed: 	Taken by: 

AFFIDAVIT OF JARROD VILLANI

Filed on behalf of the Applicant

Form 47 Rule 431

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NYB DOB 407747729

whether it is justified in prosecuting two proceedings (the First Proceeding and the Second Proceeding) against the LM Investment Management Limited (Receivers and Managers appointed)(in Liquidation) (ACN 077 208 461) ("LMIM");

- (b) an application by the Trustee pursuant to s500(2) of the *Corporations Act 2001* (Cth) in Supreme Court of Queensland Proceeding No. 8032/14 (**First Proceeding**); and
- (c) an application by the Trustee pursuant to s500(2) of the *Corporations Act 2001* (Cth) in Supreme Court of Queensland Proceeding No. 8034/14 (**Second Proceeding**).

5. I previously swore two affidavits in this proceeding on:

- (a) 1 June 2015, and filed in this proceeding on that date as Court file document number 5; and
- (b) 4 June 2015, and filed in this proceeding on 5 June 2015 as Court file document number 7 ("my 4 June 2015 affidavit").

The Trustee's opinion

6. In my 4 June 2015 affidavit:

- (a) at paragraph 47(b), I swore that:

'if the Trustee's claim in the First Proceeding is successful, the estimated net benefit after the payment of fees and costs will be approximately \$8.68M (the amount claimed minus \$1,047,089.31, being the estimated total of the Trustee's fees and legal expenses up to and including a trial) (excluding judgment interest). This would represent a 188% increase to the current asset pool of the MPF, from approximately \$4.6M to \$13.28M';

- (b) at paragraph 47(c), I swore that:

'if the Trustee's claim in the Second Proceeding is successful, the estimated net benefit after the payment of fees and costs will be approximately \$17.47M (the amount claimed minus \$1,080,422.62, being the estimated

total of the Trustee's fees and legal expenses up to and including a trial) (excluding judgment interest). This would represent a 380% increase to the current asset pool of the MPF, from approximately \$4.6M to \$22.07M'.

7. After swearing my 4 June 2015 affidavit I was informed by my solicitors that:
 - (a) in paragraph 47(c), the figure of \$17.47M was stated in error and that the correct figure was \$18.47M;
 - (b) the following expenses were inadvertently not included in the calculation of legal costs and expenses:
 - (i) tax invoice in the amount of \$8,167.50 (including GST) for Counsel's fees in respect of the First Proceeding; and
 - (ii) tax invoice in the amount of \$8,085.00 (including GST) for Counsel's fees in respect of the Second Proceeding.
8. There are a number of further factors that will or might affect the final net amount payable to the Trustee (leaving aside Supreme Court interest) in the event that the First Proceeding and the Second Proceeding are entirely successful.
9. In the First Proceeding those factors, as I presently understand them, are:
 - (a) \$2,544,128.56 ex GST being the net proceeds received by LMIM atf MPF for the sale of the three lots ("Property") pleaded at paragraph 71 of the statement of claim (for clarity, the Property has been pleaded not the sale thereof);
 - (b) \$3,933,750.76 being the sum pleaded at paragraph 71(f) of the statement of claim and received by LMIM atf MPF for, in simple terms, subordinating its security position over the Property to LMIM as trustee for the AIFCP;
 - (c) \$84,670.76 being rent received by LMIM atf MPF for the Property (my understanding is that this payment was net of expenses but this has to be verified);

- (d) \$1,921,864.48 being interest paid to the defendant in the First Proceeding under clause 4.3 of the Assignment Deed (the clause but not the amount is pleaded at 74(b) of the statement of claim). Due to the way in which this interest was paid, I have had to apportion the interest between the First Proceeding and the Second Proceeding;
 - (e) the payment to the Trustee's litigation funder (I address this in more detail below).
10. In the Second Proceeding those factors, , as I presently understand them, are:
- (a) \$4,160,855.08 plus GST being the net proceeds received by LMIM atf MPF for the sale of the Cattai Property pleaded at paragraph 56(e) of the statement of claim (or potentially the gross amount which is \$4,357,000 ex GST);
 - (b) \$3,861,201.54 being interest paid to the defendant in the Second Proceeding under clause 4.3 of the Assignment Deed (the clause but not the amount is pleaded at paragraph 59(b) of the statement of claim). Due to the way in which this interest was paid, I have had to apportion the interest between the First Proceeding and the Second Proceeding;
 - (c) the payment to the Trustee's litigation funder.
11. Exhibit 'JV-1' is a true copy of a settlement deed between PTAL, the Trustee, LMIM and its liquidators. Pursuant to this settlement deed, the Trustee received \$50,000.00. I do not consider this to be a relevant factor but I refer to it for completeness.
12. I have not sought in this affidavit to re-calculate the net return calculation to the MPF because it is affected by confidential information concerning the litigation funder.
13. However, after taking these matters into account, the Trustee continues to hold the opinion sworn to at paragraphs 46 to 48 of my 4 June 2015 affidavit.

Litigation Funding

14. As foreshadowed in my 4 June 2015 affidavit the Trustee has sought litigation funding for the First Proceeding and the Second Proceeding.
15. The Trustee contacted three different litigation funders. The Trustee has been negotiating with two of those litigation funders regarding the commercial terms of a potential funding agreement.
16. Based on commercial reasons, the Trustee has chosen IMF Bentham Limited ("IMF") as the preferred litigation funder.
17. A final agreement has not been reached with IMF but the Trustee has reached consensus on the commercial rate of funding and other essential terms. Those terms are confidential but will be communicated to the Court and to the unitholders of the MPF in a secure manner.
18. Should the Court give directions that the Trustee is justified in prosecuting the two proceedings, the Trustee will formalise the arrangements with IMF.

Upload to the Trustee's website

19. The Trustee's records show that as at 3.39 pm on 4 June 2015, a pdf copy of:
 - (a) S 96 Application;
 - (b) Application within the S 96 Application for directions about service;
 - (c) Affidavit of Jarrod Villani sworn 1 June 2015 in support of the application for directions about service;
 - (d) Order made on 29 May 2015;
 - (e) Claim and Statement of Claim filed in proceeding S8032 of 2014;
 - (f) Claim and Statement of Claim filed in proceeding S8034 of 2014;
 - (g) Affidavit of David Thomas O'Brien sworn 4 June 2015;
 - (h) Statement of Facts drawn in Proceeding No. 8032 of 2014;
 - (i) Statement of Facts drawn in Proceeding No. 8034 of 2014; and

- (j) Affidavit of Jarrod Villani sworn 4 June 2015 in support of the S 96 Application,

were uploaded on the Trustee's website whose address is:

<http://www.kordamentha.com/creditor-information/australia/109>. Exhibit '**JV-2**' is a true copy of the relevant page of the Trustee's website printed on 9 June 2015.

Notice to unitholders

20. On 4 June 2015 at approximately 3.54 pm, the Trustee sent by email to the Trustee's mailing list for the MPF unitholders a notice informing them that:
- (a) the Trustee has filed the S 96 Application in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in prosecuting Supreme Court Proceedings S8032/14 and S8034/14 against LMIM; and
 - (b) the substantive Court documents pertaining to the S 96 Application have been uploaded on the Trustee's website whose address is:
<http://www.kordamentha.com/creditor-information/australia/109>,
("**4 June 2015 email**").
21. Exhibit '**JV-3**' is a true copy of the 4 June 2015 email.
22. The Trustee has identified 258 automatic undeliverable email responses ("**the 4 June 2015 automatic email responses**") received in response to that 4 June 2015 email.
23. The 4 June 2015 automatic email responses referred to 322 email addresses ("**322 email addresses**"), some of which were referred to more than once. The reason the number of email addresses affected is different to the number of 4 June 2015 automatic email responses is because:
- (a) the Trustee received more than one automatic response email from the same address but I do not know why this occurred; and
 - (b) some of the 4 June 2015 automatic email responses contained notifications in relation to multiple email addresses.

24. On 5 June 2015, the Trustee sent, by post, 285 copies of the 4 June 2015 email to postal addresses that could be traced directly to at least 259 unitholders.
25. Of the 285 copies of the email that were posted, 26 were posted to an address linked to a domain of a particular email address (e.g. Citco.com) of the 322 email addresses. It is not possible to isolate the unitholders to which these domain names directly relate.

Response to 4 June 2015 email

26. Exhibit '**JV-4**' is a true copy of the five substantive responses received to date from unitholders in response to the 4 June 2015 email. The responses exhibited at JV-4 range from acknowledging the Trustee's application to asking questions about when the investors will receive any money. One response relates to a request to be removed from the mailing list.

16 June Adjournment Notice to Unitholders

27. On 16 June 2015 at approximately 12.20 pm, the Trustee sent by email to the MPF unitholders a notice informing them that it had become necessary to adjourn the hearing referred to in the 4 June 2015 email from 17 June 2015 to 13 July 2015 so that more information could be obtained about litigation funding ("**16 June 2015 email**").
28. Exhibit '**JV-5**' is a true copy of the 16 June 2015 email.
29. The Trustee has identified 261 automatic undeliverable email responses ("**the 16 June 2015 automatic email responses**") received in response to that 16 June 2015 email.
30. The 16 June 2015 automatic email responses referred to 327 email addresses ("**327 email addresses**"), some of which were referred to more than once. The reason the number of email addresses affected is different to the number of 16 June 2015 automatic email responses is because:
- (a) the Trustee received more than one automatic response email from the same address but I do not know why this occurred; and

- (b) some of the 16 June 2015 automatic email responses contained notifications in relation to multiple email addresses.
31. On 18 June 2015, the Trustee sent, by post, 289 copies of the 16 June 2015 email to postal addresses that could be traced directly to at least 261 unitholders.
32. Of the 289 copies of the 16 June 2015 email that were posted, 26 were posted to an address linked to a domain of a particular email address (e.g. Citco.com) of the 327 email addresses. It is not possible to isolate the unitholders to which these domain names directly relate.

Response to 16 June 2015 email

33. Exhibit 'JV-6' is a true copy of the eight substantive responses received to date from unitholders in response to the 16 June 2015 email.
34. The responses exhibited at JV-6 range from asking questions about when the investors will receive any money to administrative responses about changing contact details or being removed from the mailing list.

8 July Adjournment Notice to Unitholders

35. On 8 July 2015 at approximately 10:53 am, the Trustee sent by email to the MPF unitholders a notice informing them that it had become necessary to adjourn the hearing referred to in the 16 June 2015 email from 13 July 2015 to 23 July 2015 so that more information could be obtained about litigation funding ("**8 July 2015 email**").
36. Exhibit 'JV-7' is a true copy of the 8 July 2015 email.
37. The Trustee received automatic undeliverable email responses in response to that 8 July 2015 email. The Trustee undertook a similar process of sending copies of the 8 July 2015 email as it did for the 16 June 2015 email.
38. Even where a unitholder has requested to be removed or unsubscribed from the Trustee's mailing list, the Trustee still sends emails to that unitholder.

Notice to Residual Unitholders

39. In my 4 June 2015 affidavit, I refer to the Residual Unitholders who were not included on the Trustee's mailing list until in or about June 2015.
40. On 4 June 2015 at approximately 11.38 am, the Trustee sent an email to the Residual Unitholders informing them, among other things, that:
- (a) the Trustee has been involved in a number of different Court proceedings, involving the management of the LM Managed Performance Fund ("**the Fund**");
 - (b) their email address was not included in an email listing provided by the former trustee, and that they were not sent an email notifying them of certain information pertaining to the Fund; and
 - (c) although relevant Court documents have previously been made available on the Trustee's website (and are still available), a new information package is available on the Trustee's website, whose address is <http://www.kordamentha.com/creditor-information/australia/109>.
41. Exhibit '**JV-8**' is a true copy of the email sent to Residual Unitholders on 4 June 2015.

Insurance policy

42. I seek leave to refer to two affidavits that I previously swore in related proceedings:
- (a) my affidavit sworn on 11 June 2015 and filed on 12 June 2015 in Supreme Court of Queensland Proceeding No. 8032/14; and
 - (b) my affidavit sworn on 11 June 2015 and filed on 12 June 2015 in Supreme Court of Queensland Proceeding No. 8034/14,
- ("**my 11 June 2015 affidavits**").
43. I have been provided with a copy of the letter dated 6 July 2015 from Tucker and Cowen Solicitors to Minter Ellison. Exhibit '**JV-9**' is a true copy of that letter.

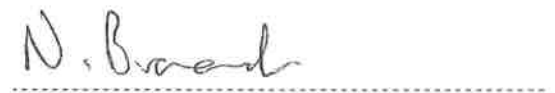
44. I did not, and presently do not, know whether the insurance policies respond in whole or in part to the claims in the First and Second Proceedings. My purpose in referring to Mr Whyte's affidavit filed in Supreme Court of Queensland Proceeding No. 12317/14 was to show that the policies of insurance exist. Mr Whyte was not saying in his affidavit that those policies respond to the claims in the First and Second Proceedings.

SWORN by JARROD VILLANI on 17 July 2015

at Brisbane

in the presence of:


Deponent


Solicitor/Commissioner for
Declarations/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

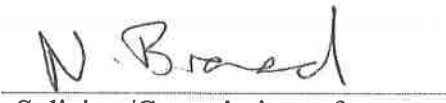
NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

CERTIFICATE OF EXHIBITS

Exhibits 'JV-1' to 'JV-9' to the affidavit of Jarrod Villani sworn 17 July 2015


Deponent


Solicitor/~~Commissioner for~~
Declarations/Justice of the Peace

CERTIFICATE OF EXHIBITS

Filed on behalf of the Applicant

Form 47 Rule 435

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NVB DOB 407747729

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

LIST OF EXHIBITS

Exhibit	Document	Pages
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JV-2	Extract of Trustee's website printed on 9 June 2015	17-19
JV-3	Email of 4 June 2015 to MPF unitholders	20
JV-4	Emails received in response to 4 June 2015 email to MPF unitholders	21-31
JV-5	Email of 16 June 2015 to MPF unitholders	32-33
JV-6	Emails received in response to 16 June 2015 email to MPF unitholders	34-53
JV-7	Email of 8 July 2015 to MPF unitholders	54-55
JV-8	Email of 4 June 2015 to Residual Unitholders	56
JV-9	Letter from Tucker and Cowen Solicitors to Minter Ellison dated 6 July 2015	57-59

LIST OF EXHIBITS

Filed on behalf of the Applicant

Form 47 Rule 435

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NVB DOB 407747729

Settlement deed

Dated November 2014

The Trust Company (PTAL) Limited ACN 008 412 913 in its capacity as security trustee for the AIF-CP and MPF Security Trust ("PTAL")

LM Investment Management Limited ACN 077 208 461 (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM Australian Income Fund ARSN 133 497 917 ("LM")

John Richard Park and Ginette Muller ("LM Liquidators")

KordaMentha Pty Ltd ACN 100 169 391 and Calibre Capital Pty Ltd ABN 66 108 318 985 as joint trustees for the LM Managed Performance Fund ("Trustees")

Level 33
Waterfront Place
1 Eagle Street
Brisbane QLD 4000
Australia
T +61 7 3244 8000
F +61 7 3244 8999
DX 311 Brisbane
www.kwm.com

Settlement deed

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Settlement deed

Details

Parties		
PTAL, LM, LM Liquidators and Trustees		
PTAL	Name	The Trust Company (PTAL) Limited in its capacity as security trustee for the AIF-CP and MPF Security Trust
	ACN	008 412 913
	Address	Level 4, 9 Beach Road, Surfers Paradise, Queensland, 4217
LM	Name	LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as Responsible Entity for the LM Australian Income Fund ARSN 133 497 917
	ACN	077 208 461
	Address	c/- FTI Consulting, 22 Market Street, Brisbane, Queensland, 4000
LM Liquidators	Name	John Richard Park and Ginette Muller in their capacity as joint and several liquidators of LM
	Address	c/- FTI Consulting, 22 Market Street, Brisbane, Queensland, 4000
Trustees	Name	KordaMentha Pty Ltd and Calibre Capital Limited as joint trustees for the LM Managed Performance Fund appointed pursuant to an order of the Supreme Court of Queensland dated 12 April 2013
	ACN and ABN	100 169 391 and 66 108 318 985
	Address	c/- KordaMentha, Level 14, 12 Creek Street, Brisbane, Queensland, 4000
Recitals	A	PTAL was the holder of first registered mortgages over the Property (" First Mortgage ").
	B	By a deed of assignment dated 28 August 2008 (" First Assignment Deed ") PTAL in its capacity as custodian for the MIF assigned to LM in its capacity as trustee of the MPF its debt and its interest under various securities including the First Mortgage.

- C On or around 28 December 2011, PTAL, AIF and the MPF entered into the Security Trust Deed which regulates the relationship between the AIF and the MPF.
- D By a deed of assignment dated 29 December 2011 ("**Second Assignment Deed**") the AIF participated in the MPF's debt secured by the First Mortgage and obtained an interest in the First Mortgage.
- E On 19 March 2013, the LM Liquidators were appointed as administrators of LM, and on 1 August 2013 they became liquidators of LM.
- F On 12 April 2013, the Trustees were appointed as trustees of the MPF in place of LM.
- G PTAL holds the PTAL Accounts which hold the balance of the net proceeds of sale of the Property.
- H A dispute has arisen between the Parties relating to their respective rights and entitlements under the Security Trust Deed and to the balance of the funds in the PTAL Accounts and the Trustees have made allegations regarding the circumstances surrounding the Second Assignment Deed.
- I Without admission of liability, the Parties have agreed to settle the Dispute on the terms set out in this deed.

Date of deed	See signing page
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Governing law	Queensland
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Settlement deed

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Account has the meaning given in clause 2.2.

AIF means the LM Australian Income Fund (formerly known as the LM Australian Income Fund-Currency Protected) ARSN 133 497 917.

AIF-CP and MPF Security Trust means the trust created by the Security Trust Deed.

Balance Payment means the deposits to Suncorp-Metway Limited account number 484799 5093536230 account styled 'The Trust Company (PTAL) Limited ACF AIF Working Account – Business Investment Acct' - 034685008 referred to in clause 2.4(b) of this deed.

Business Day means a day (other than Saturday, Sunday or public holiday) on which banks are open for business in Brisbane, Australia.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise (including any claim for costs whether the subject of court order or otherwise).

Dispute means any and all disputes between the Parties (including without limitation the disputes referred to in Recital H) arising out of or connected with:

- (a) the Security Trust Deed including, without limitation, the Parties' respective rights and entitlements to the balance of the funds in the PTAL Accounts; and
- (b) the Second Assignment Deed.

First Assignment Deed has the meaning given in Recital B.

First Mortgage has the meaning given in Recital A.

Second Assignment Deed has the meaning given in Recital D.

GST has the meaning given by the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

LM Liquidators mean the people described as such in the Details.

MIF means the LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed) ARSN 089 343 288.

MPF means the trust known as the LM Managed Performance Fund herein represented by the Trustees.

Property means Lot S10 in Plan of Subdivision 443550R being certificate of title Volume 10686 Folio 369, Lot S11 in Plan of Subdivision 443550R being certificate of title Volume 10686 Folio 370 and Lot S12 in Plan of Subdivision 443550R being certificate of title Volume 10686 Folio 371.

PTAL Accounts means:

- (a) Commonwealth Bank of Australia account number 06 2000 15020481 styled 'MPF-Barley Wood Controller Disputed Funds';
- (b) Commonwealth Bank of Australia account number 06 2000 15020326 styled 'MPF-KPG Controller Account';
- (c) Suncorp-Metway Limited account number 484799 5093536230 styled 'The Trust Company (PTAL) Limited ACF LM Income Fund'; and
- (d) any other account that may, from time to time, hold the balance of the net proceeds of sale of the Property received by PTAL under the First Mortgage and held pursuant to the Security Trust Deed.

Responsible Entity has the same meaning as in the Corporations Act 2001 (Cwlth).

Settlement Amount has the meaning given in clause 2.1.

Security Trust Deed means the security trust deed between PTAL, LM as Responsible Entity for the AIF and LM as trustee for the MPF dated 28 December 2011.

Trustees mean the people described as such in the Details.

Trust Fund has the same meaning as given in the Security Trust Deed.

1.2 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

2 Payment

2.1 Payment

Without any admission of liability by any party, PTAL agrees to pay the amount of \$50,000 ("**Settlement Amount**") to the Trustees within five business days of the exchange of a fully executed copy of this deed.

2.2 Payment method – Settlement Amount

Payment of the Settlement Amount must be made by payment to the following account ("**Account**"):

Name:	TTCPL ACF LM MPF
BSB:	062 000
Account Number:	150 20836

2.3 Time payment received

The Settlement Amount will be taken to have been received immediately upon the payment being made in cleared funds to the Account.

2.4 PTAL proper instructions

LM irrevocably authorises and directs PTAL to:

- (a) pay the Settlement Amount to the Account in accordance with clause 2.1 of this deed within five business days of receipt by PTAL of a fully executed copy of this deed; then
- (b) close the PTAL Accounts and deposit the funds held in those accounts to the account styled 'The Trust Company (PTAL) Limited ACF AIF Working Account – Business Investment Act' – 034685008;

and
- (c) provide bank statements for the period 12 April 2013 to the date of closure for each of the PTAL Accounts to LM and the LM Liquidators.

2.5 Trustees' consent

Without any admission by LM or the LM Liquidators and without derogating in any way from the rights and privileges of the parties to the Security Trust Deed, the Trustees:

- (a) consent to PTAL acting in accordance with the authority and direction given in clause 2.4; and
- (b) following the payment by PTAL of the Settlement Amount and Balance Payment, irrevocably authorise LM and the LM Liquidators to exclusively direct PTAL in relation to the PTAL Accounts in their sole and absolute discretion.

3 Mutual releases

3.1 Release by Trustees and the MPF

Upon receipt of the Settlement Amount, the Trustees and MPF:

- (a) release each of PTAL, LM, the LM Liquidators and the AIF from all Claims relating to or in any way connected with the Dispute.
- (b) agree that each of PTAL, LM, the LM Liquidators, the AIF and any other person who may direct the AIF, may plead this deed to bar any Claim brought by the Trustees, the MPF or anyone who may direct the MPF relating to or in any way connected with the Dispute.
- (c) agree not to commence or maintain any Claim against any of PTAL, LM, the LM Liquidators or the AIF relating to or in any way connected with the Dispute (with the exception of a Claim for breach or enforcement of this deed);
- (d) agree to ensure that any person with whom it is associated in any way does not commence or maintain any Claim against any of PTAL, LM, the LM Liquidators or the AIF relating to or in any way connected with the Dispute; and
- (e) agree to indemnify PTAL, LM, LM Liquidators, and the AIF against any liability, loss or costs arising from a breach of clause 3.1(c) or 3.1(d).

3.2 Release by Trustees and the MPF - third parties

The release given in clause 3.1 ("Release by Trustees and the MPF") in favour of persons not a party to this deed is intended to be, and is, given for the benefit of and is directly enforceable by each of those persons, and this deed operates as a deed poll in favour of those persons.

3.3 Release by LM, the LM Liquidators and the AIF

Upon receipt of the Balance Payment in cleared funds by the LM Liquidators, LM, the LM Liquidators and the AIF:

- (a) release each of PTAL, the Trustees and the MPF from all Claims relating to or in any way connected with the Dispute;
- (b) agree that each of PTAL, the Trustees, the MPF and any person who may direct the MPF may plead this deed to bar any Claim brought by LM, the LM Liquidators, the AIF or anyone who may direct the AIF relating to or in any way connected with the Dispute;
- (c) agree not to commence or maintain any Claim against any of PTAL, the Trustees or the MPF relating to the Dispute (with the exception of a Claim for breach or enforcement of this deed);
- (d) agree to ensure that any person with whom they are associated in any way does not commence or maintain any Claim against any of PTAL, the Trustees or the MPF relating to the Dispute; and
- (e) agree to indemnify each of PTAL, the Trustees or the MPF against any liability, loss or costs arising from a breach of clause 3.3(c) or 3.3(d).

3.4 Release by LM, the LM Liquidators and the AIF - third parties

The release given in clause 3.3 ("Release by LM, the LM Liquidators and the AIF") in favour of persons not a party to this deed are intended to be, and is, given for the benefit of and is directly enforceable by each of those persons, and this deed operates as a deed poll in favour of those persons.

3.5 Enlarged definition of "PTAL", "LM", "LM Liquidators", and "Trustees"

In clause 3 ("Mutual releases"):

- (a) "PTAL" includes the current and former officers, employees and agents of PTAL;
- (b) "LM" includes the current and former officers, employees and agents of LM;
- (c) "LM Liquidators", includes the current and former officers, employees and agents of the LM Liquidators; and
- (d) "Trustees" includes the current and former officers, employees and agents of Trustees.

3.6 No release of MIF claims

For certainty, the Parties agree and acknowledge that nothing in clause 3 releases or compromises any Claims relating to or in any way connected with:

- (a) the MIF;
- (b) the First Assignment Deed; or

6.7 Future limitations

PTAL is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless PTAL's liability is limited in the manner satisfactory to PTAL in its absolute discretion.

6.8 Failure by PTAL

A failure by PTAL to comply with or a breach by PTAL of any of its obligations under this deed will not be considered to be fraud, negligence or wilful default by PTAL if the relevant failure or breach:

- (a) arose as a result of a breach by a person other than PTAL where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to PTAL performing the said obligation; or
- (b) was in accordance with a lawful court order or direction or otherwise required by law.

6.9 Override provision

All of the terms, clauses and conditions of this deed are subject to this clause 6 ("Limit of liability- PTAL").

7 Limit of liability – LM

7.1 Responsible Entity

The parties to this deed acknowledge that they are aware that LM's liability under this deed is limited to its capacity as the Responsible Entity of the AIF, pursuant to the constitution of the AIF ("AIF Constitution") and the other Parties to this deed are aware of the limited scope of LM's obligations and powers under AIF.

7.2 Limited liability

A liability arising under or in connection with this deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the AIF out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this deed.

7.3 No right to sue, appoint or prove

The Parties may not sue LM personally or seek to prove in the liquidation of LM.

7.4 Limit of liability not to apply

The provisions of this clause 7 ("Limit of liability – LM") do not apply to any obligation or liability of LM to the extent that it is not satisfied because under AIF's Constitution or other constituent documents, or by operation of law, there is a reduction in the extent of LM's indemnification out of the assets of AIF, as a result of LM's fraud, negligence or wilful default.

7.5 Inconsistency with AIF Constitution

Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its power and obligations under the AIF Constitution will not amount to a breach of or a default under this deed. LM's determination as to whether an obligation otherwise imposed upon it under this deed is inconsistent with or beyond the scope of its obligations and powers under the AIF Constitution is final and binding on the Parties.

7.6 Future limitations

LM is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

7.7 Failure by LM

A failure by LM to comply with, or a breach by LM of any of its obligations under this deed will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

- (a) arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or
- (b) was in accordance with a lawful court order or direction or otherwise required by law.

7.8 Override provision

All of the terms, clauses and conditions of this deed are subject to this clause 7 ("Limit of liability – LM").

8 Trustees' liability

8.1 Trustees

The Trustees enter into this deed solely in their capacity as trustees of the MPF and in no other capacity. The Parties acknowledge that they are aware that the liability of the Trustees under this deed is limited to their respective capacities as trustees of the MPF, pursuant to the constitution of the MPF ("MPF Constitution") and the other parties to this deed are aware of the limited scope of the Trustees' obligations under that constitution.

8.2 Limited Liability

A liability arising under or in connection with this deed (including without limitation for any representation, warranty, conduct, omission, deed or transaction related to this deed) can be enforced against the Trustees only to the extent to which it can be satisfied out of the assets of the MPF out of which the Trustees are actually indemnified for the liability.

The limitation of the Trustees' liability contained in this clause 8 ("Trustees Liability") applies notwithstanding any other provisions of this deed and extends to all liabilities and obligations of the Trustees in connection with this deed.

8.3 Inconsistency with MPF Constitution

Any failure by the Trustees to perform an obligation which they determine is either inconsistent with or beyond their powers and obligations under the MPF Constitution will not amount to a breach of or a default under this deed. The Trustees' determination as to whether an obligation otherwise imposed upon them under this deed is inconsistent with or beyond the scope of their obligations and powers under the MPF Constitution is final and binding on all Parties.

8.4 No right to sue, appoint or prove

The parties may not sue the Trustees in any capacity other than as trustee of the MPF, including seeking the appointment of the Trustees of a receiver, a liquidator, administrator or any other similar person and may not prove in any liquidation, administration or arrangement of or affecting the Trustees.

8.5 Assets held in own right

The Trustees have no obligation to meet any liability under this deed out of any assets held by the Trustees in their own right nor in any circumstances out of assets held by them in any other capacity.

8.6 Limit of liability not to apply

The provisions of this clause 8 ("Trustees Liability") will not apply to any liability or obligation of the Trustees to the extent there is a reduction in the extent of their indemnification out of the assets of the MPF as a result of the negligence, default or fraud of the Trustees.

9 Limit of liability – LM Liquidator

The parties acknowledge that:

- (a) The LM Liquidators have been appointed as the liquidators of LM and act only as the agents of LM;
- (b) the LM Liquidators make no representations and give no warranties in relation to any aspect of this deed or its subject matter; and
- (c) the LM Liquidators accept no personal liability whatsoever in relation to any aspect of this deed or its subject matter.

10 Costs and GST

10.1 Costs

Each Party will bear their own costs relating to the preparation and execution of this deed.

10.2 GST

The Settlement Amount and Balance Payment are, and all other consideration payable under this deed is, inclusive of GST, if any.

11 Confidentiality

11.1 What the Parties agree to disclose

The Parties agree that they may disclose the fact that the Dispute has settled.

11.2 Limited Disclosure to Members

The Parties agree that:

- (a) the Trustees may disclose details of the settlement, limited to the recitals contained in this deed, the Settlement Amount and the effect of clause 3.6 of this deed, to the members of the MPF, on a confidential basis; and
- (b) LM and the LM Liquidators may disclose details of the settlement, limited to the recitals contained in this deed, the Settlement Amount and the effect of clause 3.6 of this deed, to the members of the AIF, on a confidential basis.

11.3 What the Parties agree not to disclose

Subject to clauses 11.1 ("What the Parties agree to disclose") and 11.2 ("Limited Disclosure to Members"), each Party agrees not to disclose, or authorise the disclosure of, any terms of this deed to any other person, except to the extent:

- (a) that the other Parties to the deed consent in writing;
- (b) necessary to obtain legal or financial advice;
- (c) necessary to enforce any term of this deed; or
- (d) necessary to comply with legal obligations.

12 Miscellaneous

12.1 Entire agreement

This deed constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

12.2 Warranty

The Parties each warrant that they have not assigned any cause of action relating to the Dispute to any other person.

12.3 Reliance on their own information

Each Party to this deed acknowledges that they enter into the deed voluntarily upon their own information, investigation and legal advice. They acknowledge that they may learn new or different information with respect to the Dispute and that it is their intention to, and they do, fully and finally settle all claims and actions which may now exist, or may ever exist or may ever have existed in relation to the Dispute.

12.4 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

12.5 Variation

No variation to this deed will be of any force or effect unless it is in writing and signed by each party to this document.

12.6 When deed takes effect

This deed takes effect:

- (a) if counterparts of the deed are not used, when all parties have signed the deed; or
- (b) if counterparts of the deed are signed, upon exchange. Counterparts may be exchanged by facsimile or email.

EXECUTED as a deed.

Settlement deed

Signing page

DATED: _____

PTAL

SIGNED, SEALED AND DELIVERED)
by)

as attorney for THE TRUST)
COMPANY LIMITED (PTAL) ACN 008)
412 913 as security trustee for the AIF-)
CP and MPF Security Trust under)
power of attorney dated 12 July 2010)
registered in Queensland as dealing)
number 713351029.)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....
By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

LM

EXECUTED by LM INVESTMENT
MANAGEMENT LIMITED ACN 077
208 461 (IN LIQUIDATION)
(RECEIVERS AND MANAGERS
APPOINTED) AS RESPONSIBLE
ENTITY FOR THE AUSTRALIAN
INCOME FUND by its duly appointed
joint and several liquidator:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of liquidator

.....
Name of liquidator

LM LIQUIDATORS

SIGNED by JOHN RICHARD PARK in
his capacity as joint and several
liquidator of LM INVESTMENT
MANAGEMENT LIMITED ACN 077
208 461 (IN LIQUIDATION)
(RECEIVERS AND MANAGERS
APPOINTED):

.....
Signature of witness

.....
Name of witness (block letters)

.....
Signature of JOHN RICHARD PARK

SIGNED by GINETTE MULLER in her
capacity as joint and several liquidator
of LM INVESTMENT MANAGEMENT
LIMITED ACN 077 208 461 (IN
LIQUIDATION) (RECEIVERS AND
MANAGERS APPOINTED):

.....
Signature of witness

.....
Name of witness (block letters)

.....
Signature of GINETTE MULLER

KORDA MENTHA PTY LTD

EXECUTED by KORDA MENTHA PTY LTD ACN 100 169 391 as joint trustee for the LM Managed Performance Fund in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

MARK MENTHA

Name of director (block letters)

Signature of director/company secretary

MARK KORDA

Name of director/company secretary (block letters)

CALIBRE CAPITAL LIMITED

EXECUTED by CALIBRE CAPITAL LIMITED ABN 66 108 318 985 as joint trustee for the LM Managed Performance Fund in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*

*delete whichever is not applicable

Name of director/company secretary* (block letters)

*delete whichever is not applicable



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LM Managed Performance Fund

Appointment Profile

Type of Appointment: Court appointed trustees of the LM Managed Performance Fund (ABN: 95 595 833 174)
Date of Appointment: 12 April 2013
Appointees: KordaMentha Pty Ltd

Background Information

KordaMentha and its affiliated firm Calibre Capital were appointed Trustee of the Fund on 12 April 2013.

LM Managed Performance Fund is a Trust that was previously operated by LM Investment Management Limited ('LMIL').

John Park and Ginette Muller of FTI Consulting were on 19 March 2013 appointed as Joint and Several Voluntary Administrators of LMIL. However, in Brisbane on 12 April 2013, the Supreme Court of Queensland removed and replaced LMIL as Trustee of the Fund.

On 5 January 2015, Calibre Capital Limited retired as co-trustee of the Fund. KordaMentha is now sole-trustee of the Fund.

General Information

Please email lminvestors@kordamentha.com to query any of the information below.

Frequently asked questions (updated) 4 February 2014	04/02/2014	79 kb
Notice to Unitholders	01/10/2014	154 kb

Detailed narrations for Twelfth Update to Investors	09/04/2014	183 kb
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Fourteenth Update to Investors (20/01/2015) - removed until further notice due to commercial in confidence
 Thirteenth Update to Investors (4/08/2014) - removed until further notice due to commercial in confidence
 Twelfth Update to Investors (9/04/2014) - removed until further notice due to commercial in confidence
 Eleventh Update to Investors (10/01/2014) - removed until further notice due to commercial in confidence
 Tenth Update to Investors (16/09/2013) - removed until further notice due to commercial in confidence
 Ninth Update to Investors (05/07/2013) - removed until further notice due to commercial in confidence
 Eighth Update to Investors (03/06/2013) - removed until further notice due to commercial in confidence
 Seventh Update to Investors (17/05/2013) - removed until further notice due to commercial in confidence
 Sixth Update to Investors (13/05/2013) - removed until further notice due to commercial in confidence
 Fifth Update to Investors (07/05/2013) - removed until further notice due to commercial in confidence

Fourth Update to Investors	02/05/2013	243 kb
Third Update to Investors	01/05/2013	747 kb
Second Update to Investors	30/04/2013	317 kb
Initial notification to investors	15/04/2013	236 kb

Applications

Matter number 5329/15 - Directions Application in Lifestyle and Barly Wood claims

1. Section 96 Application	180 kb
2. Application within the Section 96 Application for directions about service	208 kb
3. Affidavit of Jarrod Villani in support of application for directions about service	10242 kb
4. Order made by Peter Lyons J on 29 May 2015	349 kb
5. Claim and Statement of Claim in proceeding S8032 of 2014	1918 kb
6. Claim and Statement of Claim in proceeding S8034 of 2014	1657 kb
7. Affidavit of David Thomas O'Brien sworn 4 June 2015	682 kb
8. Statement of Facts for 8034 of 2014	16222 kb
9. Statement of Facts for 8032 of 2014	22093 kb
Affidavit of Jarrod Villani in support of s96 application	915 kb

Matter Number 12317/2014 - Directions Application in defence of FMIF claim

Affidavit of Jarrod Villani sworn 13/03/2015	13/03/2015	2060 kb
Notification of Legal Application	05/03/2015	77 kb
1. Claim and Statement of Claim	04/03/2015	9692 kb
2. S96 Application for Directions	04/03/2015	330 kb
3. Order 18 February 2015	04/03/2015	342 kb
4. Statement of Facts	04/03/2015	12940 kb
5. Affidavit of Jarrod Villani	04/03/2015	1470 kb

Appointment Contacts

Brisbane
 Level 14, 12 Creek Street, Brisbane Qld
 +61 7 3338 0222

All enquiries:
 T: +61 7 3338 0286
 F: +61 7 3338 0298
 E: lminvestors@kordamentha.com

6. Affidavit of David O'Brien	04/03/2015	3058 kb
Matter Number 8792/2013 - Directions Application		
Peregrine Beach - 1 Originating Application		93 kb
Peregrine Beach - 2 SV Affidavit + Exhibits		7120 kb
Peregrine Beach - 3 SV Affidavit + Exhibits		7907 kb
Peregrine Beach - 4 SV Affidavit + Exhibits		8402 kb
05. Affidavit of Nadia Braad		4205 kb
06. Affidavit of David O'Brien		72704 kb
07. Affidavit of Ross Williams		998 kb
08. Affidavit of Simon Vertullo + Exhibits		98753 kb
09. Consent Adjournment of Application		352 kb
10. Affidavit of Simon Vertullo		14909 kb
11. Subpoena for production addressed to Simon Vertullo		1198 kb
12. Affidavit of David O'Brien		26390 kb
13. Applicant's outline of submissions		176 kb
14. Application to set aside subpoena to Simon Vertullo		515 kb
15. Respondent's outline of submissions		1933 kb
16. Affidavit of John Richard Park		855 kb
17. Transcript of Hearing before Boddice J		4871 kb
18. Application		600 kb
19. Affidavit of Simon Vertullo		15684 kb
20. Originating Application filed 19.09.14		197 kb
21. Affidavit of John Richard Park sworn 2.10.14		18322 kb
22. Affidavit of Simon Jeremy Tickner sworn 2.10.14		2458 kb
23. Affidavit of Jarrod Villani sworn 14.10.14		347 kb
24. Affidavit of Simon Vertullo sworn 15.10.14		3867 kb
Notice to Unitholders	25/09/2014	55 kb
Matter Number 3691/2013 - Service Application		
Application to Wind Up Fund including order for service on members	18/11/2013	90 kb
Affidavit of Simon Vertullo in respect to Service	18/11/2013	3782 kb
Affidavit of Lisa Gallate and Exhibit LNG-1	18/11/2013	1094 kb
Orders and directions made re service on members	18/11/2013	84 kb
Matter Number 3691/2013 - Wind Up Application		
Application to wind up fund	19/11/2013	86 kb
Affidavit of Simon Vertullo in respect to Wind Up		1058 kb
Exhibit certificates SMV-7		1097 kb
Exhibits SMV-7 1-5		4478 kb
Exhibits SMV-7 6-11		6154 kb
Exhibits SMV-7 12-17		4356 kb
Exhibits SMV-7 18-23		25966 kb
Exhibits SMV-7 24-26		19248 kb
Exhibits SMV-7 27-30		11802 kb
Exhibits SMV-7 31-34		24685 kb
Affidavit of Simon Vertullo regarding Quarantined Funds sworn 2014.01.29		640 kb
Outline of Submissions	07/02/2014	271 kb
Matter Number 3691/2013 - Books and Records Application		
Affidavit of Simon Vertullo	18/11/2013	456 kb
Exhibit certificate SMV5 1-14		71 kb
Exhibit Certificate SMV5 15-32		64 kb
Exhibit SMV5 1-100		6044 kb
Exhibit SMV5 201-300		3183 kb
Exhibit SMV5 301-400		3495 kb
Exhibit SMV5 401-489		4182 kb
Index to SMV5		22 kb
Matter Number 11593/2013 - Approval of Settlement Agreement		
Originating Application	06/12/2013	58 kb
Affidavit of Simon Vertullo - including exhibit SMV-9		18386 kb
Exhibits SMV-10 Vol 1		13727 kb
Exhibits SMV-10 Vol 2		9242 kb
Exhibits SMV-10 Vol 3		17598 kb
Exhibits SMV-10 Vol 4		16698 kb
Exhibits SMV-10 Vol 5		8408 kb
Second Affidavit of Simon Vertullo sworn 12.12.2013 and Exhibit SMV-11		3434 kb
Application for substituted service filed 17.12.2013		73 kb
Affidavit of Simon Michael Vertullo sworn and filed with leave 17.12.2013		1991 kb
Affidavit of Paul Springthorpe sworn and filed with leave 17.12.2013		1628 kb
s96 Statement	07/02/2014	91 kb
Court orders		
Amended Order per Martin J (3691 of 2013) - 2014.03.18		251 kb
Judgment dated 13 May 2013		116 kb
Order per Justice Peter Lyons (3691 of 2013) 2013.11.14		312 kb

Orders made by Justice Jackson 29.11.13	270 kb
Orders made by Justice Mullins 17.12.13	107 kb
Orders Martin J 10.2.14 (11593_2013)	44 kb
Orders Martin J 10.2.14 9550_2013	58 kb
Orders Martin J 10.2.24 B+R	51 kb
Orders of de Jersey CJ 23_05_13 3691_2013	140 kb
Orders of Justice Jackson dated 18 November 2013	108 kb
Orders of Justice Lyons 14.11.13 (B+R)	50 kb

Nicole Hamrosi

From: lminvestors [lminvestors@kordamentha.com]
Sent: Thursday 4 June 2015 03:54 pm
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

The purpose of this correspondence is to notify Unitholders that the Trustee has filed an originating application (5329/15) under section 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in prosecuting two claims against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM"). The two claims have been filed in the Supreme Court of Queensland but not served.

The claims relate to transactions entered into by, among others, LMIM as the former trustee of the LM Managed Performance Fund and LMIM as responsible entity for the LM First Mortgage Income Fund ("LMIM ATF the FMIF").

In proceeding 8032/14, the Trustee seeks, among other things, a declaration that LMIM ATF the FMIF holds the sum of \$9,731,662.76 on constructive trust for the Trustee.

In proceeding 8034/14, the Trustee seeks, among other things, a declaration that LMIM ATF the FMIF holds the sum of \$19,551,800.65 on constructive trust for the Trustee.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The S 96 Application
- Two Statements of Facts pursuant to section 96(1)
- Service application within 5329/15
- Affidavit of Jarrod Villani in 5329/15 in support of the service application
- Order made 29 May 2015 by Peter Lyons J regarding service of the S 96 Application and supporting material
- Claims and Statements of Claim in proceedings 8032/14 and 8034/14
- Affidavit of David O'Brien regarding the costs estimates in proceedings 8032/14 and 8034/14
- Affidavit of Jarrod Villani in support of the S 96 Application

The S 96 Application is set to be heard at 10.00am on 17 June 2015, however you are not obliged to respond or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards



Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

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Nicole Hamrosi

From: jonathan.menzies@ubs.com
Sent: Thursday 4 June 2015 06:33 pm
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders
Attachments: Legal Disclaimer.txt

Please remove me from this mailing list

Thanks

From: lminvestors [mailto:lminvestors@kordamentha.com]
Sent: 04 June 2015 06:54
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

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Kind regards



KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

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Nicole Hamrosi

From: john A. [john92110@inbox.com]
Sent: Thursday 4 June 2015 04:17 pm
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders

I APPROVE Service of both claims.

Gerald LOUVEL

> -----Original Message-----

> From: lminvestors@kordamentha.com

> Sent: Thu, 4 Jun 2015 05:53:51 +0000

> To: lminvestors@kordamentha.com

> Subject: LM Managed Performance Fund - Notice to Unitholders

>

> Dear Unitholder

> Application by the Trustee for directions regarding proposed service
> of two claims

>

> The purpose of this correspondence is to notify Unitholders that the
> Trustee has filed an originating application (5329/15) under section
> 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the Supreme
> Court of Queensland seeking directions as to whether the Trustee would
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> Queensland but not served.

>

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> as the former trustee of the LM Managed Performance Fund and LMIM as
> responsible entity for the LM First Mortgage Income Fund ("LMIM ATF
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>

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> <http://kordamentha.com/creditor-information/australia/109>:

>

>

> * The S 96 Application

>

> * Two Statements of Facts pursuant to section 96(1)

>

> * Service application within 5329/15

>

> * Affidavit of Jarrod Villani in 5329/15 in support of the
> service application

>

> * Order made 29 May 2015 by Peter Lyons J regarding service of
> the S 96 Application and supporting material

>

> * Claims and Statements of Claim in proceedings 8032/14 and
> 8034/14

>
> * Affidavit of David O'Brien regarding the costs estimates in
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> attention of the Court any correspondence it receives from Unitholders
> regarding the S 96 Application.
> Kind regards
>
>
> [cid:image001.png@01D09ED3.2353FFE0]<<http://www.kordamentha.com/>>
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>
>
> Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
>
> [cid:image002.png@01D09ED3.2353FFE0]
> <<http://www.KordaMentha.com/Restructuring>>
>
> connect with us [cid:image003.png@01D09ED3.2353FFE0]
> <<http://www.linkedin.com/company/kordamentha>>
> [cid:image004.png@01D09ED3.2353FFE0] <<https://twitter.com/KordaMentha>>
> [cid:image005.png@01D09ED3.2353FFE0]
> <<http://www.kordamentha.com/forensic/forensic-spotlight-with-kordament>
> ha>
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Nicole Hamrosi

From: Suresh Raj [sraj@farringdongroup.com]
Sent: Thursday 4 June 2015 04:03 pm
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders

Hi guys,

In simple terms, can you let us know if there are any chances of any monies being returned back to investors?

Regards,

Suresh Raj

Portfolio Manager

Farringdon

(T) +60 3 2026 0286 | (F) +60 3 2026 0291 | (W) www.farringdongroup.com

Farringdon Group Ltd | Suite 15.02 | Floor 15 | KH Tower | 8 Lorong P Ramlee | 50250 Kuala Lumpur | Malaysia (MAP)



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From: lminvestors [mailto:lminvestors@kordamentha.com]
Sent: Thursday, 4 June, 2015 1:54 PM
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

The purpose of this correspondence is to notify Unitholders that the Trustee has filed an originating application (5329/15) under section 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in prosecuting two claims against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM"). The two claims have been filed in the Supreme Court of Queensland but not served.

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Kind regards



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Nicole Hamrosi

From: James Best [james.best@abm.co.th]
Sent: Thursday 4 June 2015 03:59 pm
To: lminvestors
Subject: Re: LM Managed Performance Fund - Notice to Unitholders

Can you kindly advise what your objectives are?

Also in the best case scenario how much money do you expect to recoup to unit-holders and when?

Mail from:
James Best
Communications Director
Aziam Burson-Marsteller (ABM)
Bangkok, Thailand
Tel: +66 (0) 2252 9871 ext. 577
Fax: +66 (0) 2254 8353
Mobile: +66 (0) 8 3198 4722

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If you have received this transmission in error, please notify the sender at the e-mail address above.

On Thu, Jun 4, 2015 at 12:53 PM, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

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Kind regards

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Nicole Hamrosi

From: Kari M. [karimork@gmail.com]
Sent: Thursday 4 June 2015 06:59 pm
To: lminvestors-
Subject: Re: LM Managed Performance Fund - Notice to Unitholders

Hi,

Thank you for reply. I can see "application by the Trustee for directions regarding proposed service of two claims" information, but I still do not know when I can get back my money, when will the case finish? As an investor, I do more concern on will I receive my return and when and how much?
I look forward to your advise! Thank you

regards,
Kari Mork

On 4 June 2015 at 07:53, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

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Nicole Hamrosi

From: lminvestors [lminvestors@kordamentha.com]
Sent: Tuesday 16 June 2015 12:20 pm
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

As foreshadowed in the Affidavit of Mr Villani, it has become necessary to adjourn the hearing which was scheduled for 17 June 2015 to 13 July 2015 so that more information can be obtained about litigation funding.

We will continue to update the website with the materials filed in the application.

Kind regards



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From: lminvestors
Sent: 4 June 2015 3:54 PM
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

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Nicole Hamrosi

From: Christian Fagerstrom [christian.fagerstrom@opwglobal.com]
Sent: Tuesday 16 June 2015 02:37 pm
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders

Hi My name is Christian Fagerström and I am one of the Unitholders who is getting your updates regarding this issue.

I am about to change my email address so how will I make that change happen? Who shall I contact?

Best regards

Christian Fagerström
Area Sales Manager
OPW EMEA
Office: +46 (0) 227 422 16
Cell: +46 (0) 70 610 22 17
Skype: christianvonfagerstrom
Fax: +46 (0) 227 422 01
Web Site: www.opwglobal.com
Email: christian.fagerstrom@opwglobal.com

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From: lminvestors [mailto:lminvestors@kordamentha.com]
Sent: den 16 juni 2015 04:20
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

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Kind regards



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Sent: 4 June 2015 3:54 PM
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Nicole Hamrosi

From: howard.boyle78 [howard.boyle78@gmail.com]
Sent: Tuesday 16 June 2015 04:03 pm
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders

Unsubscribe

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: lminvestors <lminvestors@kordamentha.com>
Date: 15/06/2015 19:20 (GMT-08:00)
To: lminvestors <lminvestors@kordamentha.com>
Cc:
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

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Sent: 4 June 2015 3:54 PM
To: lminvestors
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Nicole Hamrosi

From: Sean Mahony [sean.mahony@mondialdubai.com]
Sent: Tuesday 16 June 2015 04:29 pm
To: lminvestors
Subject: Re: LM Managed Performance Fund - Notice to Unitholders

You have had 2 years to sort this out why do you need more time? How much have you spent on winding up this fund and how much have you recovered?

Why don't all 4 liquidators go to arbitration and sort it out to the mutual benefit of investors and stop haemorrhaging money?

Sean Mahony ASCI

Senior Wealth Manager

Mobile (UAE): +971 50 653 6468

Mobile (Cyprus): +357 9979 2648

Mobile (UK): +447825685753 Vodaphone

Mobile (UK) +447977057359 Orange

Home (UK) +441488685104



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From: lminvestors <lminvestors@kordamentha.com>
ate: Tuesday, 16 June 2015 06:20
To: lminvestors <lminvestors@kordamentha.com>
Subject: LM Managed Performance Fund - Notice to Unitholders

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Sent: 4 June 2015 3:54 PM

To: Iminvestors

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Nicole Hamrosi

From: graham hayward [hayward@email.com]
Sent: Tuesday 16 June 2015 07:48 pm
To: lminvestors
Subject: Re: LM Managed Performance Fund - Notice to Unitholders

Do you realise that we have lost our life savings. All we get is information that we don't understand. When the link between the crooked developer and the Australian Government is uncovered we will get all our money back. Perhaps you should spend some time searching for that link because it is definitely there. How could this man have conducted this Ponzi scheme under the nose of the Australian financial service org. IMPOSSIBLE he must have had some help. We are closing in !!!

Sent with my iPad

On 16/06/2015 at 09:20, lminvestors wrote:

> Dear Unitholder
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>
> Application by the Trustee for directions regarding proposed service of two claims
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>
> We refer to our email dated 4 June 2015.
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>
> As foreshadowed in the Affidavit of Mr Villani, it has become necessary to adjourn the hearing which was scheduled for 17 June 2015 to 13 July 2015 so that more information can be obtained about litigation funding.
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>
> We will continue to update the website with the materials filed in the application.
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> Kind regards
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> Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
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> connect with us [cid:image003.png@01D0A82C.FF6DFCD0] <<http://www.linkedin.com/company/kordamentha>>
[cid:image004.png@01D0A82C.FF6DFCD0] <<https://twitter.com/KordaMentha>>

[cid:image005.png@01D0A82C.FF6DFCD0] <<http://www.kordamentha.com/forensic/forensic-spotlight-with-kordamentha>>

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> From: Iminvestors

> Sent: 4 June 2015 3:54 PM

> To: Iminvestors

> Subject: LM Managed Performance Fund - Notice to Unitholders

> Dear Unitholder

> Application by the Trustee for directions regarding proposed service of two claims

> The purpose of this correspondence is to notify Unitholders that the Trustee has filed an originating application (5329/15) under section 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in prosecuting two claims against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM"). The two claims have been filed in the Supreme Court of Queensland but not served.

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> In proceeding 8032/14, the Trustee seeks, among other things, a declaration that LMIM ATF the FMIF holds the sum of \$9,731,662.76 on constructive trust for the Trustee.

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> * The S 96 Application

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> At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.
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> Kind regards
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> connect with us [cid:image003.png@01D0A82C.FF6DFCD0] <<http://www.linkedin.com/company/kordamentha>>
[cid:image004.png@01D0A82C.FF6DFCD0] <<https://twitter.com/KordaMentha>>

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Nicole Hamrosi

From: Fiona Troalic [Fiona.Troalic@nedbankprivatewealth.com]
Sent: Tuesday 16 June 2015 11:12 pm
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders

Dear Sirs

We have a few clients with LM Managed holdings currently held in Trust.

They are looking to have the LM Managed asset transferred into their own names, can you please advise if this is possible and what you will require from us as the Trustees and the clients as looking to hold the asset?

Kind regards



PRIVATE WEALTH
SINCE 1834

FIONA TROALIC

Trust Officer | Nedgroup Trust Limited | PO Box 192 Fairbairn House Rohais
St Peter Port Guernsey GY1 3LT
Tel +44 (0) 1481 710895 | Direct +44 1481 706197 | Fax +44 1481 710789 |
Email Fiona.Troalic@nedbankprivatewealth.com |
Web www.nedgrouptrust.com



Before you print this email, please think about the environment

From: lminvestors [mailto:lminvestors@kordamentha.com]
Sent: 16 June 2015 03:20
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

As foreshadowed in the Affidavit of Mr Villani, it has become necessary to adjourn the hearing which was scheduled for 17 June 2015 to 13 July 2015 so that more information can be obtained about litigation funding.

We will continue to update the website with the materials filed in the application.

Kind regards



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Sent: 4 June 2015 3:54 PM
To: Iminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

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The S 96 Application is set to be heard at 10.00am on 17 June 2015, however you are not obliged to respond or take any action with respect to this notification.

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Kind regards



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Nedgroup Trust.

If verification of this email or any attachment is required, please request a hard copy.

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Nicole Hamrosi

From: Rosario y Cesi [forestha2013@gmail.com]
Sent: Tuesday 16 June 2015 11:44 pm
To: Iminvestors; Steve Burdett
Subject: Re: LM Managed Performance Fund - Notice to Unitholders

Hi Steve:
We have news from LM Managed Performance.

Kind Regards. Ceci.

From: Iminvestors
Sent: Tuesday, June 16, 2015 4:20 AM
To: Iminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

As foreshadowed in the Affidavit of Mr Villani, it has become necessary to adjourn the hearing which was scheduled for 17 June 2015 to 13 July 2015 so that more information can be obtained about litigation funding.

We will continue to update the website with the materials filed in the application.

Kind regards



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From: Iminvestors
Sent: 4 June 2015 3:54 PM
To: Iminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

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Kind regards



KordaMentha

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El software de antivirus Avast ha analizado este correo electrónico en busca de virus.
www.avast.com

Nicole Hamrosi

From: Christine Armstrong [christine@mediate-health.co.uk]
Sent: Wednesday 17 June 2015 10:56 pm
To: lminvestors
Subject: Re: LM Managed Performance Fund - Notice to Unitholders

This just looks like a very good way to burn up any funds on legal fees and pointless wrangling.

Please advise whether any funds are actually ringfenced beyond the reach of lawyers that could eventually be returned to the people who were defrauded in the first place.

Christine Armstrong
Investor

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

From: lminvestors
To: lminvestors
Sent: Tuesday, June 16, 2015 3:20 AM
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

As foreshadowed in the Affidavit of Mr Villani, it has become necessary to adjourn the hearing which was scheduled for 17 June 2015 to 13 July 2015 so that more information can be obtained about litigation funding.

We will continue to update the website with the materials filed in the application.

Kind regards



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From: lminvestors
Sent: 4 June 2015 3:54 PM
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

The purpose of this correspondence is to notify Unitholders that the Trustee has filed an originating application (5329/15) under section 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in prosecuting two claims against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM"). The two claims have been filed in the Supreme Court of Queensland but not served.

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Kind regards



KordaMentha

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Nicole Hamrosi

From: John Wood [john.bangkok@hotmail.com]
Sent: Friday 19 June 2015 01:19 am
To: lminvestors
Subject: RE: LM Managed Performance Fund - Notice to Unitholders

PLEASE RETURN THE FUCKING MONEY TO THE INVESTORS AND STOP THIS INSANE CIRCUS!!!!

From: lminvestors@kordamentha.com
To: lminvestors@kordamentha.com
Subject: LM Managed Performance Fund - Notice to Unitholders
Date: Tue, 16 Jun 2015 02:20:23 +0000

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

As foreshadowed in the Affidavit of Mr Villani, it has become necessary to adjourn the hearing which was scheduled for 17 June 2015 to 13 July 2015 so that more information can be obtained about litigation funding.

We will continue to update the website with the materials filed in the application.

Kind regards



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From: lminvestors
Sent: 4 June 2015 3:54 PM
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

The purpose of this correspondence is to notify Unitholders that the Trustee has filed an originating application (5329/15) under section 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in prosecuting two claims against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM"). The two claims have been filed in the Supreme Court of Queensland but not served.

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Kind regards



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Nicole Hamrosi

From: lminvestors [lminvestors@kordamentha.com]
Sent: Wednesday 8 July 2015 10:53 am
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our emails of 4 June 2015 and 16 June 2015 below.

We are presently negotiating with prospective litigation funders in order to obtain the most favourable terms for the MPF.

As a result of delays in negotiating with prospective litigation funders, it has become necessary to adjourn the hearing which was scheduled for 13 July 2015 to 23 July 2015 to enable the Trustee to secure funding for these actions.

We will continue to update the website with the materials filed in the application.

Kind regards



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From: lminvestors
Sent: 16 June 2015 12:20 PM
To: lminvestors
Subject: LM Managed Performance Fund - Notice to Unitholders

Dear Unitholder

Application by the Trustee for directions regarding proposed service of two claims

We refer to our email dated 4 June 2015.

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KordaMentha

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Nicole Hamrosi

From: lminvestors [lminvestors@kordamentha.com]
Sent: Thursday 4 June 2015 11:38 am
To: lminvestors
Subject: LM Managed Performance Fund

Dear Unitholder

LM Managed Performance Fund

KordaMentha is the court appointed trustee of the LM Managed Performance Fund (the Fund).

Since being appointed as replacement trustee of the Fund in April 2013, the new trustee has been involved in a number of different court proceedings involving the management of the Fund. These proceedings have resulted in the court making formal orders at various times. Where relevant, documents relating to each proceeding were made available to unitholders via email. Recently the trustee has become aware that your email address was not included in an email listing provided to us by the former trustee. Accordingly, you were not sent an email, at your address, to notify you of certain information pertaining to the Fund.

Although the relevant court documents have previously been made available on the website (and are still available) a new information package consisting of the court orders resulting from the various court proceedings has now also been uploaded and can be accessed at <http://www.kordamentha.com/creditor-information/australia/109>.

If you have been receiving emails from the Trustee another way, we would be grateful to hear from you so that we can update our records.

Please don't hesitate to contact us should you have any queries.

Kind regards



KordaMentha

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Nicole Hamrosi

From: Alison Woodbury [awoodbury@tuckercowen.com.au] on behalf of David Schwarz [dschwarz@tuckercowen.com.au]
Sent: Monday 6 July 2015 09:08 am
To: David O'Brien; Nadia Braad
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) - Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14
Attachments: letter to Minter Ellison (TCS01004962).pdf
Categories: Purple Category

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury
Personal Assistant

E: awoodbury@tuckercowen.com.au
D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors

First Tier for Insolvency - Doyle's Guide to the Australian Legal Profession 2015

Richard Cowen, David Tucker and David Schwarz have been singled out in Doyle's Guide and Justin Marschke has again been recognised as one of Australia's Best Lawyers for litigation by **Best Lawyers® International 2016**

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Tucker & Cowen Solicitors.

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone, 07 300 300 00 / Facsimile, 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz / Mr Nase
Your reference: Mr O'Brien / Mrs Braad

6 July 2015

Minter Ellison
Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane QLD 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Partners.
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Geoff Hancock.

Associates.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Dear Colleagues

LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) ("LMIM") as Responsible Entity for the LM First Mortgage Income Fund (Receiver Appointed) ("FMIF")
KordaMentha Pty Ltd and Calibre Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14

We refer to the above matters, and to the Affidavits sworn by Mr Villani on 11 June 2015 in the above proceedings.

We note that Mr Villani says in paragraphs 18 to 20 of his Affidavits that:-

- "18. I am aware that LMIM holds insurance policies that might respond in whole or in part to the Claim made in this proceeding, but I do not have a copy of those policies.
19. The relevant source of my knowledge in relation to the insurance policies is the affidavit of Mr David Whyte, the Court appointed receiver of LMIM in its capacity as responsible entity for the FMIF, sworn and filed on 4 February 2015 in Queensland Supreme Court Proceeding No. 12317/14. Mr Whyte's affidavit refers to the insurance policies. Exhibit JV-5 is a copy of Mr Whyte's affidavit.
20. On 5 July 2013, I instructed the Trustees' solicitors, Minter Ellison, to send a letter to LMIM's insurance broker, Action Insurance Brokers Pty Ltd, putting it on notice of potential claims under the policies. Those claims included the claim the subject of this proceeding. Exhibit JV-6 is a copy of Minter Ellison's letter (with enclosures) dated 5 July 2013, to Action Insurance Brokers Pty Ltd."

We note that, whilst Mr Whyte says in his Affidavit filed in proceeding 12317/14 that he holds copies of insurance policies, and that he believes they will respond to the circumstances pleaded in the claim in proceedings 12317/14, he does not say or in any way suggest that he believes the insurance policies might respond to the claims made by your client which are the subject of Mr Villani's affidavits. Accordingly, Mr Whyte's Affidavit is no basis for any suggestion that the insurance policies might respond to the claims made by your client.

We also note that, given that Mr Villani deposes to instructing your firm to send letters to LMIM's insurance broker, Action Insurance Brokers Pty Ltd on 5 July 2013 (before the date of Mr Whyte's Affidavit) purporting to put it on notice of potential

claims under the insurance policies, it seems clear that your client knew about the insurance policies, before Mr Whyte swore his Affidavit.

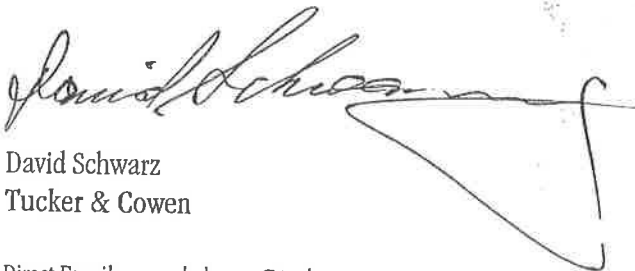
It would therefore seem to us that Mr Villani's Affidavit is not entirely accurate and complete, in so far as it seems to suggest that:

1. Mr Whyte's Affidavit provides a basis for Mr Villani's belief that the insurance policies might respond to the claims made by your client (when Mr Whyte's Affidavit provides no basis for such a belief); and
2. the source of your client's knowledge of the insurance policies was Mr Whyte's Affidavit (when your client was plainly aware of the insurance policies before Mr Whyte swore his Affidavit).

While our client expects that the statements in Mr Villani's Affidavits were not intended to convey an inaccurate impression, our client requests that, in the interests of ensuring that the evidence before the Court is accurate and complete, further Affidavits of Mr Villani be filed in the proceedings correcting these inaccuracies or, alternatively, exhibiting this letter.

We look forward to receiving your confirmation that your client will accede to the above request.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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